

**BEFORE THE ADJUDICATING OFFICER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

[ADJUDICATION ORDER NO. - SRP/DL/AO: 186/2011]

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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:*

**Mr. Bhavesh Pabari**

(PAN –AKGPP8679N)

In the matter of M/s. 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. During investigations, 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 and persons belonging to the 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 hereinafter these entities are collectively referred to as "**promoter group entities.**") 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.
3. It was also observed during investigations that a group of entities namely, i) Bhavesh Pabari (hereinafter referred to as "**the Noticee**"), ii) Rajesh Bhanushali iii) Hemenat Sheth, iv) Ankit Sanchaniya, v) Prem Parikh, vi) Narendra Ganatra, vii) Manish Joshi, viii) Bharat Thakker, ix) Vinayak Bhanage, (x) Kishore Chauhan, xi) Mala Sheth, xii) Bhupesh Rathod, xiii) Janak Vyas,

xiv) Devendra Vadhaiya, xv) Jayesh Kuwadia, xvi) Ashish Ganatra and xvii) Nimesh Ganatra, who were allegedly connected/related to each other, have traded in the scrip of GIL on BSE under different client codes and have also engaged in off market deals in the shares of GIL. Amongst these entities, Mr. Narendra P. Ganatra was the director of GIL. For the sake of brevity these entities are hereinafter collectively referred to as “**Narendra Ganatra Group.**”

4. Based on the findings of the investigation it has been alleged that the said Narendra Ganatra Group entities, including the Noticee, had manipulated the scrip of GIL. They indulged in synchronized/circular/reversal trades etc. and thereby artificially increased the price/volumes of the shares traded in violation of the provisions of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as ‘**PFUTP Regulations**’). It has also been alleged that the Noticee did not make the required disclosures to the Company/ BSE in regard to his shareholding and thus violated the provisions of the SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997 (hereinafter referred to as ‘**SAST Regulations**’) and the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as ‘**PIT Regulations**’).

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

5. 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/or 15A(b) of the SEBI Act, the alleged violation of the regulations 4(1) and 4 (2) (a), (b), (e) and (g) of the PFUTP Regulations, regulations 7 (1) and (2) of the SAST Regulations and regulations 13 (1), (3) and (5) of the PIT Regulations by the Noticee.

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

6. Show Cause Notice dated June 08, 2010 (**SCN**) was issued to the Noticee under rule 4(1) of the Rules. The Noticee was asked to show cause as to why an inquiry be not held and penalty be not imposed on him under sections 15HA and/or 15A(b) of the SEBI Act for the alleged violation of the provisions of the regulations 4(1) and 4 (2) (a), (b), (e) and (g) of the PFUTP Regulations, regulations 7 (1) and (2) of the SAST Regulations and regulations 13 (1), (3) and (5) of the PIT Regulations.
7. The SCN was earlier sent to the Noticee through hand delivery and thereafter, by registered post at his last known address (i.e. 102, Maheshwar Mansion, Bhapubhai Vashi Road, Vileparle, Mumbai – 400 002) , however, on both the occasions it was returned undelivered. Thereafter, another attempt was made on July 13, 2010 to get the SCN delivered to the Noticee by registered post, but it again failed. Further, attempt to get the SCN affixed at the

premises of the Noticee and serve it as substituted delivery also failed. As all the attempts made to serve the SCN to the Noticee failed, the undersigned approached SEBI on August 12, 2010 with a request to provide alternate address of the Noticee, if any, available with them. In response the undersigned received alternate address of the Noticee (i.e. 196/A, Tara House, Dr. Viegas Street, X Lane No. 8, 1<sup>st</sup> Floor, Flat No. 16, Chira Bazaar, Mumbai -400 002) from SEBI on August 30, 2010. Thereafter, the undersigned received a letter dated September 12, 2010 from the Noticee, wherein the Noticee had submitted, *inter alia*, that he came to know about the proceedings against him through his uncle Mr. Bharat Thakkar and on going through the SCN and enclosures attached thereto, he came to know that his address was wrongly mentioned therein and therefore, he had not received the earlier communications. He further requested vide his above said letter to send the earlier correspondences to his present address. In view of the same a copy of SCN dated June 08, 2010 alongwith the enclosures mentioned therein, was sent to the Noticee on September 20, 2010. The Noticee was also granted an opportunity of personal hearing on October 05, 2010. The Noticee, vide his letter dated October 04, 2010 requested for one month's time to file his reply to the SCN and also to adjourn the hearing scheduled for October 05, 2010 accordingly. In consideration of the request of the Noticee, he was granted another opportunity of hearing on October 28, 2010 vide notice dated October 07, 2010.

8. Hearing on October 28, 2010 was attended by Ms. Rinku Valanju, the authorized representative of the Noticee. During the hearing the Noticee asked for some more time to file reply to the SCN and also desired inspection of documents and other records relied upon for the allegations. The Noticee also requested to adjourn the hearing to a next suitable date.
9. Although, all the relevant documents were provided to the Noticee in **Annexures I to IX** of the SCN, however, considering the request of the Noticee made at the time of the personal hearing, he was given the opportunity of inspection of documents relied upon for the purpose of framing allegations against him, on November 23, 2010 and the intimation to this effect was sent to the Noticee vide letter dated November 16, 2010, which was duly received at the Noticee's end on November 17, 2010. Despite the above, the Noticee did not turn up for inspection on the given date. Vide his letter dated November 22, 2010, he informed that his authorized representative, Ms. Rinku Valanju, is preparing for her exams and therefore, he may be granted another date after a week or thereafter. Once again his request was acceded to and another opportunity of inspection of documents was granted to him on December 03, 2010. Intimation in this regard was sent to him vide letter dated November 24, 2010, which was received at his end on November 26, 2010. The Noticee once again did not turn up for inspection. He neither responded to the said letter nor submitted any reason for his non-appearance.
10. I have noted that despite given sufficient time and opportunities the Noticee has not filed his reply to the SCN. Further, he was given two opportunities of hearing and also as requested by

him, he was granted two opportunities for inspection of documents as well - which he has failed to avail. Therefore, the undersigned sent another letter dated December 09, 2010 to the Noticee advising him to file his reply to the SCN dated June 08, 2010 within 7-days and clearly indicating therein that if he fails to do so then the matter shall be proceeded with on the basis of evidence available on record in terms of sub-rule (7) of rule (4) of the Rules. The letter sent by registered post was returned undelivered. It is evident from the notings of the postal department on the returned cover that due to non-availability of the addressee at the time of delivery of letter, intimation memo was issued to him at the said address on December 13, 2009 advising the addressee i.e. the Noticee to claim/collect the said registered cover from the post office and apparently it was not claimed/collected by the addressee, therefore it was returned back to sender. This clearly indicates that the Noticee has not responded and ignored even the intimation of the postal department to receive/collect the above said letter. It may be mentioned that the said address was provided by Noticee himself and had specifically requested to send the communications at his above said address only. Further, as mentioned in the SCN and hearing Notices, which were duly received at the Noticee's end; the Noticee was required to keep the undersigned informed about any change in his correspondence address. Since, no such intimation has been received; I have no hesitation in arriving at the conclusion that the Noticee has deliberately not received the said communiqué.

11. I would like to sum up my above observations as under –

- Various attempts were made to deliver the SCN dated June 08, 2010 to the Noticee at his available address (by hand delivery, registered post, substituted delivery by pasting etc.) but it failed. SCN, as admitted by the Noticee, was finally received by him on September 22, 2010. However, no reply in respect of the allegations have been filed till date i.e. even after 5 –months of receiving of the same.
- The Noticee was given two opportunities of personal hearings; it availed one but even on that occasion it asked for inspection of documents and the proceedings could not be completed as the Noticee requested for adjournment.
- Thereafter, two opportunities of inspection of documents were given to the Noticee. On the first occasion it did not turn for the inspection by stating some irrelevant and insufficient reasons/grounds. The second date for inspection of documents was given to the Noticee, in accordance with the request made by him in this regard. Despite that he did not turn up. He did not even care to respond to the same or furnish any explanation/reason for his non-appearance.
- The facts and circumstances of the case suggest that further communication made in the matter on December 09, 2010 was deliberately not received by the Noticee.

12. In light of the above, I am of the view that sufficient opportunities have already been given to the Noticee to make his submissions or inspect the documents or to appear before me for the personal hearing, but he has failed to avail of these opportunities. He has not even replied to

the SCN dated June 08, 2010, which was admittedly received by him on September 22, 2010. Therefore, in the available facts and circumstances of the case, I am compelled to proceed with the matter on the basis of the facts and documents available on record.

### **CONSIDERATION OF ISSUES AND FINDINGS**

13. I have carefully examined the allegations against the Noticee and the material/evidence on record. The issues that arise for consideration before me in the present case are as under :

- i) Whether the Noticee is connected/related/linked in any manner with the Narendra Ganatra Group entities as mentioned in the SCN?
- ii) Whether the Noticee had violated the provisions of the PFUTP Regulations by indulging in synchronized/reversal/circular trade etc. which caused the artificial increase of price and volumes of the GIL scrip?
- iii) Whether the Noticee had acquired or disposed of shares for which he was required to make disclosures under the provisions of regulations 7(1) and (2) of the SAST Regulations and/or regulation 13 (1), (3) and (5) of the PIT Regulations and if yes, whether he complied with the same?
- iv) Does the contravention/violation of the aforesaid regulations, if any, committed by the Noticee attract monetary penalty under section 15HA and/or 15 A (b) of the SEBI Act?
- v) If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in section 15 J of the SEBI Act?

14. Before moving forward it would be pertinent to refer to the relevant provisions of the PFUTP Regulations, the SAST Regulations and the PIT Regulations alleged to have been violated by the Noticee. The provisions of these regulations are reproduced hereunder:

#### **A. PFUTP Regulations**

##### ***4. Prohibition of manipulative, fraudulent and unfair trade practice***

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

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

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

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

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

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

## **B. SAST Regulations**

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

(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 per cent 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 at every stage the aggregate of his shareholding or voting rights in that company to the company and to the stock exchanges where shares of the target company are listed.

(2) The disclosures mentioned in sub-regulations (1) and (1A) shall be made within two 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.

## **C. PIT Regulations**

### **Disclosure of interest or holding by directors and officers and substantial shareholders in 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 4 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.

### **Continual disclosure.**

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

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

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

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

15. I have carefully examined the alleged charges against the Noticee and the same are dealt on merit issue wise as under.

### **Issue (i): Whether the Noticee is connected or related in any manner with Narendra Ganatra Group Entities.**

16. It has been alleged in the SCN that the Noticee is connected/related to Narendra Ganatra Group entities and in collusion with them; he executed the alleged manipulative trades and thereby, artificially increased the price and volumes of the scrip. Now, as regards the links/ relation of the Noticee with the above said entities with whom the transactions were allegedly

found to have been done, it is observed from the available records i.e. **Annexure II** attached with the SCN, that the address of the Noticee was same as that of Rajesh Bhanushali, Bharat Thakkar and Narendra Ganatra. It is also observed from available records, that the Noticee had fund movement as well as shares movement with Nimesh Ganatra, Prem Parekh, Ankit Sanchaniya, Kishore Chauhan and Rajesh Bhanushali. It is also observed that the Noticee had mainly dealt with Jayesh Kuwadia, Mala Sheth, Rajesh Bhanushali and Ashish Ganatra, in off market transactions. He received about 18, 93,005 shares and transferred 23, 75,452 shares in off market from/to the said related group entities. Details in regard to such off market deals were provided to the Noticee in **Annexure IX** to the SCN. Further, the Noticee had a joint bank account with Hemant Sheth in Axis Bank Ltd. As admitted by him Bharat Thakkar is his uncle. In regard to the issue of connection/relation of the Noticee with the above said Narendra Ganatra Group entities, I have also noted that the details provided to the Noticee in **Annexures VII to IX** of the SCN are in regard to his alleged indulgence in manipulative trades, mainly with Rajesh Bhanushali, Hemant Sheth, Mala Sheth, Prem Parikh and Kishore Chauhan (Narendra Ganatra Group entities) as counterparties during the relevant period. The details of relation/connection of the group entities with the Noticee and/or among other members of the group were provided to the Noticee in **Annexure II** of the SCN.

17. It is pertinent to mention here that in regard to violation of the PFUTP Regulations, the core of the allegations against the Noticee is that he is related/ connected with the Narendra Ganatra Group entities and executed the alleged manipulative trades in collusion with the other entities of that Group. It would be appropriate to mention here that in respect of the dealings and transactions of the Noticee, relation/ connection does not mean that the Noticee should be related to Narendra Ganatra Group entities by way of any familial relation or any other close relation; rather the relation/connection may be of any other kind i.e. professional/business relation etc. I am of the opinion that depending on the facts and circumstances of the case the persons who are related to each other by virtue of some professional/business relations or otherwise are also related/connected entities if they are acting in collusion within themselves to enter into such transactions. Now, here a question arises as to whether the Noticee along with above said Group entities was having any collusion while entering into such transactions. In this context, it is stated that the relation of any kind does not *ipso facto* makes a person liable of manipulation of trades, however, it can be seen/observed from the transactions showing the involvement of a person with selected entities only, which are purported to be executed in such fashion between them in pursuance of such collusion. It means that such collusion can also be seen/observed only from the attending circumstances of the trades which give presumption that the trades would not have been matched/synchronized/circular/ reversal etc. in an automated mechanism of the stock exchange, unless the same are so planted or designed with the intention to result in same fashion as desired by the entities. (The same has also been observed by Hon'ble Securities Appellate Tribunal in Ketan Parekh case referred to in the later part of this Order).

18. Further, on the issue of connection/relation between the Noticee and the other entities of the Narendra Ganatra Group, I am of the opinion that the persons with whom the Noticee is sharing his address, having banking transactions and also dealt in off market, cannot be strangers, but would certainly be related/connected with the Noticee in some manner. Further, as I have stated earlier that the relation of any kind does not *ipso facto* makes a person liable of manipulation of trades and the same should be seen from the transactions showing the involvement of a person with others in majority of trades, which are purported to be executed in such fashion between them in pursuance of such collusion. Such involvement and trades have been discussed in the subsequent paras of this Order.
19. Therefore, taking into consideration the above observations, I am left with no-doubt, that the Noticee is related/connected/linked to the above said Narendra Ganatra Group entities as far as the alleged transactions in the scrip of GIL are concerned.

**Issue (ii): Whether the Noticee had indulged in synchronized, reversal and circular trades etc. causing artificial increase in price and volumes of the scrip.**

20. It has been alleged, inter alia, in the SCN at Para Nos. 5 to 18 that the said Narendra Ganatra Group entities including the Noticee, acted in collusion and were indulged in synchronized/circular/reversal trades etc. and thereby artificially increased the volumes/price of the scrip which facilitated the promoters and promoter group entities of the Company, who were earlier unable to sell their shares, to offload their almost entire stake at such artificially risen prices. Despite being given sufficient time and opportunities, the Noticee has not furnished any reply in respect of the allegations.
21. I have carefully perused and examined the records/evidence available with me in respect of the alleged indulgence of the Noticee in synchronized/circular/reversal trades etc. and observed as under. I have noted from the investigation report and the material/information on record that the promoter group entities were together holding 25,27,630 shares i.e. 83.92 % of the total share capital of the Company on August 28, 2006, and they reduced their shareholdings to 1.22% by the quarter ended on September 30, 2008. It is observed from the trade/order logs that the sale transactions of the promoter group entities in the market had matched mainly with the entities of the Narendra Ganatra Group. It is also observed that the scrip was illiquid as after November 2005, the trading in the scrip on BSE commenced only on August 28, 2006.
22. I have also observed from the available records, including **Annexure-IV** to the SCN, that the price of the scrip rose from ₹ 2.94 on August 28, 2006 to ₹ 45.45 on November 12, 2007 and thereafter, it came down to ₹ 14.85 on April 15, 2008 and further increased to ₹ 51.80 on August 21, 2008. The scrip was traded for 446 days during the investigation period with the total traded quantity of 2,55,37,175 shares and an average daily volume of 57,258 shares. It



is also seen from the Investigation Report that the period covered under the investigation has been analyzed in two phases i.e. August 28, 2006 to March 16, 2007 and March 20, 2007 to August 21, 2008.

23. It is observed from **Annexure VI to VI E** of the SCN that during **first phase** i.e. August 28, 2006 to March 16, 2007, the price of the scrip rose from ₹ 2.94 on August 28, 2006 to ₹ 24.15 on February 15, 2007 then it came down to ₹ 19.70 on March 16, 2007. During this phase the scrip was traded on 98 days for 25, 92,500 shares with an average daily volume of 26,454 shares. There were 4,592 buy orders for 3, 73, 85,295 shares and 1,976 sale orders for 56, 94,403 shares which resulted into 1,864 trades for 25, 92,500 shares. I have also noted from the trade/order log details mentioned at above said Annexures that during this period allegedly the Narendra Ganatra Group entities had dealt in the scrip through different stock brokers and purchased 12,90,000 shares and sold 2,38,400 shares accounting to 49.75% of the total traded volume of the scrip. On analyzing the counter party to the sales of the promoter group entities (connection/relation of the promoter group entities was provided to the Noticee in **Annexure V** to the SCN) it is observed that out of 13, 03,800 shares sold by the above said promoter group entities, the 9, 45,500 shares (72.51% of 13, 03,800) were bought by the entities of Narendra Ganatra Group as counterparty. It is also observed from the order/trade logs that there were no major market participants in the scrip during this period besides promoter group entities and clients forming part of the Narendra Ganatra Group.
24. During August 28, 2006 to August 30, 2006, the scrip was traded for 20,100 shares. Allegedly, these trades were executed between a few of the Narendra Ganatra Group entities and one of the promoter group entity namely, Sushila Shah. Thereafter, the scrip was not traded from August 31, 2006 to September 24, 2006. During this period there were 93 buy orders (out of which 57 buy orders were placed by entities belonging to Narendra Ganatra Group) placed by 12 stock brokers on behalf of 21 clients for 10,12,200 shares (for 9,74,000 shares orders were placed by Narendra Ganatra Group entities). These buy orders remained unexecuted due to non-availability of sale orders in the system. During September 26, 2006 to December 12, 2006 the scrip was traded for 2,14,000 shares and the price increased from ₹ 3.55 to ₹ 12.48, wherein, for majority of incremental trades the entities belonging to Narendra Ganatra Group were on the buy side. The promoter group entities started selling in the market mainly after December 13, 2006 when the price of the scrip had gone up to ₹ 12.48. During this period the major selling clients were the promoter group entities, namely, Mradula Shah, Sharman Appliances Pvt. Ltd., Nihal Shah, Sushila Shah, Vijaykumar Shah, Bindi Shah and Shreya Shah and their trades accounted for 49.91% of the total traded volume.
25. Taking into consideration the details of trade/order logs as provided to the Noticee in **Annexure VI to VI E** of the SCN, it is observed that there were 473 trades which influenced/increased the price of the scrip when compared to last traded price during the investigation

period and out of such 473 trades, the entities of the Narendra Ganatra Group were on the buy side in 155 trades for 2, 54,800 shares. Further, in respect of 180 trades for 41,600 shares the Narendra Ganatra Group entities were on sale side and towards 25 trades for 7,800 shares the entities of the Narendra Ganatra Group dealt among themselves. It is also observed that during August 29, 2006 to December 8, 2006, out of 31 first trades, the 10 first trades were among these Narendra Ganatra Group entities for 17,100 shares, where, in every first trade the price was increased by 4% or more and the price rise was observed from ₹ 4.09 on September 29, 2006 to ₹12.87 on December 5, 2006. I have also noted that out of 31 first trades, for 29 first trades the entities of Narendra Ganatra Group were either on the buy side or sale side where the price increased by 4% or more (circuit filter in the scrip was 5% during the period) and the price rise was observed from ₹ 3.08 on August 29, 2006 to ₹ 13.50 on December 8, 2006.

26. I have carefully examined the role of the Noticee in price and volume manipulation of the scrip during the first phase of investigation. I have observed that during this phase of investigation, Narendra Ganatra Group has played an important role in influencing the price and volumes of the scrip and the Noticee, in his individual capacity, has also played a significant role. It is evident from the details provided in **Annexure VI** to the SCN that during this phase the Noticee had purchased a total of 2, 59,736 shares. Further, it is observed from the details provided in **Annexure VI A to VI E** of the SCN, that the Noticee had purchased around 55,200 shares ( mostly from Manish Joshi and Hemant Sheth ), where buy orders were placed at a price higher than the last traded price (LTP). From the details in the said Annexures, I have come across as many as 82 such instances where buy orders were placed by the Noticee at a price over and above the LTP. Such LTP variances on account of the Noticee are in the range of ₹ 0.01 to ₹ 1.75.
27. It is observed from the trade/order log details that during **second phase** of the Investigation i.e. March 20, 2007 to August 21, 2008, the price of the scrip rose from ₹ 18.80 on March 20, 2007 to ₹ 45.45 on November 12, 2007 then it came down to ₹ 27.95 on March 05, 2008 and rose to ₹ 51.80 on August 21, 2008. The scrip was traded for 348 days during this phase with an average daily volume of 65,933 shares. The promoter group entities sold 11, 60,380 shares during this phase and the Narendra Ganatra Group entities bought 8, 96,619 shares as counterparties.
28. It is also observed from the information provided to the Noticee in **Annexure VII & VIII** of the SCN that the entities of Narendra Ganatra Group together purchased 1,55,51,037 shares which is 67.77% of the total buy volume and sold 1,63,81,784 shares which is 71.39% of the total sale volume during this phase. Further, it is also found that the entities of Narendra Ganatra Group entered into 4,398 circular/reversal trades (26.29% of total trades) among themselves. For these transactions, the buy and sale orders matched within the group. It is evident from the details provided to the Noticee in **Annexure VIII** to the SCN, that during April

24, 2007 to August 21, 2008 the Group entities accounted for a total cumulative last traded price (LTP) variation of ₹ 30/- in the scrip. They raised the price of the scrip from ₹ 21.80 to ₹ 51.80 by executing large numbers of buy orders at the price higher than the last traded price during this phase.

29. I have carefully examined the role of the Noticee in price manipulation of the scrip during the second phase of investigation. I have observed that during this phase of investigation also, the Narendra Ganatra Group has played an important role in influencing the price of the scrip, and the individual role of the Noticee is also very significant. During this phase the Noticee has purchased 5,89,634 shares mostly from Kishore Chauhan, Ankit Sanchania, Mala Sheth, Prem Parikh, Bhupesh Rathod, Bharat Thakkar, (Narendra Gantra group entities) at a price higher than the LTP. From the details in the said Annexures, I have come across as many as 59 such instances where buy orders were placed by the Noticee at a price over and above the LTP. Such variances are ranging from ₹ 0.01 to ₹ 2.15.

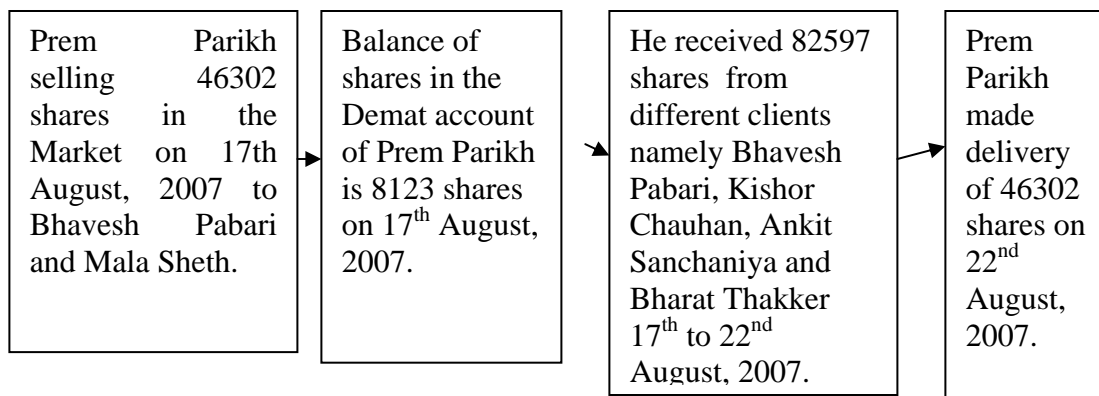
30. As far as the circular/reversal trades entered into by entities of Narendra Ganatra Group is concerned, cumulative details of such transactions are given in the table below:

Name of the clients	Name of the brokers	No of Days Traded / No of Days indulged in Circular Trading on buy side	Circular/ reversal buy Qty	% to market buy	No of Days Traded / No of Days indulged in Circular Trading on sale side	Circular / reversal sell Qty	Circular trading % to market sell	%of circular trading by client to gross market
Ashish Ganatra	Gogia International Securities Ltd.	0/0	0	0.00%	4/4	44300	98.44%	0.10%
Ankit Sanchaniya	JHP Securities Pvt. Ltd. India Infoline Ltd. Anand Rathi Securities Ltd. S P Jain Securities Pvt. Ltd. Atlanta Share shoppee Ltd.	66/51	1443145	87.98%	60/41	1258965	81.03%	5.89%
Bharat Thakkar	Angel Broking Ltd. Arcadia Shares and Securities Pvt. Ltd.	37/25	137936	75.40%	33/24	89391	70.54%	0.50%
Bhavesh Pabari	Ami shares and Stock Brokers Pvt. Ltd. Anand Rathi Securities Ltd. Arcadia Share & Stock Pvt. Ltd. India Infoline Ltd. JHP Securities Pvt. Ltd. Religare Securities Ltd. S P Jain Securities Pvt. Ltd. Kotak Securities Ltd. Sunidhi Securities and Finance Pvt. Ltd.	223/168	2709751	74.72%	221/149	3055901	66.18%	12.56%

Bhupesh Rathod	S P Jain Securities Pvt. Ltd.	5/3	64250	74.70%	21/18	602182	82.91%	1.45%
Devendra Vaidhaiya	Asit C. Mehta	21/19	159560	94.90%	14/12	59407	79.76%	0.48%
Hemant Sheth	Anand Rahti Securitis Ltd. India Infoline Ltd. JHP Securities Pvt. Ltd. S P Jain Securities Pvt. Ltd. Sunidhi Securities and Financial Pvt. Ltd. Ami Stock Brokers Pvt. Ltd	130/80	1648671	55.41%	107/79	1662224	70.52%	7.21%
Janak Vyas	Arcadia Shares and Stock Brokers Pvt. Ltd.	3/2	200	0.79%	8/8	4600	18.25%	0.01%
Jayesh Kuwadia	Standard Chartered STCI Ltd.	0/0	0	0.00%	6/3	8765	43.83%	0.02%
Kishor Chauhan	Arcadia Share & Stock Pvt. Ltd. India Infoline Ltd. JHP Securities Pvt. Ltd. Religare Securities Ltd. S P Jain Securities Pvt. Ltd.	99/99	2090526	83.17%	86/64	1378560	67.10%	7.56%
Mala Sheth	JHP Securities Pvt. Ltd. Religare Securities Ltd India Infoline Ltd.	94/53	478081	64.97%	42/33	493865	86.39%	2.12%
Manish Joshi	Ami Shares and Stock Brokers Pvt. Ltd.	3/2	480	40.16%	14/12	77130	94.78%	0.17%
Nimesh Ganatra	Sharekhan Ltd.	0/0	0	0.00%	11/10	31365	52.71%	0.13%
Prem Parikh	Anand Rathi Securities Ltd. Angel Broking Ltd. India Infoline Ltd. JHP Securities Pvt. Ltd. Kotak Securities Ltd. S P Jain Securities Pvt. Ltd.	135/105	2712299	77.69%	123/90	2735834	69.98%	11.87%
Rajesh Bhanushali	Ami Shares and Stock Brokers Pvt. Ltd.	4/2	105100	98.77%	12/10	47510	33.03%	0.33%
<b>Total circular/ reversal trading by group</b>			<b>11549999</b>			<b>11549999</b>		<b>50.33%</b>

31. It is evident from the above details that out of the 223 trading days when the Noticee had traded in the scrip as buyer his trades on 168 days involving 27,09,751 shares were in the nature of circular/reversal trades and out of 221 days when the Noticee had traded in the scrip as a seller on at least 149 days involving 30,55,901 shares his trades were circular/reversed to the extent that the shares changed hands and rotated within the group and thus volumes were generated and by such trades and volumes other investors were induced to trade in an otherwise illiquid scrip. Further, details were provided to the Noticee in **the Annexure IX** to the SCN, which indicate that the Noticee along with entities of Narendra Ganatra Group had entered into circular trading among themselves wherein, on a number of instances one leg of

transaction was through off market trades. For example the movement of shares on August 17, 2007 is shown below:

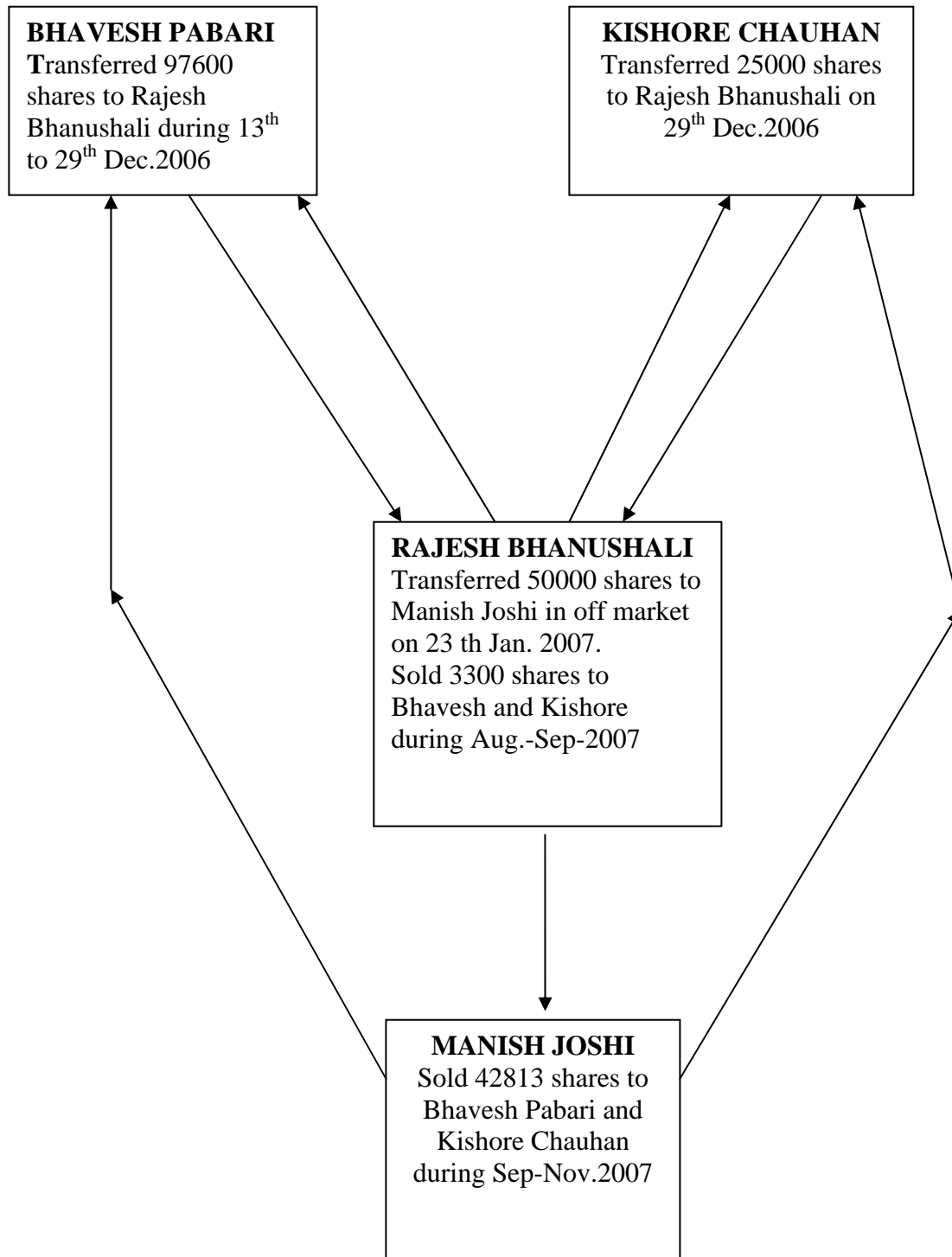


I have noted from the details provided to the Noticee in **Annexure IX** to the SCN that he had purchased as many as 18,93,005 shares and sold 23,75,452 shares in off market mainly from/to Hemant Sheth, Kishore Chauhan, Prem Parikh and Devendra Vadhiya (i.e. the Narendra Ganatra Group entities).

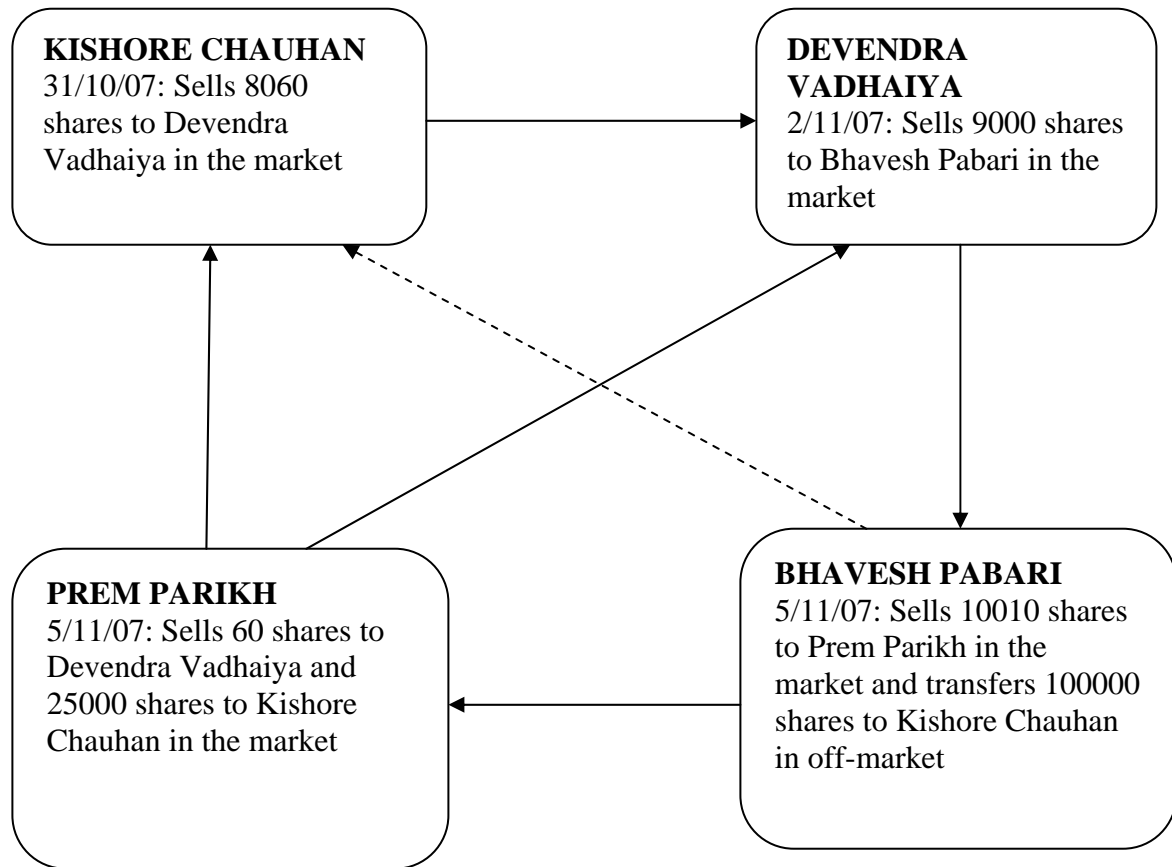
32. I have noted from the above details that during the period a total of 1, 15, 49,999 shares were bought and exactly the same number of shares were sold among the Narendra Ganatra Group entities on market and I am of the view that the same cannot be just a matter of coincidence, particularly when, there were other buyers and sellers also present in the market. A significant number of transactions between the group entities took place in off market as well. In this regard, I have noted that with regard to the Noticee's sale of 30, 55,901 shares and purchase of 27, 09,751 shares, as has been stated above, the counterparties were always one or other entity belonging to the Narendra Ganatra Group. These sale and purchase of shares have taken place among the same set of related/connected entities by executing large number of buy and sale transactions over a long period of time. Buying and selling of exactly the same number of shares within the same set of related/connected entities leaves no doubt in reaching to the conclusion that the said transactions are in the nature of circular /reversal trades. Here, it would be pertinent to mention that if only the individual trades of the Noticee are taken into consideration, the total buy and sale quantities of the Noticee as has been mentioned in the table at para No. 30 above, are not exactly the same and for a total trade (buy and sale) of about 57.64 lakh shares (27,09,751 purchase and 30,55,901 sale) executed by him during the said period with the group entities there is a difference of approximately three lakh shares between the shares bought and sold by him. However, the fact cannot be ignored that for all the said buy and sale transactions of the Noticee the counter parties have always been one or other entity belonging to the group, which means that the shares have been rotated and remained within the group. Further, such transactions have not been executed on a single day but have taken place over a long period of time. Hence, even if there is some differences in the total buy and sale quantities of the individual entities of the group, the fact remains that exactly

the same number of 1, 15, 49,999 shares have been bought and sold within the group entities and therefore, considering the entire transactions of the group as a whole I have no hesitation in considering the individual trades of the Noticee as circular /reversed trades. Here, I would also like to mention that these transactions have been executed by the Narendra Ganatra Group entities in a very latent and detection avoiding manner. Trades were executed by the Group entities through different stock brokers using different client codes (the Noticee, in his individual capacity has traded in the scrip through nine different stock brokers (i. e. Ami Shares and Stock Brokers Pvt. Ltd., Anand Rathi Securities Ltd., Arcadia Share & Stock Ltd., India Infoline Ltd., JHP Securities Ltd., Religare Securities Ltd., SP Jain Securities Ltd., Kotak Securities Ltd. and Sunidhi Securities and Finance Pvt. Ltd.) and continuously over a long period. Therefore, it may not be possible in this order to show the entire gamut or cycle of such trades (i.e. A>B>C>D>.....>A) involving a total of 1, 15, 49,999 shares purchased and sold within the Group entities (consolidated details in this regard have been provided in the table at Para 30 above). However, for the purpose of understanding a part of such trades executed between a few group entities are placed below in the flow chart format to show as to how such manipulative transactions were executed between the entities of the Narendra Ganatra Group:

### Example -I Circular Trade

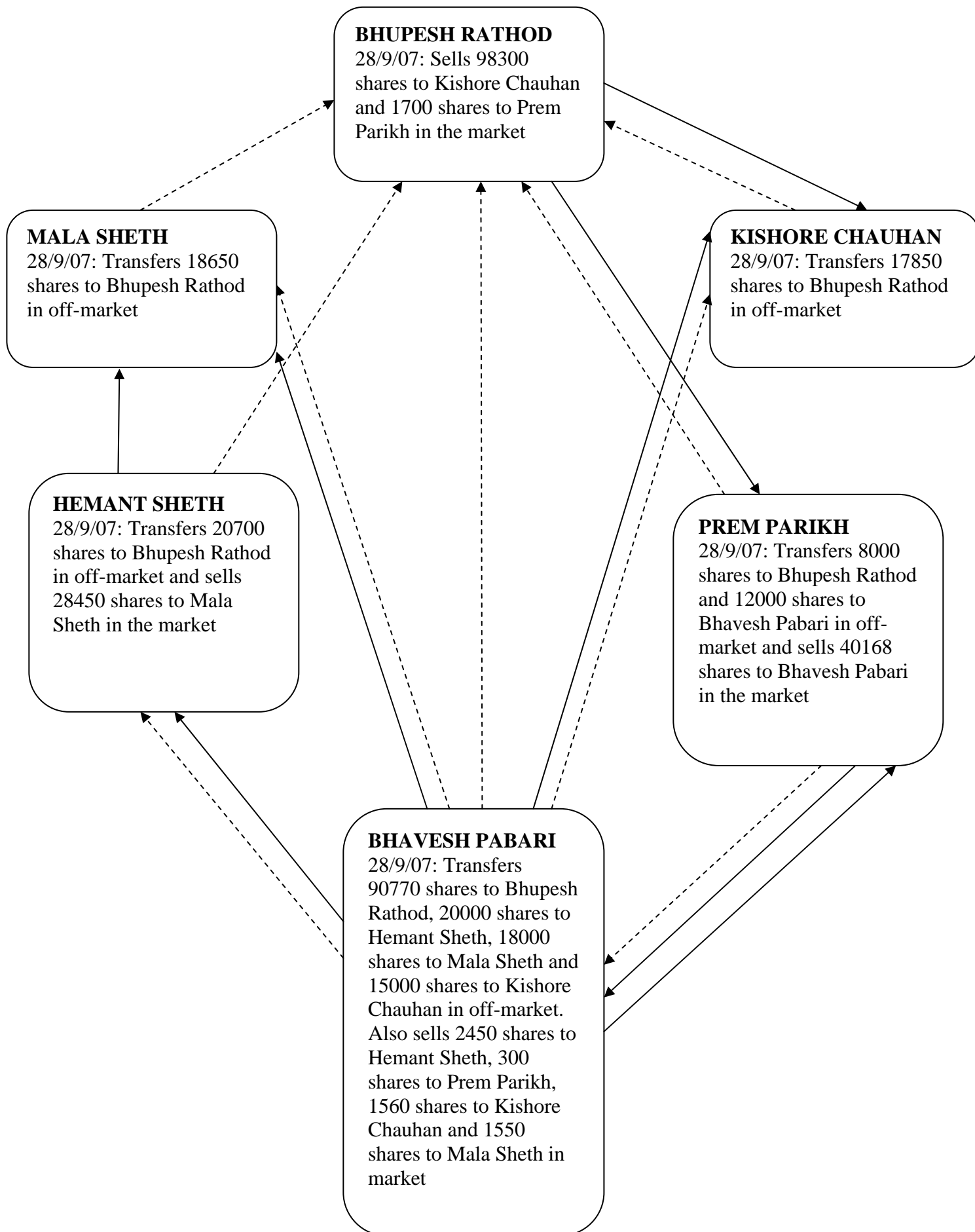


**Example -II Circular Trade**

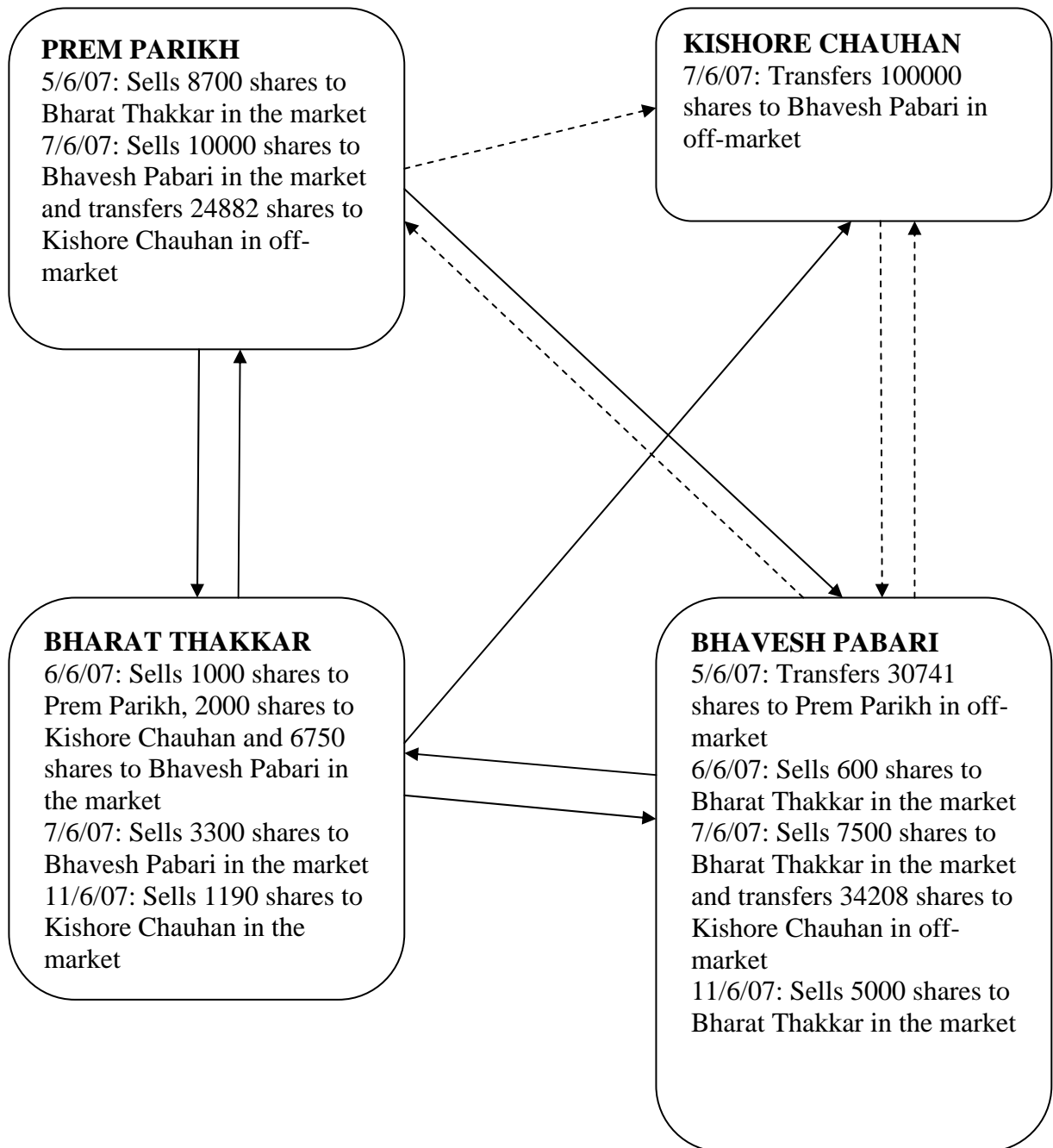




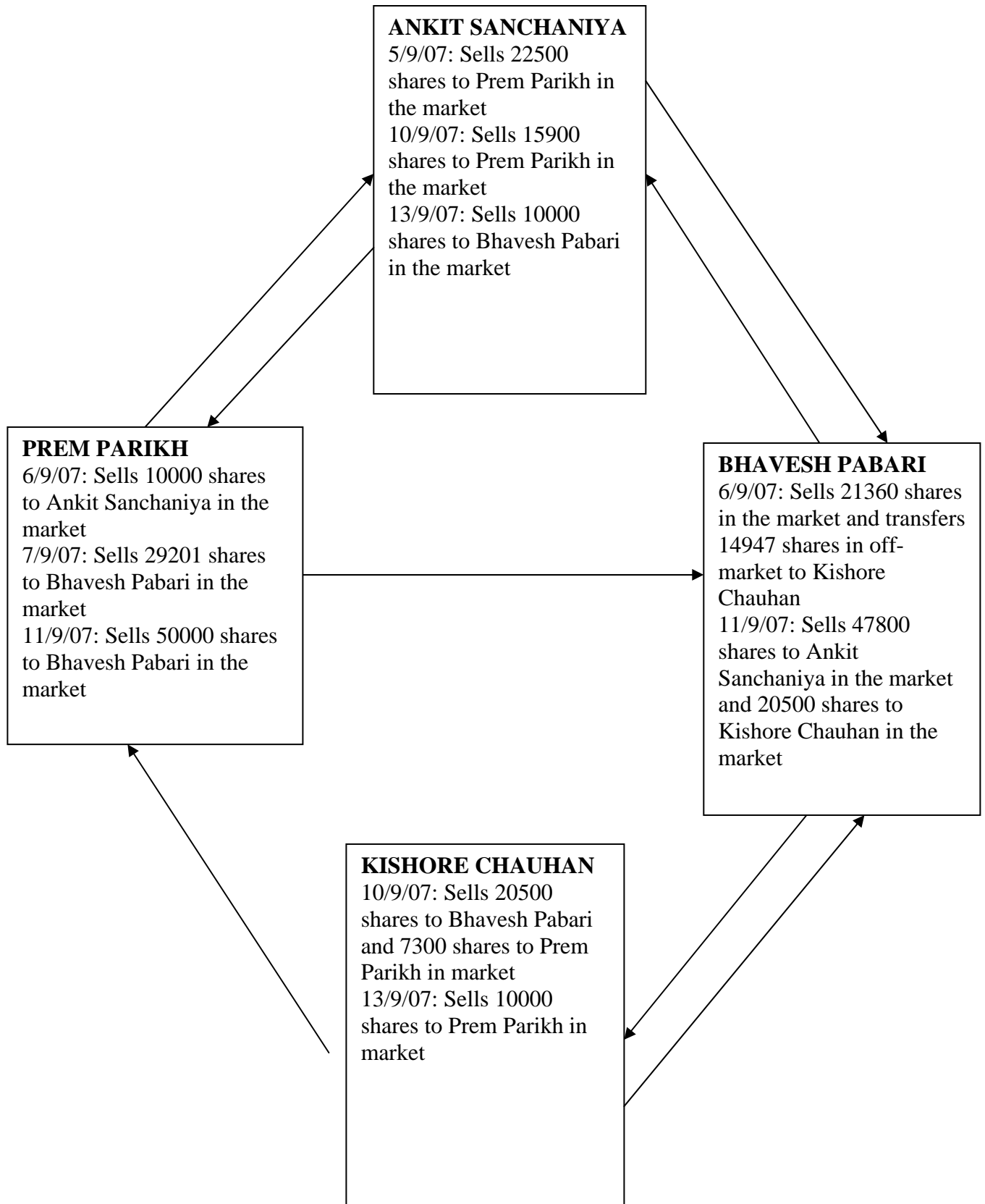
**Example – III: Circular Trade**



#### Example – IV Circular Trade



**Example – V : Circular Trade**



33. It is observed that most of the transactions of the Noticee were matched/took place within the Narendra Ganatra Group and I am of the opinion that it cannot happen without some prior arrangement and the meeting of minds. Further, had these been the fair *intra day* transactions, the same could have matched with other investors on a frequent and regular basis, but it has not happened in the instant case. Hence, I am left with no doubt that the said transactions were not bonafide; rather same were manipulative, as has been mentioned above.
34. Apart from the above, I have noted from the details of order/trade logs (details provided to the Noticee at **Annexure VIII** of the SCN) that the Noticee also indulged in fictitious trades i.e. the Noticee was on the buy side as well as sale side of the same trade. Instances of such fictitious trades are given as under : that on July 18, 2007 – 1500 shares, July 26, 2007 - 15 shares, August 03, 2007 – 16,470 shares, August 07, 2007 – 25,000 shares, August 08, 2007 -18,000 shares, October 12, 2007 - 20,000 shares, January 10, 2008 – 13, 799 shares, January 11, 2008 – 4,115 shares. A mere look at these transactions, where in respect of the same trade the Noticee is buyer as well as seller, reveal the fraudulent intents of the Noticee. There is no logic or explanation that how the same person would be buyer and seller in respect of the same trade and that too, not once or twice but on so many different occasions.
35. It is also evident from the details provided to the Noticee in **Annexure VII** to the SCN that out of the 4,398 trades entered into among the entities of Narendra Ganatra Group, 664 trades for 26,19,923 shares were synchronized trades. Such trades were matched mainly within the Narendra Ganatra Group entities with a time difference of not more than one minute and with zero price difference. A large number of such trades were on account of the Noticee. He had purchased 5,89, 634 shares mostly from Kishore Chauhan, Prem Parikh, Ankit Sanchaniya, Mala Sheth, Hemnat Sheth and Devendra Vadhiya and sold 6,36,975 shares to Kishore Chauhan , Prem Parikh, Ankit Sanchaniya, Mala Sheth, Hemant Sheth and Devendra Vadhiya (i.e. the Narendra Ganatra Group entities), where the trades were executed within a time difference of not more than one minute and with zero price difference between the buy and sale orders. It is also observed that the Noticee along with the said Group entities had traded in the scrip through different stock brokers using different client codes apparently to avoid detection of their identities under surveillance system. As has been stated earlier the Noticee had traded in the scrip through nine different stock brokers by using different client codes such as: 19 B001, 1101, DVB001, 22501, GDHN 10B012, BP149 etc.
36. Here, I have noticed that for the charge of synchronization of trades, although there is no price difference and also negligible time difference in respect of buy and sale orders placed, however, in a number of cases the quantity of shares in such orders are not same. But considering the fact that altogether a total of 1, 15,49,999 shares were bought and exactly the same number of shares were sold among the group members for a long time and further in respect of 26, 29, 923 shares the orders have been placed with no price difference and

negligible time difference, I have no hesitation in concluding that the said trades among the group members involving the above stated 26,29,923 shares (where for individual trades the quantity of shares may not be the same) were of the nature of synchronized trades.

37. In this regard, I am of the view that matching of large number of trades regularly between the selected set of persons/entities for a considerable period of time in illiquid scrip and where there is no difference in price of the buy and sale orders and where the time difference between placing of the buy and sale orders are less than a minute, cannot be by virtue of coincidence, but same are intended to manipulate the market and to get benefit out of it by defeating the fair market mechanism. Since, during the period GIL was relatively illiquid scrip, such trades reveal synchronization and make me to believe that those were executed to artificially increase the volume and to induce other investors to trade in the scrip.
38. In the matter, I would also like to give reference of the Order of the *Hon'ble* Securities Appellate Tribunal dated 14.7.2006 passed in the matter of *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."*

It was further held by Honble Tribunal *"that a synchronized transaction will however be illegal or violative, if it is executed with a view to manipulate the market or if it results in circular trading and is executed with a view to avoid regulatory detection or executed to create false volumes. Whether a transaction has been executed with the intention to manipulate the market and to defeat the mechanism the intention can only be inferred from attending circumstances, because direct evidence of such cases may not be available."*

39. In light of the above facts, I am of firm belief that the Noticee acted in collusion with others and created artificial volumes in the market and also influenced the price of the scrip by placing and executing large numbers of buy orders at a price higher than the last traded price, by way of abovementioned manipulative trades and by indulging into such unfair trade practices. Therefore, based on the abovementioned facts and circumstances of the case I arrive at the

conclusion that the Noticee has violated the provisions of Regulations 4(1), 4(2) (a), (b), (e) and (g) of the PFUTP Regulations and is liable for imposition of penalty under section 15HA of the SEBI Act, which states as under:

**15HA. Penalty for fraudulent and unfair trade practices.**

*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.*

**Issue 4 & 5 : Whether the Noticee has acquired or disposed of his shareholding in the Company which triggers the requirement of disclosures under the SAST and the PIT Regulations and if yes, then whether he complied with those requirements.**

40. It has also been alleged in the SCN that the Noticee has violated the abovementioned provisions of the regulations 7 (1) and (2) of the SAST Regulations and regulations 13 (1), (3) and (5) of the PIT Regulations. In regard to the said alleged violations the following details pertaining to the acquisition and disposal of shares of GIL by the Noticee were provided to him in the SCN.

<b>Date of Transactions</b>	<b>No. of shares held (% to the paid-up capital)</b>	<b>No. of Shares acquired (% to the paid up capital)</b>	<b>No. of shares disposed off ( % to the paid up capital)</b>	<b>Balance No. of shares held ( % to the paid up capital)</b>
<b>09.02.2007</b>	<b>0</b>	<b>2,06,900</b>	<b>0</b>	<b>2,06,900 (6.89%)</b>
<b>15.02.2007</b>	<b>6.89%</b>	<b>1,69,800</b>	<b>0</b>	<b>3,76,700 (12.55%)</b>
<b>21.02.2007</b>	<b>13.79%</b>	<b>0</b>	<b>2,70,000</b>	<b>1, 43,700 (4.79%)</b>

41. The relevant details regarding the said acquisition /disposal of shares were also made available to the Noticee in the Annexures attached to the SCN. However, the Noticee has neither made any reply to the aforesaid alleged violations nor produced any evidence before me in respect of aforesaid allegations.

42. I have perused the provisions of the above mentioned SAST and PIT Regulations for examining the role of the Noticee in his committing of the alleged violations. I have also examined the shareholding pattern of the Company mentioned in **Annexure III** to the SCN, and observed that the total paid up capital of the Company comprised of 30 lakh shares during the period of investigation. For examining these allegations against the Noticee, I have perused the evidences/Depositories Statements on record and observed as under.

i. That Noticee acquired 2, 06,900 shares of GIL on 09/02/2007 as shown in Depository statement of Central Depository Services (I) Limited (CDSL) bearing Client ID 19471989 (DP ID: Stock Holding Corporation India Ltd.), and prior to such acquisition he was not holding any shares. Therefore, it is clear from said Depository statement that the Noticee

was holding a total of 2, 06,900 shares on 09/02/2007 which works out to 6.89% of the paid up capital of GIL.

ii. That the Noticee further acquired 1, 69,800 shares of GIL on 15/02/2007 as is evident from the Depository statement of CDSL bearing Client ID 19471989 (DP ID: Stock Holding Corporation India Ltd.) ). Thus, his holding in the shares of GIL increased to 3, 76,700 on 15/02/2007, which was 12.55% of the paid up capital of GIL.

iii. That the Noticee disposed of /sold 2, 70,000 shares of GIL on 21/02/2007 as is evident from the Depository statement of CDSL bearing Client ID 19471989 (DP ID: Stock Holding Corporation India Ltd.) and his holding was reduced to 1, 43,700 shares. Therefore, it is evident from the above that the Noticee was holding 1,43, 700 shares of GIL on 21/02/2007 which was 4.79% of the paid up capital of GIL.

43. Therefore, in light of the above, I have come to the conclusion that the Noticee crossed the shareholding/voting rights in the Company beyond the threshold of 5 % / 10 % on at least two occasions. On crossing the said bench mark, on each occasion, the Noticee was required to disclose the aggregate of his shareholding/voting rights to the Company and to the Stock Exchanges, where its shares were listed, in terms of regulation 7(1) read with regulation 7(2) of the SAST Regulations. I found that the Noticee failed to do so and therefore, he has contravened/violated the provisions of the regulation 7(1) read with regulation 7 (2) of the SAST Regulations.

44. Further, on crossing the benchmark of 5% shareholding in GIL, the Noticee was also under an obligation to make disclosure to the Company in accordance with the provisions of regulation 13(1) of the PIT Regulations. Thereafter, as has been detailed above, on acquisition of 1, 69,800 shares (i.e. 5.66% of the paid up capital) on 15/02/2007 his shareholding increased to 12.55 % and on his disposing of 2, 70,000 shares on 21/02/2007 his shareholding was reduced to 4.79 %. Therefore, on each of these occasions the requirement of regulations 13(3) and (5) were triggered and the Noticee was under obligation to make the required disclosures under the said PIT regulations, which he has failed to do. Therefore, I hold him guilty of violation/contravention of regulation 13 (1) and 13 (3) read with regulation 13(5) of the PIT Regulations.

45. The aforesaid alleged violation makes the Noticee liable for monetary penalty under Section 15A(b) of the SEBI Act which reads as follows:

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

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

46. 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 the SEBI Act, which reads as under:-

47. 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 the 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.*

48. Regarding penalty under section 15HA of the SEBI Act for indulging in fraudulent and unfair trade practices, it is noted from the above that the Noticee has acted in collusion with other Group entities, who were instrumental in manipulating the price and volumes of the scrip. The price of the scrip before the beginning of any manipulative trade was ₹ 2.94 on August 28, 2006 and due to said fraudulent and unfair manipulation it went up to ₹ 51.80 on August 21, 2008. I am of the opinion that any unlawful profit made by way of such transactions is naturally a loss to other innocent investors and it also lowers the investors' confidence and distorts market integrity. The investigations have not revealed the profits made by the Noticee or by the Narendra Ganatra Group by indulging into such manipulative and unfair trades. It is also not possible from the information/details available with me to arrive at the figures for the profit made by these entities or the loss suffered by the investors. A large number of fraudulent trades were executed and also a large number of entities were involved in such trades, therefore, to meet the ends of justice it becomes imperative to impose an appropriate penalty on the Noticee.

49. Therefore, based on the facts and circumstances of the case and considering the extent of involvement of Noticee as mentioned above during the period of investigation, I am of the opinion that a penalty of ₹ 10 lakh on the Noticee under section 15 HA of the SEBI Act for the violation/contravention of the aforesaid provisions of the PFUTP Regulations shall be commensurate with the violations committed.

50. Regarding penalty under section 15A (b) of the SEBI Act for failure to make disclosures in terms of regulation 7(1) and (2) of SAST Regulations and regulation 13 (1), (3) and (5) of the



PIT Regulations, it is once again difficult to quantify exactly the disproportionate gains or unfair advantage enjoyed by the Noticee or the consequent losses suffered by the investors. Though, it may not be possible to ascertain the monetary loss to the investors on account of such defaults by the Noticee, the change of shareholding in the Company and timely disclosure thereof, is of importance from shareholder's or investor's point of view in making of prompt investment decision. 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. Here, the fact remains that the markets in general and the investors in particular were deprived of such important information at the relevant point of time. Therefore, for the failure on the part of the Noticee to make the required disclosures under the SAST Regulations and the PIT Regulations, I am of the view that a penalty of ₹ 2.00 lakh on the Noticee under section 15A (b) of the SEBI Act shall be commensurate with the violations committed by him.

### **ORDER**

51. 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 ₹ 12,00,000/- only (₹ twelve lakh only) on the Noticee (₹ 10,00,000/- under the provisions of section 15 HA of the SEBI Act and ₹ 2,00,000/- under the provisions of section 15 A(b) of the SEBI Act). The Noticee 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 Deputy 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.
52. In terms of Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee and also to SEBI.

**Date: March 10, 2011**

**Place: Mumbai**

**Satya Ranjan Prasad  
ADJUDICATING OFFICER**