

**BEFORE THE ADJUDICATING OFFICER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

[ADJUDICATION ORDER NO. - SRP/RK/AO: 108-117/2010]

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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 BY ADJUDICATING OFFICER) RULES,  
1995

*In respect of:*

1. Premchand K Shah	PAN: AACPS7758K
2. Sharman P Shah	PAN: AAUPS1281M
3. Nihal P Shah	PAN: AACPS7759J
4. Sharman Appliances Pvt. Ltd.	PAN: AAACS0755K
5. Mradula V Shah	PAN: AAYPS4244A
6. Sushila P Shah	PAN: AAUPS1280L
7. Vijaykumar N Shah	PAN: AGTPS1675G
8. Shreya V Shah	PAN: AAKPS8146B
9. Bindi V Shah	PAN: AJZPS5561Q
10. Vanechand N Vora	PAN: AADPV1316K

*In the matter of*

**Gemstone Investments Limited**

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**BACKGROUND IN BRIEF**

1. The Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') conducted investigations into the affairs, trading and dealings in the shares of Gemstone Investments Limited (hereinafter referred to as '**Company/GIL**') for the period from August 28, 2006 to August 21, 2008 on the basis of a report received from the Bombay Stock Exchange Ltd. (hereinafter referred to as '**BSE**') regarding substantial reduction in the shareholding of the promoters of the Company and unusual spurt in price and traded volume of the scrip.
2. On investigation, it was, inter alia, observed by SEBI that i) Premchand K. Shah was the Chairman & Managing Director of the Company and ii) Sharman P Shah, iii) Nihal P. Shah, iv) Sharman Appliances Private Limited, v) Mradula V Shah and vi) Sushila P Shah were

the promoters/directors and persons belonging to promoter group of GIL. vii) Vijaykumar N Shah, viii) Shreya V Shah, ix) Bindi V Shah and x) Vanechand N Vora were persons related to promoters/directors of the Company. For the sake of brevity all these persons/entities are hereinafter collectively referred to as '**Noticees**'. It was also observed that Mr. Narendra Prabodh Ganatra was familiar to the promoters/directors of the Company since the year 2005. Subsequently, he was appointed as one of the directors of the Company on August 1, 2007 and was looking after the day to day affairs of the Company. The investigations revealed that the Noticees have allegedly acted in connivance amongst themselves and with the connected/related entities of Narendra Ganatra to manipulate the price of the scrip in order to off-load their stake at higher prices. In view of the above, it has been alleged that the Noticees have violated the provisions of regulations 3 (a), (b), (c) & (d) and regulations 4(1) & 4(2)(a) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practice relating to Securities Markets) Regulations, 2003 (hereinafter referred to as "**PFUTP Regulations**"). The alleged violation/contravention of the aforesaid provisions of the PFUTP Regulations, if established, makes the Noticees liable for monetary penalty under section 15HA of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**')

3. Based on the findings of the investigation it has also been alleged that –

- Premchand K. Shah, Sharman P Shah, Nihal P. Shah and Sharman Appliances Private Limited have failed to make the required disclosures under regulation 7(1A) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as '**SAST Regulations**') to the Company and to the stock exchange, where the shares of the Company were listed.
- Further, that Premchand K. Shah, Sharman P Shah, Nihal P. Shah and Mardula V Shah were the directors of GIL during the relevant period and the offloading of stake by them had attracted regulation 13(4) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as '**PIT Regulations**'), but they did not make the required disclosure to the Company under the aforesaid PIT Regulations.
- Sharman Appliances Private Limited and Sushila P Shah were holding more than 5% shares/voting rights in GIL and they sold their entire stake in the Company, however, they failed to make disclosure to the Company as required under regulation 13(3) of the PIT Regulations.

The alleged violation/contravention of the aforesaid provisions of the SAST Regulations and/or PIT Regulations, if established, makes these persons/entities liable for monetary penalty under section 15A (b) of the SEBI Act as well.

#### **APPOINTMENT OF ADJUDICATING OFFICER**

4. The undersigned has been appointed as Adjudicating Officer under section 15 I of the SEBI Act read with rule 4 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Rules**') vide order dated March 31, 2010 to inquire into and adjudge under sections 15HA and 15A (b) of the SEBI Act, the alleged violation of the aforesaid provisions of the PFUTP Regulations, SAST Regulations and PIT Regulations by the Noticees as has been detailed above.

#### **SHOW CAUSE NOTICE, HEARING AND REPLY**

5. Show Cause Notices dated June 4, 2010 (hereinafter referred to as '**SCN**') was issued to each of the Noticees, under rule 4(1) of the Rules. The Noticees were asked to show cause as to why an inquiry be not held and penalty be not imposed on them under section 15HA of the SEBI Act for the alleged violation of the provisions of the regulations 3 (a), (b), (c) & (d) and regulations 4(1) & 4(2)(a) of the PFUTP Regulations. In addition to the alleged violation of the provisions of PFUTP Regulations, the SCN issued to Mr. Premchand K. Shah, Mr. Sharman P Shah and Mr. Nihal P. Shah also alleged that they have violated the provisions of regulation 7(1A) of the SAST Regulations and regulation 13(4) of the PIT Regulations for which penalty may be imposed under section 15A (b) of the SEBI Act. The SCN issued to Sharman Appliances Private Limited additionally asked it to show cause as to why inquiry be not held and penalty be not imposed under section 15A(b) of the SEBI Act for the alleged violation of the provisions of regulation 7(1A) of the SAST Regulations and regulation 13(3) of the PIT Regulations. Similarly, Mardula V Shah was additionally alleged to have violated the provisions of regulation 13(4) of the PIT Regulations and Sushila P Shah the provisions of regulation 13(3) of the PIT Regulations. The content of the SCNs to the Noticees with respect to the alleged violation of the aforesaid provisions of PFUTP Regulations was similar.
6. The Noticees have submitted a common reply to the SCN vide letter dated July 14, 2010. On perusal of the submissions made by the Noticees it was decided to conduct inquiry in the matter. For the purpose of the inquiry opportunity of hearing was granted to the Noticees on July 19, 2010. Mr. Premchand K Shah, Authorized Representative, appeared for hearing on behalf of himself and all other Noticees. The written and oral submissions of the Noticees are mainly to the following effect:

- *Premchand K. Shah, Sushila Shah, Nihal P. Shah, Sharman Shah, Tanay N Shah (minor), Vijay Kumar Shah, Mradula V Shah, Shreya Shah, Bindi Shah, Vinechand Vora and Sharman Appliances Private Limited are all related parties and were the promoters/ persons belonging to promoter group of GIL.*
- *The Noticee along with other connected related entities mentioned above, acquired shares of GIL at Rs.2.75 from erstwhile promoters of the Company vide a memorandum of understanding (dated November 11, 1998) and made open offer to the shareholders of GIL in pursuance of the provisions of regulation 11(1) of the SAST Regulations.*
- *The Company (GIL) was not able to compete effectively in the consumer finance business and as Nihal Shah and Sharman Shah (Directors) did not show any interest in continuing with the Company therefore, it was decided that the holdings of the Noticee and other promoters/related entities in the Company may be sold. Unfortunately, there were no buyers and activities in the stock were very low at stock exchange.*
- *During August 2006, the price of the shares started moving up and touched a high of Rs.51.80 on August 21, 2008. However, the promoters/directors of the Company and their related entities have not sold shares of the Company at a price beyond Rs.28.50 and the period after July 2007.*
- *Premchand K Shah retained a small portion of his holding so that he could continue to be the promoter and sell the Company to any prospective buyer.*
- *The Noticee or any other family members did not know about the buyers of their shares as the shares were sold through the open market mechanism.*
- *In August 2007, Nihal Shah and Sharman Shah (sons of Premchand K Shah) expressed their desire to resign from the directorship therefore, Mr. Narendra Ganatra, who was holding 14,000 shares of GIL, was appointed as director of the Company. He was taking care of day to day activities of the Company.*
- *The sale of shares was only with a view to sell the Company at a later date and there was no malafide intention on their part or any intention to upset the equilibrium in the market.*

With regard to the allegation that some of the Noticees have not made the required disclosures under regulation 7(1A) of the SAST Regulations, regulation 13(3) and 13(4) of the PIT Regulations, a few documents were furnished at the time of the personal hearing.

## **CONSIDERATION OF ISSUES AND FINDINGS**

7. I have carefully examined the allegations against the Noticees, written and oral submissions made by the Noticees and the documents available on record. It has been alleged that the Noticees have acted in connivance with each other and with the entities related/connected to Narendra Ganatra in order to manipulate the price and volume of the scrip of GIL to offload their stake at higher prices in violation/contravention of the provisions of regulations 3 (a), (b), (c) & (d) and regulations 4(1) & 4(2) (a) of the PFUTP Regulations.
8. Before proceeding further, it would be appropriate to recapitulate the facts which are relevant with respect to the allegations mentioned above. SEBI conducted investigations in the scrip of GIL for the period from August 28, 2006 to August 21, 2008. The shares of the company are listed on BSE and the audited profit of the Company, as reported by it, was Rs.17, 40,000/- for the financial year 2005-06 and Rs.17, 20,000/- for the financial year 2007-08. However, for the financial year 2006-07 the company had reported a loss of Rs.2, 70,000/ on an equity capital of Rs.3,00,00,000/-.
9. The Noticees, viz., Premchand K. Shah, Sharman P Shah, Nihal P. Shah, Sharman Appliances Private Limited, Mradula V Shah, Sushila P Shah, Vijaykumar N Shah, Shreya V Shah, Bindi V Shah and Vanechand N Vora are related/connected with each other and with the Company in the following manner:
  - Sushila P Shah is the wife of Premchand K Shah (Chairman and Managing Director of GIL) and their sons are Nihal P Shah (Director) and Sharman P Shah (Director). Tanay N Shah (minor) is son of Nihal P Shah. Vanechand N Vora is the father-in-law of Nihal P Shah.
  - Directors of Sharman Appliances Pvt. Ltd. are Premchand K Shah, Sushila P Shah, Sharman P Shah, and Nihal P Shah.
  - Mradula V Shah (Director of GIL and Sister-in-Law of Premchand K Shah) is the wife of Vijaykumar N Shah. Shreya V Shah and Bindi V Shah are their daughters.

It may be appropriate to mention here that one of the above referred persons namely, Tanay N. Shah is a minor. His father Nihal P. Shah, in his communiqué to SEBI dated August 08, 2009 has taken responsibility for all the transactions done in the scrip of GIL in the name of Tanay N. Shah.

10. The investigations found that the scrip was illiquid and there was no trading in the scrip on BSE for the period from March 2002 to November 2005. After November 2005, trading in

the scrip commenced only from August 28, 2006. The price of the scrip on August 28, 2006 was Rs.2.94 and it rose to Rs.45.45 on November 12, 2007 and thereafter it came down to Rs.14.85 on April 15, 2008.

11. From the documents available on record it is observed that at the beginning of the investigation period i.e., on August 28, 2006, the Noticees were together holding 25,17,630 shares (83.92%) of GIL, out of the total 30,00,000 shares issued by the Company. One of the Noticees, viz., Sushila P Shah started selling her stake in the Company on August 29, 2006. She sold 20,000 shares through the stock broker Prabhudas Liladhar Private Limited (hereinafter referred to as '**PLPL**') on BSE during August 29-30, 2006 in the price range of Rs.3.08 to Rs.3.23. It is observed from the trade log that the counterparty client to these trades was one Mr. Manish Joshi. During the period from September 1, 2006 to November 9, 2006 a total of 2,200 shares were traded with very low trading volume and the price of the scrip rose to Rs.7.22. During the period November 10, 2006 to December 7, 2006 Vanechand N Vora sold his entire holding of 1,40,000 shares through the stock broker Balance Equity Broking (India) Pvt. Ltd. on BSE. These shares were sold in the price range of Rs.7.58 to Rs.13.10 and most of these shares were bought by Manish Joshi, Bhavesh Pabari and Narendra P Ganatra. On December 13, 2006, Shreya V Shah and Bindi V Shah sold their entire holding through the stock broker PLPL on BSE at the rate of Rs.11.22 per share and the counterparty client for almost all of these trades was again Manish Joshi.

12. It is pertinent to mention here that Manish Joshi and Bhavesh Pabari were known to Narendra Ganatra as he had introduced them to their respective stock-brokers and Bhavesh Pabari and Narendra Ganatra are having same office address. Further, from the statement of Premchand K Shah, managing director of GIL, recorded on September 8, 2009 it is observed that Narendra P Ganatra was known to Premchand K Shah since long time. The extract of the statement is as under:

*"Mr. Narendra Ganatra was introduced to me by my ex-tax consultant Shri Dhiraj Sahiyar, Mumbai in the later part of the year 2005 and I took him as co-promoter of the company since then and he was appointed as director of the company in August 2007. At present I am connected with him as a co-promoter of the company."*

13. On December 15, 2006 the shares of GIL were traded in the price range of Rs.11.03 to Rs.11.60. On this day Vijaykumar N Shah and Mardula V Shah started selling their stake in the Company through the broker PLPL on BSE. From the trade log it is observed that the counterparty client to most of their trades was again Manish Joshi, Bhavesh Pabari and

Narendra Ganatra. Thereafter, Nihal P Shah, Sharman Appliances Pvt. Ltd., Sushila P Shah, Sharman P Shah and Premchand K Shah sold their stakes in the company through the stock broker PLPL on BSE in the price range of Rs.16.48 to Rs.28.50. The details in this regard is tabulated below:

Sl. No	Name of the promoters / promoter group	No. of shares held as on 28/08/2006	No. of shares sold	Dates when sold	Price range
1	Premchand K Shah	400300	363150	18/5/2007 to 03/07/2007	Rs.22.5 to Rs.28.50
2	Sushila P Shah	487400	487400	29/08/2006 to 09/05/2007	Rs.3.08 to Rs.22.50
3	Nihal P Shah	150000	150000	15/01/2007 to 21/05/2007	Rs.16.48 to Rs.17.30
4	Tanay N Shah (Minor) S/o. Nihal P Shah	150000	150000	15/01/2007 to 21/05/2007	Rs.16.48 to Rs.17.30
5	Sharman P Shah	200000	200000	15/05/2007 to 30/05/2007	Rs.21.20 to 22.50
6	Sharman Appliances Pvt. Ltd.	699930	699930	31/1/2007 to 01/03/2007	Rs.17.30 to Rs.23
7	Mradula V Shah	240000	240000	15/12/2006 to 02/01/2007	Rs.11.03 to Rs.12.42
8	Vijaykumar N Shah	30000	30000	19/12/2006	Rs.11.03
9	Bindi V Shah	10000	10000	13/12/2006	Rs.11.22
10	Shreya V Shah	10000	10000	13/12/2006	Rs.11.22
11	Vanechand N Vora	140000	140000	10/11/2006 to 07/12/2006	Rs.7.36 to Rs.13.10
	<b>Total</b>	<b>2517630</b>	<b>2480480</b>		

14. From the trade log it is evident that the counterparty clients in most of the trades of Nihal P Shah, Sharman Appliances Pvt. Ltd., Sushila P Shah, Sharman P Shah and Premchand K Shah were Manish Joshi, Bhavesh Pabari, Narendra Ganatra, Vinayak Bhangе, Hemant Sheth, Prem Parekh, Bharat Thakkar, Mala Sheth and Kishore Chauhan. Here, it is

pertinent to mention that these counterparty clients are related/ connected to Narendra P Ganatra and the details in this regard and transactions among them were enclosed with the SCN. The investigations also found that that these entities, acting in collusion, consistently traded in the scrip from August 28, 2006 to August 21, 2008 and are instrumental in price rise of the scrip from Rs.2.94 (on August 28, 2006) to Rs.51.81 (on August 21, 2008) by placing buy orders at incremental prices and indulging in circular/reversal trades. The relevant details in this regard were also forwarded to the Noticees along with the SCN and the Noticees have not disputed or disagreed with the same.

15. On the basis of the analysis of trade and order log it has been observed in the investigation report that the trades of the promoter/director and their related entities had matched mainly with Narendra Ganatra and persons related/connected to him. It was observed that during the period from August 28, 2006 to March 16, 2007, out of 13,03,800 shares sold by the Noticees, for 9,45,500 shares (72.51%) Narendra Ganatra and entities related/connected to him were the counterparty clients. On analyzing the details of the counter party to the purchases made by Narendra Ganatra and his related entities it was observed that out of a total 12.90 lakh shares purchased by them, 9,45,500 shares were purchased from the Noticees. Between March 20, 2007 to July 3, 2007 promoters/Company related entities sold 11,56,680 shares and for 8,96,619 shares the counterparty buyers were Narendra P Ganatra and his related/connected entities. The investigation report also mentions that although, the time gap was more than one minute between buy orders and sale orders, from the order log it was observed that there were no major market participants in the scrip besides promoters/company related entities and Narendra P Ganatra and his related/connected entities during the period when these entities have traded.
16. The Noticees have not denied or disputed the fact that they are related/connected to each other and are promoters/persons belonging to promoter group of the Company. They had acquired shares of the Company from erstwhile promoters of GIL @ Rs.2.75 per share. As the Company was not able to effectively compete in the business of consumer finance, they wanted to sell their holdings. However, there were no buyers. The Noticees have further submitted that as the price of the shares started moving up during August 2006, they thought that by reducing their stake it would be easier to sell the Company, therefore, they started selling their holdings. The Noticees have also submitted that they did not know who the buyers were as the shares were sold in the market through the market mechanism. A small portion of the holdings of Premchand K Shah was retained so that he can continue to be the promoter and sell the Company to any prospective buyer.



17. On the basis of the material available on record, the common reply and submissions and admission of the Noticees, I have no doubt that the Noticees have acted in concert amongst themselves to off-load their stake in GIL. Further, there is no dispute over the fact that the Noticees were unable to sell their holdings in the Company as the prevailing market price before the beginning of the period of investigation was very low. However, during the investigation period they sold almost entire stake in the Company in the market at substantially higher prices and most of their sale trades have matched with the buy trades of Narendra Ganatra and entities related/connected to him.
18. The question that remains to be determined is whether the transactions were done with premeditation and in a manner so as to disturb the market equilibrium and make gains for themselves at the cost of investors in securities. In this regard, in Ketan Parekh v. SEBI, decided on July 14, 2006, Hon'ble Securities Appellate Tribunal had observed that:

*“Whether a transaction has been executed with the intention to manipulate the market or defeat its mechanism will depend upon the intention of the parties which could be inferred from the attending circumstances because direct evidence in such cases may not be available. The nature of the transaction executed, the frequency with which such transactions are undertaken, the value of the transactions, whether they involve circular trading and whether there is real change of beneficial ownership, the conditions then prevailing in the market are some of the factors which go to show the intention of the parties. This list of factors, in the very nature of things, cannot be exhaustive. Any one factor may or may not be decisive and it is from the cumulative effect of these that an inference will have to be drawn.”*

19. In the instant case, it is observed that during the financial year 2006-07 the Company had suffered a loss of Rs.2,70,000/- and the Noticees, being the promoters/ persons belonging to the promoter group, were aware of this. Further, the Company had not declared any dividend for last several years and there was no corporate announcement by the Company during the period of investigations. The investigation has found that there was no trading in the scrip for the period from March 2002 to November 2005. After November 2005, trading in the scrip on BSE commenced only from August 28, 2006 with 100 shares traded on this day. On August 29-30, 2006 one of the Noticees, namely, Sushila P. Shah sold 20,000 shares on BSE in the price range of Rs.3.08 to Rs.3.23. The purchaser of these shares was Manish Joshi, who is connected/related to Narendra P Ganatra. Further, as per statement of Premchand K Shah, Narendra Ganatra was acting as promoter of the Company since the later part of the year 2005 and the Noticees wanted to sell their stake

in the Company but were unable to do so as there were no buyers and the prevailing share price of GIL was very near to the price at which they had purchased those shares eight years back.

20. The investigation has found that the scrip was again not traded from August 31, 2006 to September 24, 2006. Between September 26, 2006 to December 12, 2006 the scrip was traded for 2,14,000 shares and the price increased from Rs.3.55 to Rs.12.48, wherein, many first trades at incremental prices were executed by the entities related/connected to Narendra Ganatra. With the increase in the price and volume of the scrip more market participants started coming in the market.
21. As has been detailed above, from December 13, 2006 onwards, when the price of the scrip had already gone up substantially, the other Noticees started off-loading their stake in the Company. On the basis of the analysis of trade and order log it has been observed in the investigation report that the trades of the promoter/director and their related entities had matched mainly with Narendra Ganatra and persons related/connected to him. It was observed that during the period August 2006 to July 2007, out of the total sale trade of 24,80,480 shares by the promoters/directors and their related entities, i.e., the Noticees, sale trade for 18,42,119 shares (74.26%) matched with the buy trades of Narendra P Ganatra and his related/connected entities. About matching of trades, the Noticees have stated that in the automated trading system, it is not possible to know who the counter parties are.
22. In the matter, I have noted that although some trades were made earlier, the major sale transaction of the promoter/director and their related entities had started taking place with effect from December 13, 2006, when the price of the scrip had already gone up substantially on account of the manipulative trades done by certain entities, as has been mentioned above. By July 3, 2007, except for Premchand Shah, all other promoters/directors and related entities of GIL had sold their entire stake in the Company. Further, Premchand K Shah had also reduced his holding to 37,150 shares (1.24% of the paid-up capital of GIL) from 4,00,300 shares held at the beginning of the investigation period. The promoter group's holding in the company was 1.22% at the end of quarter ended on September 30, 2008. Thus, promoters/directors of GIL along with their related entities had almost entirely off-loaded their stake in the Company by the beginning of July 2007.
23. The circumstances enumerated above indicate that the Noticees were not deriving any profit or benefit out of their holdings in GIL and being the promoters/directors they knew

that they will not be able to compete with others and turn around the Company into a profitable undertaking. Therefore, they wanted to exit from the Company. But exiting at the prevailing market price would have put them in very disadvantageous position as the price of the shares of the Company at BSE was very near to the price at which they had purchased those shares eight years back and the Noticees had not got any returns from their investment in the shares of the Company as the Company had not declared any dividend. In such circumstances, Premchand K Shah came in contact with Narendra P Ganatra in the year 2005 and soon Ganatra became associated with the Company. During the period August 29, 2006 to December 7, 2006 a small quantity of shares of GIL- as has been mentioned in the preceding paragraphs - were sold by some of the Noticees. Most of these sale transactions matched with the buy orders placed by Narendra P Ganatra and his related/connected entities. The investigation has revealed that during this period Narendra P Ganatra and his related/connected entities executed many first trades at incremental prices. Such trades of Narendra Ganatra and his related entities influenced the price and volume of the scrip and thereby generated trading interest in the shares of GIL. The Noticees started selling shares of GIL in the market mostly from December 13, 2006, when the price of the scrip had gone up to Rs.12.48 and they continued doing so till July 3, 2007, when the price of the share of GIL had reached up to Rs.28.50 per share. During this period the Noticees off loaded almost their entire stake in the Company (82.68% of the issued capital of GIL) and made huge profits.

24. It is also observed that during the period from August 28, 2006 to March 16, 2007, out of a total of 13,03,800 shares sold by the Noticees, for 9,45,500 shares (72.51%) Narendra Ganatra and entities related/connected to him were the counterparty clients. The details in regard to the counter party to the purchases made by Narendra Ganatra and his related entities indicate that out of total 12.90 lakh shares purchased by them, 9, 45,500 shares were purchased from the Noticees. Between March 20, 2007 to July 3, 2007 promoters/Company related entities sold 11, 56,680 shares and for 8, 96,619 shares the counterparty buyers were Narendra P Ganatra and his related/connected entities. Thus, during the period between August 2006 and July 2007, out of the total sale trade of 24, 80,480 shares by the Noticees, sale trade for 18,42,119 shares (74.26%) matched with Narendra P Ganatra and his related/connected entities. As has been stated earlier, in regard to matching of trades, the Noticees have submitted that in the open market mechanism it is not possible to know that who the counterparty is. However, I am of the opinion that matching of such a large number of trades with the same set of counterparties can not be attributed to mere coincidence and the same is not possible without collusion and prior understanding /arrangement between the parties to such trades. Therefore, the

contention of the Noticees that they did not know who the buyers were as the shares were sold in the market through market mechanism, is not acceptable.

25. I also find that by the beginning of July 2007 the stake of the promoter group was reduced to 1.24% of the paid-up capital of the Company and by August 1, 2007 Narendra Ganatra and one more person known to Mr. Ganatra, namely Heena M Verde, were appointed as directors of GIL. I have also noted that as director, Mr. Ganatra was taking care of the day to day affairs of the Company.
26. Thus, the circumstances stated above leave no doubt that the Noticees were acting with prior understanding between themselves and with Narendra P Ganatra and his related entities in order to offload their stake at manipulated prices. A large number of trades got matched regularly between the same set of persons/entities for a considerable period of time. The phenomenal regularity with which the Noticees have indulged in such trades and could exit from the Company after making substantial profits leads one to conclude, that these transactions were effectively meant to manipulate the market and to get benefit out of it by defying the market mechanism.
27. The Noticees have contended that the scrip had touched a high of Rs. 51.80 on August 21, 2008 but they have not sold the shares at a price beyond Rs. 28.50 and after July 2007. I do not find any merit in the above contention of the Noticees. The Noticees were fully aware that the scrip was illiquid and it was not even traded at the Exchange for a considerable time. They had acquired the shares from the erstwhile promoters of GIL @ Rs. 2.75 per share about eight years back but during this period the share price had not increased and had remained almost at the same levels. During this period no dividend was paid. Further, as promoters they were aware that the Company is incurring loss during the financial year 2006-07 and there is no such corporate development that would increase the price of the scrip. There was no basis for such phenomenal rise in the price of the scrip, and therefore, slowly offloading their stakes at higher prices (highest being Rs. 28.50) would not have been a disadvantageous bargain for them. I am of the view, that nobody, who for years could not dispose of his holdings and is not deriving any benefit out of his holdings and is aware of the abovementioned facts, shall wait further and take a chance of offloading such stock at a later date, in anticipation that such manipulated share prices would further move up. The fact cannot be ignored that by offloading their holdings at such artificially inflated prices they could make unlawful gains to the tune of Rs. 4.46 crore (details in this regard have been discussed in the later part of the report) .

28. The observations made by the undersigned in the instant case can be summarized as under –

- i. The Noticees are related/connected entities and were the promoters/persons belonging to promoter group of GIL. As per the reasons mentioned above, the Noticees wanted to sell their stake in the Company but there were no buyers.
- ii. The scrip of GIL was illiquid and there was no trading in the scrip for more than three and half years (March 2002 to November 2005). Even after November 2005 trading in the scrip recommenced only from August 28, 2006 i.e. after a gap of around 9 months.
- iii. Between August 28, 2006 to November 12, 2007, the price of the scrip rose from Rs.2.94 to Rs. 45.45 i.e. more than 1500 %. The phenomenal and abnormal rise in the price of the scrip was not supported by any fundamentals or corporate developments. In fact, this happened even though the Company had incurred losses during the financial years 2006-07. A group of related/connected entities were identified by SEBI, who were instrumental in manipulating the price and volumes of the GIL scrip traded during the relevant period. One of the persons belonging to this group was introduced to the Noticees and was known to them since 2005 and subsequently, he was appointed as director of the Company.
- iv. Most of the trades executed by the Noticees have matched with the trades of the said entities. This way the Noticees, who were earlier unable to sell their stake in GIL, could off load almost entire of their holdings at such higher manipulated prices and thereby they could make huge profits.

29. The above details clearly indicate the fraudulent intent and game plan of the Noticees. In this regard, I would like to refer to the views expressed by the Hon'ble SAT in its order dated 14.7.2006 in *Ketan Parekh Vs. SEBI* wherein it had observed that *"When a person takes part in or enters into transactions in securities with the intention to artificially raise or depress the price he thereby automatically induces the innocent investors in the market to buy /sell their stocks. The buyer or the seller is invariably influenced by the price of the stocks and if that is being manipulated the person doing so is necessarily influencing the decision of the buyer / seller thereby inducing him to buy or sell depending upon how the market has been manipulated. We are therefore of the view that inducement to any person to buy or sell securities is the necessary consequence of manipulation and flows therefrom. In other words, if the factum of manipulation is established it will necessarily follow that the investors in the market had been induced to buy or sell and that no further proof in this regard is required. The market, as already observed, is so wide spread that it may not be humanly possible for the Board to track the persons who were actually induced to buy or sell securities as a result of manipulation and law can never impose on the Board a burden*

*which is impossible to be discharged. This, in our view, clearly flows from the plain language of Regulation 4(a) of the Regulations."*

30. Thus, on the basis of the aforesaid I have come to the conclusion that the Noticees have acted in collusion with each other and also with Narendra Ganatra and his connected/related entities to manipulate the market which has led to creation of artificial price and volumes and enabled them to off load their almost entire shareholding in GIL at higher prices which were manipulated. The facts of the present case clearly bring out an element of fraud by the Noticees as laid down in regulation 2 (1) (c) of the PFUTP Regulations, which reads as follows:

*"2 (1)(c) "fraud" includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss, ... .."*

31. Regulation 3(a) of the PFUTP Regulations prohibits any person from dealing in securities in a fraudulent manner. Regulation 3(b) prohibits use of any manipulative or deceptive device or contrivance in connection of purchase or sale of securities. Regulation 3(c) prohibits any scheme to defraud investors in securities. Regulation 3(d) prohibits any person from engaging in any act which would operate as fraud or deceit upon any person in connection with dealing in securities. Further, regulation 4(1) of the PFUTP Regulations prohibits any person from indulging in fraudulent or unfair trade practices in securities. Regulation 4(2)(a) of the PFUTP Regulations prohibits a person from indulging in an act which creates false or misleading appearance of trading in the securities market. As detailed above, the Noticees have acted in connivance with other entities and as per their scheme to defraud investors they manipulated the price of the scrip to generate artificial buying interest as detailed above, which enabled them to sell their stake in GIL in the market at higher prices. I am of the strong opinion that such fraudulent and unfair trade activities of the Noticees are definitely in violation / contravention of the provisions of regulations 3 (a), (b), (c) and (d) of the PFUTP Regulations and also regulations 4(1) and 4(2)(a) of the PFUTP Regulations. These violations make the Noticees liable for penalty under section 15HA of the SEBI Act.

32. The SCN dated June 4, 2010 issued to Premchand K. Shah, Sharman P Shah, Nihal P. Shah and Sharman Appliances Private Limited also alleged that they have violated the provisions of regulation 7(1A) of the SAST Regulations. The regulation reads as under:

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

*(1A) Any acquirer who has acquired shares or voting rights of a company under sub-regulation (1) of regulation 11, shall disclose purchase or sale aggregating two per*

*cent or more of the share capital of the target company to the target company, and the stock exchanges where shares of the target company are listed within two days of such purchase or sale along with the aggregate shareholding after such acquisition or sale.*

33. Regulation 7(1A) of the SAST Regulations requires any acquirer who acquired shares/voting rights under regulation 11(1) of the SAST Regulations to disclose purchase or sale exceeding 2% of share capital to the target company and to the stock exchanges within two days of such purchase or sale. It is not in dispute that Premchand K Shah, Nihal P Shah, Sharman P Shah and Sharman Appliances Pvt. Ltd. had acquired 42% shares/voting rights from the then promoters of the Company by an MOU dated 11th November, 1998 and had made a public announcement in pursuance to regulation 11(1) of the SAST Regulations and acquired further shares. The details of their shareholdings and number of shares sold by them are as under:

Sl. No	Name of the promoters	No. of shares acquired	% holding	No. of shares sold	% of holding reduced	Dates when sold
1	Premchand K Shah	400300	13.34	363150	12.10	18/5/2007 to 03/07/2007
2	Nihal P Shah	300000	10.00	300000	10.00	15/01/2007 to 21/05/2007
3	Sharman P Shah	200000	6.66	200000	6.66	15/05/2007 to 30/05/2007
4	Sharman Appliances Pvt. Ltd.	699930	23.33	699930	23.33	31/1/2007 to 01/03/2007

34. I have noted that 2% shareholding of GIL works out to 60,000 shares. From the trading details (which were enclosed with the SCN) it is observed that Premchand K. Shah had sold more than 60,000 shares by May 18, 2007, Sharman P Shah's sale transaction exceeded 2% shareholding of GIL on May 12, 2007, Nihal P. Shah had sold more than 2% on January 12, 2007 and Sharman Appliances Private Limited on February 1, 2007. I am therefore, of the view that these entities were required to make disclosures regarding their sale and aggregate shareholding in GIL to the Company and to the BSE in terms of regulation 7(1A) of the SAST Regulations. I find that each of these entities vide their letter to SEBI dated August 8, 2009 had made submissions to the effect that they have not made any disclosures under the SAST Regulations or PIT Regulations. Premchand K Shah, Nihal P Shah, Sharman P Shah and Sharman Appliances Pvt. Ltd have not disputed that

they have not made the required disclosures under regulation 7(1A) of SAST Regulations either to the Company or to the Stock Exchange. Therefore, I hold them guilty of violation of regulation 7(1A) of the SAST Regulations, which makes them liable for penalty under section 15A (b) of the SEBI Act.

35. The SCN issued to Premchand K. Shah, Sharman P Shah, Nihal P. Shah and Mardula V Shah also alleged that they have failed to make required disclosure to the Company within prescribed time and in the prescribed manner under regulation 13(4) of the PIT Regulations. The regulation reads as under:

**13. Disclosure of interest or holding by directors and officers and substantial shareholders in a listed companies - Continual disclosure.**

*(4) Any person who is a director or officer of a listed company, shall disclose to the company 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 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.*

36. Regulation 13(4) of the PIT Regulations places obligation on directors of any listed company to disclose to the Company any change in shareholding exceeding the lower of Rs.5 lakh, or 25000 shares or 1% of total shareholding. These disclosures are to be made within four working days. In the instant case, it is observed that Premchand K. Shah, Sharman P Shah, Nihal P. Shah and Mardula V Shah were the directors of GIL. Further, Premchand K Shah sold 3,63,150 shares between May 18, 2007 and July 3, 2007, Sharman P Shah sold 2,00,000 shares between May 11, 2007 and May 28, 2007, Nihal P Shah sold 1,50,000 shares between January 15, 2007 and May 21, 2007 and Mardula V Shah sold 2,40,000 shares between December 15, 2006 and February 1, 2007. Therefore, these directors were required to make disclosure to the Company regarding change in their shareholdings in terms of regulation 13(4) of the PIT Regulations.

37. Premchand K. Shah, Sharman P Shah, Nihal P. Shah and Mardula V Shah, vide their reply dated July 14, 2010, have submitted that disclosure in prescribed form was made by the company to BSE on August 6, 2010. From the perusal of the documents submitted, I find that there is only one letter (letter dated August 3, 2007 from GIL to BSE) which deals with disclosure under PIT Regulations. Further, this letter was written by the Company to BSE and not by the directors to the Company therefore, it can not be considered as an evidence of disclosure by the directors. Apart from this, I find that this letter discloses only about the sale of 2,40,000 shares sold by Premchand K Shah. It does not disclose, even belatedly, about sale transactions of other shares of Premchand K Shah or that of other directors. In



view of the admission of each of these entities, vide their letter to SEBI dated August 8, 2009, and material available on record I am of the view that Premchand K. Shah, Sharman P Shah, Nihal P. Shah and Mardula V Shah have failed to make the requisite disclosure in Form D to the Company within the prescribed time and hence, violated regulation 13(4) of the PIT Regulations. This makes them liable for penalty under section 15A (b) of the SEBI Act.

38. The SCN issued to Sharman Appliances Private Limited and Sushila P Shah also alleged that they were holding more than 5% shares/voting rights in GIL and they sold their entire stake in the Company however, they failed to make disclosure to the Company in terms of regulation 13(3) of the PIT Regulations. The regulation reads as under:

**13. Disclosure of interest or holding by directors and officers and substantial shareholders in a listed companies - Continual disclosure.**

*(3) Any person who holds more than 5% shares for voting rights in any listed company shall disclose to the company in Form C the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below 5%, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this sub-regulation; and such change exceeds 2% of total shareholding or voting rights in the company.*

39. Regulation 13(3) of the PIT Regulations places an obligation on any person holding more than 5% shares in a company, to disclose to the company in Form C any change in shareholding beyond 2%. In the instant case the Sharman Appliances Private Limited sold its entire shareholding in GIL, i.e., 6,99,930 shares (23.33%) between January 31, 2007 and March 1, 2007, and has admitted on record vide letter to SEBI dated August 8, 2009 that it has not made any disclosures under PIT Regulations. Similarly, Sushila P Shah sold her entire shareholding in GIL, i.e., 4,87,400 shares (16.24%) between August 29, 2006 and May 9, 2007, and has admitted on record vide letter to SEBI dated August 8, 2009 that she has not made any disclosures under PIT Regulations. Therefore, I am of the view that Sharman Appliances Private Limited and Sushila P Sha have failed to make the required disclosure to the Company in Form C within prescribed time and hence, violated regulation 13(3) of the PIT Regulations which makes them liable for penalty under section 15A(b) of the SEBI Act.

40. While determining the quantum of penalty under section 15HA and 15A(b) of the SEBI Act, it is important to consider the factors stipulated in section 15J of SEBI Act, 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.

41. Regarding penalty under section 15HA of the SEBI Act for indulging in fraudulent and unfair trade practices it is noted from above that the Noticees have acted in collusion with other entities, who were instrumental in manipulating the price of the scrip and thereafter offloaded their shares at such inflated prices - which were not determined genuinely by the market forces - to make unlawful gains. The price of the scrip before the beginning of any manipulative trade in the scrip was Rs.2.94 (as on August 28, 2006). I am of the view that any profit made by the Noticee by indulging into such trades is unlawful and the Noticees have unfairly and disproportionately made this gain. On the basis of trading details discussed above, the unlawful gains made by the Noticees are mentioned in column 7 of the table given below.

1	2	3	4	5	6	7
Sl. No.	Name of the promoters / promoter group	No. of shares sold	Price range	Payment received (in Rs.)	Value of shares sold on the basis of share price as on 28/8/06 (Rs.2.94 per share)	Unlawful Gains made (column 5 minus column 6)
1	Premchand K Shah	363150	Rs.22.5 to Rs.28.50	8012902.00	1067661.00	6945241.00
2	Sushila Shah	487400	Rs.3.08 to Rs.22.50	9888625.00	1432956.00	8455669.00
3	Nihal Shah and Tanay N Shah (Minor)	300000	Rs.16.48 to Rs.17.30	9888625.00	882000.00	9006625.00
4	Sharman P Shah	200000	Rs.21.20 to 22.50	4454384.60	588000.00	3866384.60
5	Sharman Appliances Pvt. Ltd.	699930	Rs.17.30 to Rs.23	15129034.00	2057794.20	13071239.80
6	Mradula V Shah	240000	Rs.11.03 to Rs.12.42	2585990.00	705600.00	1880390.00
7	Vijay Kumar Shah	30000	Rs.11.03	330900.00	88200.00	242700.00
8	Bindi Shah	10000	Rs.11.22	112200.00	29400.00	82800.00
9	Shreya Shah	10000	Rs.11.22	112200.00	29400.00	82800.00
10	Vanechand Vora	140000	Rs.7.36 to Rs.13.10	1426109.20	411600.00	1014509.20
	<b>Total</b>	<b>2480480</b>		<b>51940969.80</b>	<b>7292611.20</b>	<b>44648358.60</b>

42. It is noted from the above that the Noticees have together made unlawful gain to the tune of Rs.4.46 Crore. I am of the opinion that such profits made by the Noticees are naturally a loss to other retail investors. I am also of the opinion that apart from the monetary loss to investors, incidences of this nature definitely compromise the securities market regulatory framework to the detriment of investors at large. It lowers the investors' confidence and distorts market integrity. There is nothing on record to show that the Noticees have indulged in this practice repetitively. Therefore, based on the facts and circumstances of the case I am of the opinion that in terms of section 15 HA of the SEBI Act a consolidated penalty of Rs. 6 crore on the Noticees for the violation/contravention of the aforesaid provisions of the PFUTP Regulations shall commensurate with the violations committed by them.
43. Regarding penalty under section 15A (b) of the SEBI Act for failure to make disclosures in terms of regulation 7(1A) of SAST Regulations and regulation 13(3) and 13(4) of the PIT Regulations, it is difficult in cases of such nature to quantify exactly the disproportionate gains or unfair advantage enjoyed by an entity and the consequent losses suffered by the investors. Though, it may not be possible to ascertain the monetary loss to the investors on account of default by the entities, the change in the shareholding and timely disclosure thereof, is of importance from the point of view of shareholders/investors as that would have prompted them in making decision on investment or otherwise. It would, however, be difficult to come to a firm conclusion as to how the general shareholders would have reacted on knowing the aforesaid change in the shareholding. On account of failure on the part of Premchand K. Shah, Sharman P Shah, Nihal P. Shah, Mardula V Shah, Sushila P Shah and Sharman Appliances Private Limited to make the necessary disclosures on time, as discussed above, the fact remains that the concerned investors and market participants were deprived of the important information at the relevant point of time. In the facts and circumstances of the case, I am of the view that a penalty under section 15A(b) of the SEBI Act as mentioned below on Premchand K. Shah, Sharman P Shah, Nihal P. Shah, Mardula V Shah, Sushila P Shah and Sharman Appliances Private Limited shall be commensurate with the violations committed by them.

#### **ORDER**

44. In exercise of the powers conferred upon me under Section 15 I of the Act and rule 5 of the Rules, I impose a consolidated penalty of Rs.6,00,00,000/- (Rupees six crore only) on Premchand K. Shah, Sharman P Shah, Nihal P. Shah, Sharman Appliances Private Limited, Mradula V Shah, Sushila P Shah, Vijaykumar N Shah, Shreya V Shah, Bindi V Shah and Vanechand N Vora under section 15HA of the SEBI Act for the violation of the

provisions of regulations 3 (a), (b), (c) and (d) of the PFUTP Regulations and regulations 4(1) and 4(2)(a) of the PFUTP Regulations.

45. I also impose additional penalty individually on Premchand K. Shah, Sharman P Shah, Nihal P. Shah, Mardula V Shah, Sushila P Shah and Sharman Appliances Private Limited under section 15A(b) of the SEBI Act as mentioned below:

- a) Premchand K Shah – Rs. 1,00,000 /- (Rupees one lakh only ) for the violation of the provisions of regulation 7(1A) of the SAST Regulations and regulation 13(3) of the PIT Regulations.
- b) Sharman P Shah – Rs. 1,00,000 /- (Rupees one lakh only ) for the violation of the provisions of regulation 7(1A) of the SAST Regulations and regulation 13(4) of the PIT Regulations.
- c) Nihal P Shah – Rs. 1,00,000 /- (Rupees one lakh only ) for the violation of the provisions of regulation 7(1A) of the SAST Regulations and regulation 13(4) of the PIT Regulations.
- d) Mardula V Shah – Rs.50,000 /- (Rupees fifty thousand only) for the violation of the provisions of regulation 13(4) of the PIT Regulations.
- e) Sushila P Shah – Rs.50,000 /- (Rupees fifty thousand only) for the violation of the provisions of regulation 13(3) of the PIT Regulations.
- f) Sharman Appliances Private Limited – Rs. 1,00,000 /- (Rupees one lakh only ) for the violation of the provisions of regulation 7(1A) of the SAST Regulations and regulation 13(3) of the PIT Regulations.

I am of the view that the said penalty is commensurate with the violations committed by the Noticees.

46. The Noticees shall pay the said amount of penalty by way of demand draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, within 45 days of receipt of this order. The said demand draft should be forwarded to the General Manager, IVD – ID 8, Securities and Exchange Board of India, SEBI Bhavan, Plot No.C4-A, “G” Block, Bandra Kurla Complex, Bandra (East), Mumbai–400 051.

47. In terms of Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee and also to SEBI.

**Date: September 06, 2010**

**Place: Mumbai**

**Satya Ranjan Prasad  
ADJUDICATING OFFICER**