

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. - SRP/JP/AO: 135 /2010]

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. Prem Parikh

(Address: 140/K, Cavel Cross, Lane No. 7,

Room No. 1, Kalbadevi,

Mumbai- 400 002)

In the matter of M/s. Gemstone Investments Limited

PAN – Not available

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 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) Prem Parikh (hereinafter referred to as **“the Noticee”**), ii) Bhavesh Pabari, iii) Hemenat Sheth, iv) Ankit Sanchaniya, v) Bharat Thakker, vi) Narendra Ganatra, vii) Manish Joshi, viii) Rajesh Bhanushali, 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 15A (b) of the SEBI Act, the alleged violation of the regulations 4(1) and 4 (2) (a), (b), (e) & (g) of the PFUTP Regulations, regulations 7 (1) & (2) of the SAST Regulations and regulations 13 (1), (3) & (5) of the PIT Regulations by the Noticee.

SHOW CAUSE NOTICE, HEARING AND REPLY

6. Show Cause Notice dated June 08, 2010 (hereinafter referred to as **‘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 15 A(b) of the SEBI Act for the alleged violation of the provisions of the regulations 4(1) and 4 (2) (a), (b), (e)

& (g) of the PFUTP Regulations, regulations 7 (1) & (2) of the SAST Regulations and regulations 13 (1), (3) & (5) of the PIT Regulations.

7. The Noticee did not reply to the said SCN even after duly acknowledging the same. Therefore, based on the available information and the material on record, it was decided to conduct an inquiry in the matter and for the purpose an opportunity of hearing on August 03, 2010 was granted to the Noticee vide notice dated July 09, 2010. The Noticee did not appear for the hearing on August 03, 2010. However, in the meantime vide his letter dated July 27, 2010 he sought extension in time to submit his reply to the SCN and also requested to grant him opportunity of hearing after his making of reply. In the interest of natural justice he was granted another opportunity of hearing on August 26, 2010 vide notice dated August 04, 2010. The Noticee vide his letter dated August 24, 2010, sought another extension in time for hearing attributing festival season to be the reason for his request. In consideration of the same the Noticee was granted the third opportunity of personal hearing on September 27, 2010 and intimation to this effect was sent to him vide Notice dated August 27, 2010. In response to the aforesaid third hearing Notice, the Noticee filed his written reply dated September 07, 2010 and made his submissions in respect of the allegations referred to in the SCN. He also submitted that his said reply may be considered in compliance of Notice for personal hearing without desiring any further hearing in the matter. The written submissions of the Noticee dated September 07, 2010 on the allegations are briefly mentioned below :

- That he is a small trader and jobber in the market and he does jobbing activities for his livelihood. Trades are done by him on T+2 settlement basis for which sometimes funds are required to be borrowed from the market by executing off market trades.
- He denied his relation/connection with Narendra Ganatra Group /Promoter group entities in any manner and stated that he was not aware that when he was doing his trading in GIL shares, promoter group entities were selling.
- The material required by him to furnish his reply were not provided and he may be provided with all the documents relied upon including order log/trade log file of the said period.
- His volume of trading is high; therefore, he has opened trading account with more than one stock broker. At times, he has to shift his position from one stock broker to another to adjust debit /credit balances with them.
- Since, he is in trading business, it is likely that he would have bought and sold same quantity of shares on the same day which is the core of his business activity.
- He also denied that his alleged trades were manipulative in nature as no circular/synchronized trades are established from the details indicated in annexures attached with SCN.

- Apart from denial of his liability under the PFUTP Regulations, he also denied his liability under the SAST and PIT Regulations by stating that he did not cross the threshold of holding of shares which require the mandatory disclosures.
8. I am of the view that sufficient opportunities have already been given to the Noticee to make his submissions and appear before me for the personal hearing. While he has filed his written reply, though after considerable delay, he has chosen not to avail of the opportunity of hearing. Therefore, in the 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.
9. Here, it would also be appropriate to refer to the submissions of the Noticee that he was not provided with the documents relied upon in respect of the allegations against him and in this regard he has specifically mentioned about not providing of order log/trade log details. In the matter, I have noted from the details available on record that all the details/documents including the order/trade log extracts, which were relevant to the Noticee, were provided to the Noticee in Annexures I to IX of the SCN and the same were received by him, as is evident from his aforesaid written reply, wherein, he has frequently made references to such Annexures. It would also be pertinent to mention here that the allegations in the SCN issued to the Noticee are in respect of a group of entities alleged to have acted in collusion, and therefore, providing their individual trade details etc. may not give a true picture of the case, hence, such trade details provided to the Noticee are the details in respect of the group including the Noticee; and not only the alleged individual trades of the Noticee. I would also like to mention here that in the matter the Noticee was granted three opportunities of personal hearing but he failed to attend the hearing on all the three occasions. SCN dated June 08, 2010 was duly received at the Noticee's end on June 09, 2010, but he did not care to respond to the same. He replied to the SCN almost after two months (vide letter dated September 07, 2010 received at the office of SEBI on September 09, 2010) and that too, pursuant to issuance of three hearing Notices. Time and again he sought extensions in submitting reply or attending hearings without specifying any valid and acceptable reason for the same. Further, it can be very reasonably inferred from the act and conduct of the Noticee that if some relevant documents which according to the Noticee were very relevant and not provided to him along with SCN, or some details were not understood from said trade/order logs, then the Noticee (if he is fairly contesting the same) could have strongly raised such issue during personal hearings which were deliberately not attended by the Noticee despite three opportunities. Merely, making a passing reference on the issue of not providing the relevant documents without further following up his presentation at the relevant stage can not be a supporting ground to the Noticee for his own deliberate failure. Therefore, I am of the view that the above contention of the Noticee has no valid ground and the same has been made apparently with the same delaying approach that has so far been adopted by the Noticee in the matter.

CONSIDERATION OF ISSUES AND FINDINGS

10. I have carefully examined the allegations against the Noticee, the submissions made by him and the material/evidence on record. The issues that arise for consideration before me in the present case are as under :
- a. Whether the Noticee is connected/related/linked in any manner with the Narendra Ganatra Group entities as mentioned in the SCN?
 - b. 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?
 - c. Whether the Noticee had acquired or disposed of shares for which he was required to make disclosures under the provisions of regulations 7(1) & (2) of the SAST Regulations and/or regulation 13 (1), (3) & (5) of the PIT Regulations and if yes, whether he complied with the same?
 - d. 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?
 - e. 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?
11. 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 a listed companies - Initial Disclosure.

13. *(1) Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company in Form A, the number of shares or voting rights held by such person, on becoming such holder, within 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.

12. I have carefully examined the alleged charges, reply of the Noticee and the same is dealt on merit issue wise as under.

Issue (1): Whether the Noticee is connected or related in any manner with Narendra Ganatra Group Entities.

13. It has been alleged in the SCN that the Noticee is connected/related to Narendra Ganatra Group and in collusion with them; he executed the alleged manipulative trades and thereby artificially increased the price and volumes of the scrip. On this allegation, the Noticee vide his reply dated September 07, 2010 contended that he is not related/connected with aforesaid Narendra Ganatra Group entities in any manner and has also denied about any collusion with either Narendra Ganatra Group or Promoter Group entities while dealing in the shares of the Company. He has stated that his fund movement and share movement with

some of the group entities was to overcome his temporary fund and share requirement arising out to meet with his pay-in obligations of shares and funds.

14. In regard to the issue of connection/relation of the Noticee with the above said Narendra Ganatra Group entities, I have noted that the details provided to the Noticee in Annexures VII to IX of the SCN are in regard to his alleged indulgence in circular/reversal/synchronized trades mainly with Bhavesh Pabari, Hemant Sheth, Mala Sheth, Bhupesh Rathod, Kishore Chauhan, Ankit Sanchania, Manish Joshi and Devendra Vaidhaiya (Narendra Ganatra Group entities) as counter parties during the relevant period. 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 SCN, that the Noticee is having funds and securities movement with Bhavesh Pabari, Hemant Sheth and Kishore Chauhan in market as well as in off market transactions. The execution of off market transactions by the Noticee with the group entities has not been disputed by the Noticee in his above said reply. Further, it is observed from the material on record that Mr. Bhupesh Rathod had introduced the Noticee to the stock broker - M/s. S P Jain Securities Pvt. Ltd, along with other group entities i.e. Hemant Sheth, Bhavesh Pabari and Kishore Chauhan. It is also observed that Ms. Mala Sheth (wife of Mr. Hemant Sheth who is connected with the Noticee as shown above) had the funds movement as well as on market and off market transactions with the Noticee. It is also observed that Mr. Ankit Sanchania was having the funds and securities movement with the Noticee and was having the same telephone number as that of the Noticee.
15. 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 also be appropriate to mention here that in respect of the dealings/transactions of the Noticee, relation/ connection does not mean that the Noticee should be related to Narendra Ganatra Group by way of any familial relation or any other close relation; rather the relation/connection may be of any 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 in to 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 others in majority of trades, which are purported to be executed in such fashion between them in pursuance of such collusion. It means that such collusion can be seen/observed only from the attending circumstances of

the trades which gives 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 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.)

16. Further, the issue of connection/relation is very much clear from the fact that the persons with whom the Noticee share the telephone number, the person who introduced the Noticee to his stock broker as mentioned above and the persons with whom the Noticee is dealing in off market and having funds and securities movement, can not be the 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. Therefore, taking into consideration the material/evidences available on record, viz. sharing of same telephone number with other group entity, his introducer to the stock broker being one of the group entities, the Noticee having funds and securities transactions and off market deals with the group entities and majority of the trades amongst above said related persons with the Noticee, 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 (2): Whether the Noticee has indulged in synchronized, reversal and circular trades etc. causing artificial increase in price and volumes of the scrip.

17. 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 and also 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. The Noticee vide his above said reply, has disputed the allegations contending that he is doing jobbing activities in the stock market for his livelihood, and matching of such transactions with above said Group entities is merely a coincidence as the trading was done on the stock exchange's anonymous trading system. It has also been contended by the Noticee that he is not involved in any alleged reversal/circular/synchronized trades etc. and the off market transactions were done by him for raising funds to meet the pay in obligations of shares and funds with the stock broker.
18. In respect of artificial price rise, the Noticee vide his said reply has contended that as per Annexure VI of the SCN, only around 9 days out of the 446 days of the investigation period his trades have matched with the sale transactions of the promoter group entities of the

Company, which happened innocently and not intentionally. The Noticee further contended that as per the details made available to him in Annexure VI A to VI E of the SCN, he had done trades only on two days i.e. on 05/02/2007 and on 23/02/2007. The Noticee has provided details of such trades in a tabular format and submitted that he was involved in execution of trades for only 2,600 shares on 05/02/2007 and 25,500 shares on 23/02/2007 out of the 446 trading days covered during the investigations and hence, how could he be liable for price manipulation as alleged.

19. In respect of synchronization of trades, the Noticee vide his said reply contended that he had placed orders on the basis of market orders available on the trading terminal at the relevant time and he was not aware that who the counterparty stock brokers/clients were. The Noticee has also submitted that as per annexure VII of the SCN, most of his orders were at the then prevailing market rates i.e. last traded price and hence, he has not executed any synchronized trades.
20. In respect of circular/reversal trades, the Noticee vide his said reply, contended that he could not find any circular trades from the details provided to him in Annexure VIII of the SCN, and produced details in a tabular format showing his trade details on a sample basis for six days and iterating that said details do not indicate reversal of trades on the same date. He submitted that he had not executed any circular/reversal transactions as alleged.
21. I have carefully perused and examined the records/evidence available on record 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 the details provided to the Noticee in Annexures 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 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 the shares sold) were bought by the entities of the 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 Rs.3.55 to Rs.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 Rs.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 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 and the price rise was observed from ₹ 3.08 on August 29, 2006 to ₹ 13.50 on December 8, 2006. Few such instances, where the Noticee is involved during this phase of the investigation, have been mentioned in the later part of the Order.

26. In addition to the above general observations, I have carefully examined the role of the Noticee in price and volume manipulation of the scrip during this phase of investigation. Relevant details in this regard were made available to the Noticee in Annexure VI to VI E of the SCN. I have noted from the details given in Annexure VI of the SCN that the Noticee had bought 4,22,163 shares by way of 37 orders resulting into 41 transactions, where the counterparty clients were the promoter group entities namely Sharman Appliance Pvt. Ltd, Premchand Shah and Sushila Shah.
27. It is also observed from the trade/order logs details, which were provided to the Noticee in Annexure VI A to VI E of the SCN, that the Narendra Ganatra Group entities raised the price of the scrip by placing large buy orders at higher prices than the last traded price. I have also noted the instances where the Noticee executed the buy orders at the price higher than the last traded price during the first phase of investigation e.g. on 05/02/2007 and on 23/02/2007 for a total of 28,100 shares. Such orders of the Noticee influenced the price of the scrip from ₹ 0.4 to ₹ 1.45 as compared to the last traded price of the scrip. These trades on 05/02/2007 and on 23/02/2007 have not been disputed or denied by the Noticee. It may be mentioned here that in case it is proved from the facts of the case, nature of transactions executed or otherwise, that the trades were done by several persons in prior understanding/collusion among themselves then the issue of individual role in such manipulation, howsoever small it may be, can not be a ground for exoneration from liability as the manipulations were purposively designed to get it done by joint efforts of all of them. As regards the issue of collusion between the entities, the same can be seen/observed from the nature of transactions done by the Group entities mostly among themselves, besides their relations etc. as has been discussed in the earlier Paras. I have also noted from the said details that the Narendra Ganatra Group entities used to increase the price of the scrip by placing buy orders over and above the last traded price (LTP) and after that they, including the Noticee, executed trades at such higher prices in order to generate interest of other investors to deal in the scrip at such artificial high prices. Therefore, it is evident from the facts and circumstances of the case and the material on record that during the first phase of investigation the entities belonging to Narendra Ganatra Group, acting in combination/with prior understanding among themselves and with the promoter group entities, consistently traded in the scrip and influenced its price and volumes as

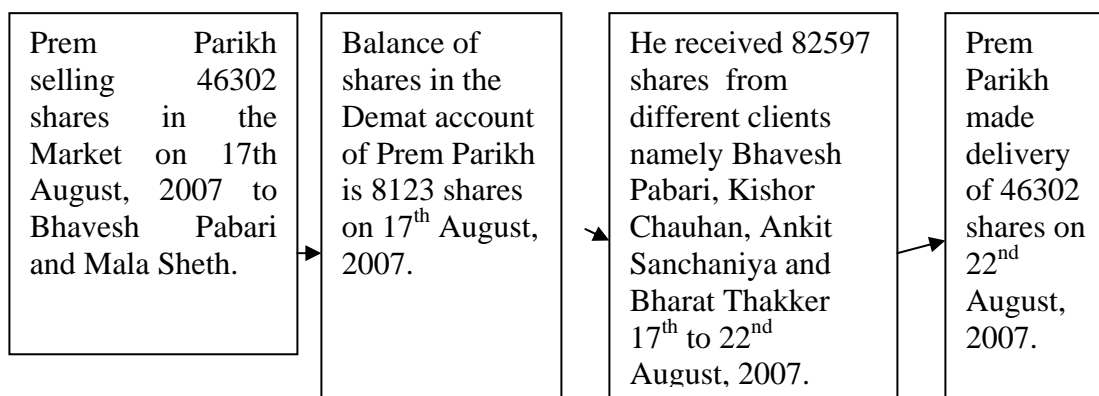
has been stated above and thus induced other investors to trade in the scrip and thereby enabled promoters/company related entities to off load their stake at such manipulated prices, which they could not dispose of earlier as there were no buyers, at the higher prices.

28. It is observed from the trade/order log details that during the **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 their counterparties.
29. It is also observed from the details made available 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. 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 LTP during this phase. I have noted that the Noticee in collusion with other entities of the Narendra Ganatra Group - mainly with Hemant Sheth, Bhupesh Rathod, Bhavesh Pabari, Mala Sheth, Kishore Chauhan, Ankit Sanchania and Bharat Thakkar - executed trades by placing buy orders at the prices higher than the LTP. I have also noted the instances where the Noticee has executed the trades by placing buy orders at the prices higher than the LTP during this phase e.g. on 30/07/2007, 06/08/2007, 10/08/2007, 28/08/2007, 13/09/2007, 21/09/2007, 05/10/2007, 10/10/2007, 15/10/2007, 18/10/2007, 23/10/2007, 31/10/2007, 08/11/2007, 13/11/2007, 11/12/2007, 14/12/2007, 26/12/2007, 03/01/2008, 04/01/2008, 22/02/2008, 27/02/2008 & 22/05/2008. In the above said instances, the Noticee raised the price of the scrip in the range of ₹ 0.5 to ₹ 2.35 as compared to last traded price of the scrip.
30. As far as the circular/reversal trades entered into by the entities of Narendra Ganatra Group are 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 Securitit 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%
Total circular/ reversal trading by group			11549999			11549999		50.33%

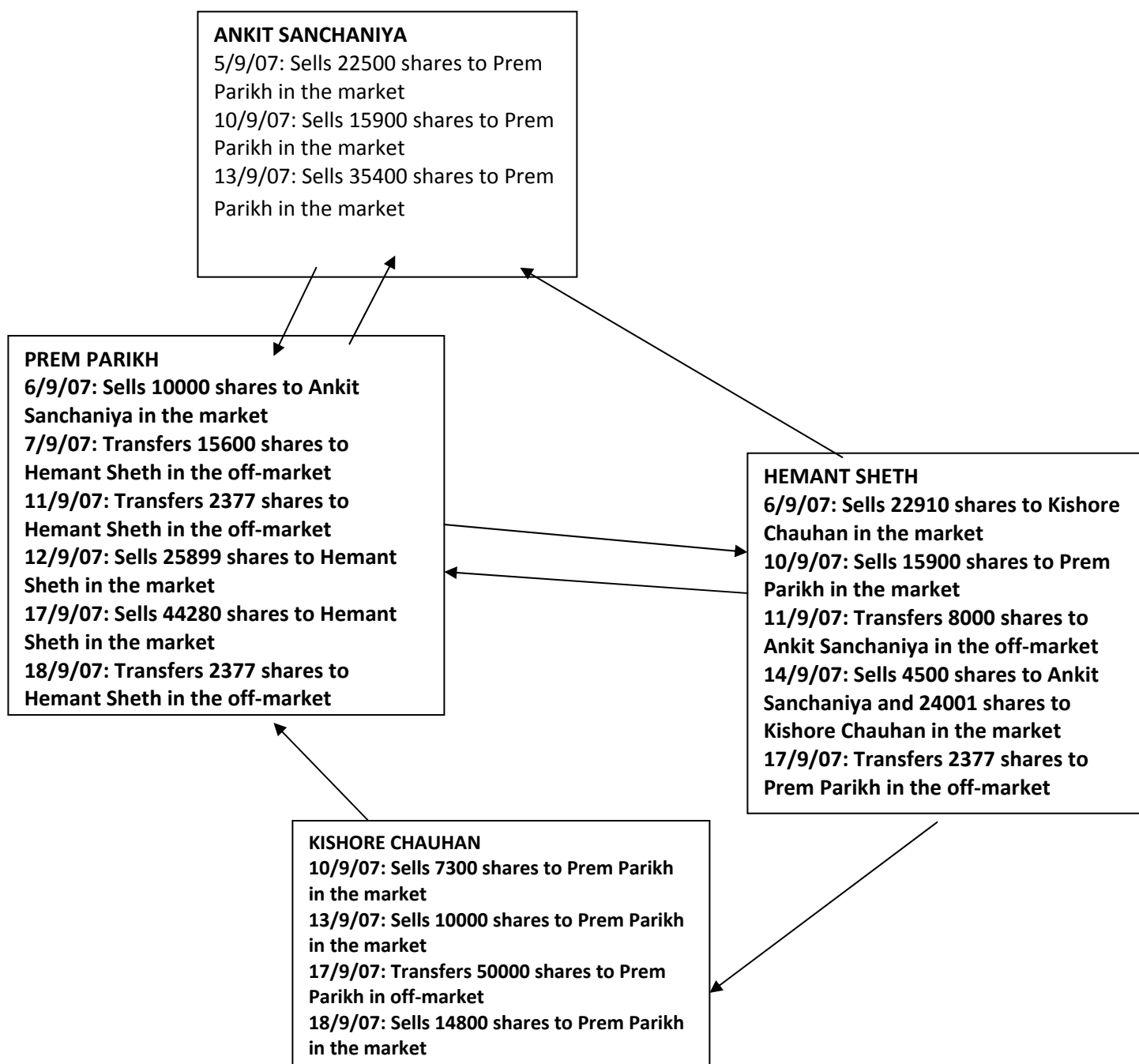
31. Further, out of 135 trading days when the Noticee had traded in the scrip as buyer his trades on as many as 105 days involving 27,12, 299 shares were in the nature of circular/reversal trades and out of 123 days when the Noticee had traded in the scrip as a seller on at least 90 days involving 27,35,834 shares his trades were circular/reversed where counterparty buyers/sellers were always the Group entities, i.e. the shares were rotated within the group entities. Further, for such trades details were provided to the Noticee in the Annexure IX to the SCN, which indicate that the entities of Narendra Ganatra Group had been 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:



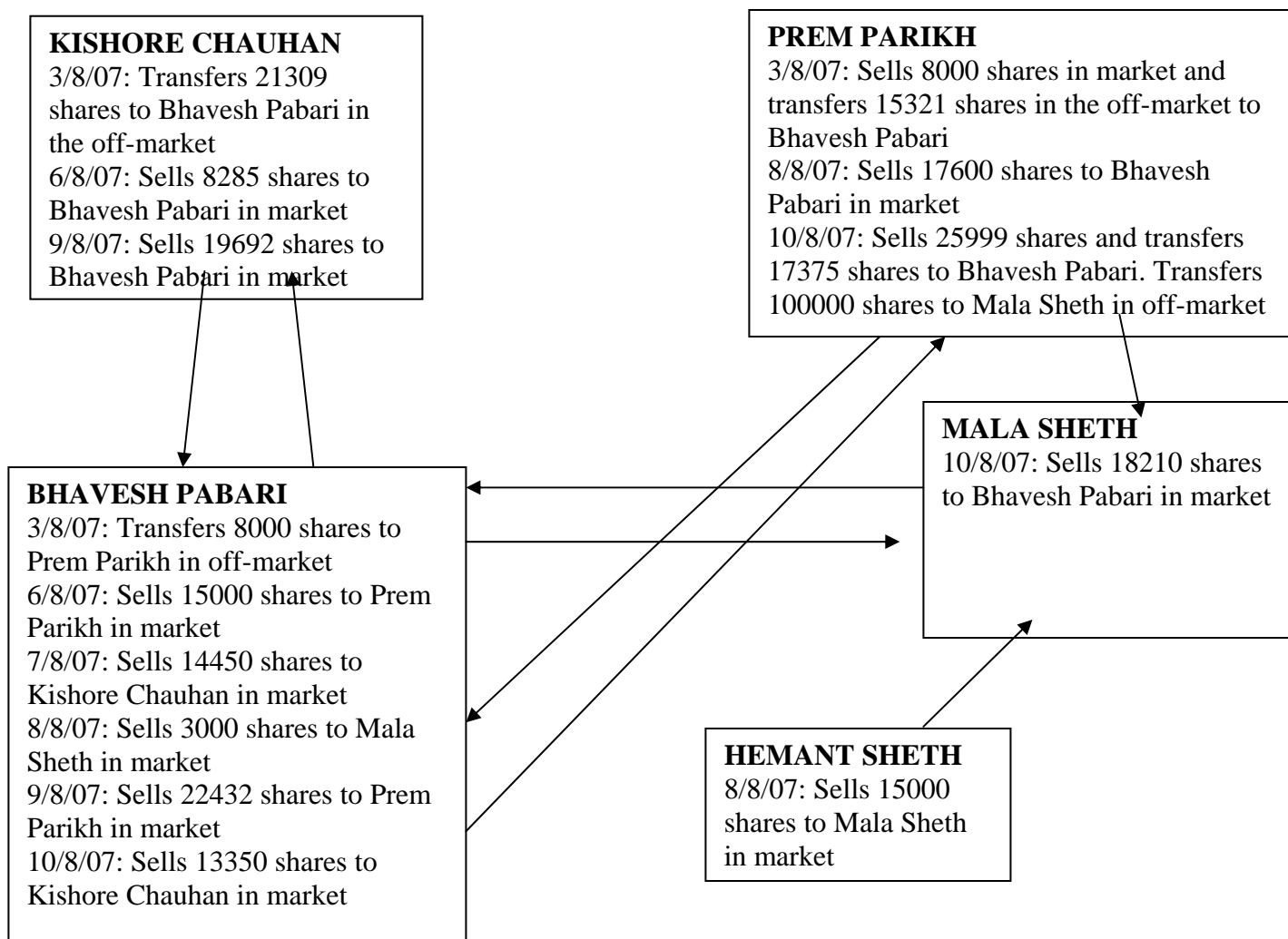
32. I have noted from the above details that during the period a total of 1, 15, 49,999 shares were bought and exactly the same numbers of shares were sold among the Narendra Ganatra Group entities and I am of the view that the same cannot be just a matter of coincidence. Further, the Noticee has not disputed or denied his execution of those transactions in the GIL scrip. In this regard, I have also noted that the aforesaid sale/purchase of shares have taken place between the same Group 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. I have also observed 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, and continuously over a long period. Therefore, it may not be possible in this order to show the entire gamut or cycle of all 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 Noticee and other entities of the Narendra Ganatra Group:

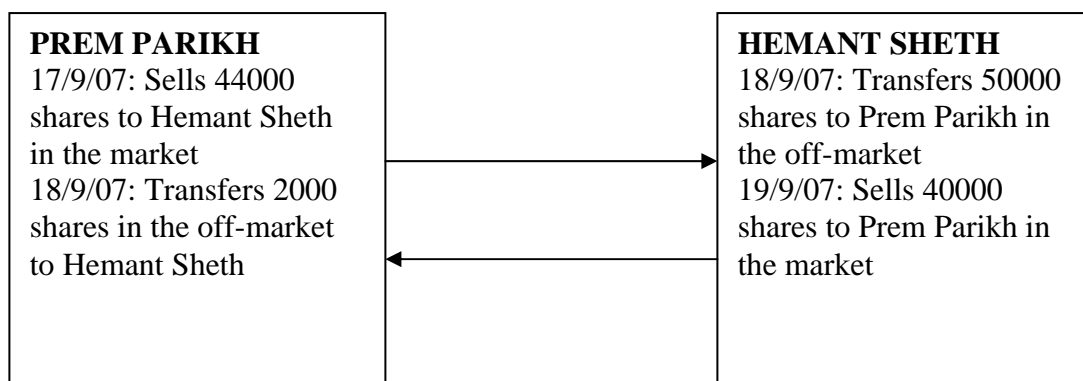
Example - I



Example - II



Example - III



33. In regard to the reversal of the trades or circular trades etc. the Noticee has stated the following: *"However with regard to reversal of transaction, I clarify that since I am doing trading business, it is likely that I may have bought and sold same quantity on the same day which is core of my trading activity i.e. to do trading activity on square up basis or so called reversal basis so that I am not required to take delivery of shares."* The defense/contention of the Noticee that during intraday trading the trades necessarily would be reversed between him and others, is not justified in context of the present facts of the case as it is observed that most of the transactions of the Noticee were matched/took place within the 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 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. 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 13/08/2007- 824 shares, on 31/08/2007- 23150 shares, on 18/09/2007- 960 shares, on 21/09/2007- 200 shares, on 26/10/2007- 15000 shares, on 30/10/2007- 14950 shares, on 05/11/2007- 83725 shares, on 06/11/2007- 3245 shares, on 07/11/2007- 350 shares, 08/11/2007- 1000 shares, on 12/11/2007- 2000 shares, on 23/11/2007 – 50000 shares, on 06/12/2007- 67438 shares, on 10/12/2007- 700 shares, on 11/12/2007- 5000 shares, on 12/12/2007- 5000 shares, on 13/12/2007- 2162 shares, on 26/12/2007- 5000 shares and on 04/01/2008- 3800 shares.
35. It is relevant to note here that on the issue of reversal of trades, the Hon'ble Securities Appellate Tribunal in Appeal No. 70 of 2008 in the matter of Rajesh Kumar Choudhary vs. SEBI decided along with Appeal No. 69 of 2008 (Ashok Kumar Choudhary vs. SEBI) on 05/11/2008 held that *"A mere look at these two Annexures which contain the details of a large number of trades between them inter se makes it clear that the trades are reverse trades. When the appellant buys, it is Rajinder Rai who sells and vice-a-versa. Such large number of reverse trades cannot take place through the mechanism of the system. These have obviously been manipulated. Moreover, reverse trades are fictitious trades meant to increase volumes on the screen of the trading system as there is no change of beneficial ownership in the traded shares"*.
36. It is also evident from the details provided in the abovementioned Annexure VII that out of the 4,398 trades entered into among the entities of Narendra Ganatra Group, 664 trades for 26,19,923 shares were in the nature of synchronized trades. There was no price difference for

such buy and sale orders. Such trades were matched mainly within the Narendra Ganatra Group entities with a time difference of not more than one minute. Large number of such trades were executed by the Noticee mainly with Hemant Sheth, Bhupesh Rathod, Bhavesh Pabari, Mala Sheth, Kishore Chauhan, Ankit Sanchania and Bharat Thakkar as counterparty. It is also observed from the trade/order logs that the Noticee along with said Group entities had traded in the scrip through different stock brokers using different client codes viz. 19P002, DVP001, GDHN10P012, PARIKH84, P9592 etc. to avoid the detection of his identity under surveillance system. Here, I do not accept the contention of the Noticee that as his volume of trading is normally high, that is why he preferred to open trading account with more than one stock broker to get better facilities from them. Further, I am of the view that matching of large number of trades regularly between the same 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.

37. In the matter, I would also 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.”

38. In light of the above facts, I am of firm belief that the Narendra Ganatra Group entities including the Noticee acted in collusion among themselves and with the promoter group entities of the Company and created artificial volumes in the market by way of abovementioned Circular /Reversal /Synchronized trades etc. They also influenced/increased the price of the scrip on a number of occasions by placing and executing large numbers of buy orders at a price higher than the last traded price (LTP). Such manipulative trades induced other investors to deal in the shares of GIL and enabled promoter group entities to off load their stakes in the Company at such artificially risen prices and book huge profits. For most of the transactions of the promoter group entities, the Narendra Ganatra Group entities were the counter parties.
39. 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) & (2) of the SAST Regulations and regulations 13 (1), (3) & (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.

Date of Transactions	No. of shares held (% to the paid-up capital)	No. of Shares acquired (% to the paid up capital)	No. of shares disposed off (% to the paid up capital)	Balance No. of shares held (% to the paid up capital)
27.02.2007	1,30,000 (4.33%)	45,000 1.50%	0	1,75,000 5.83%
20.08.2007	1,38,390 4.61%	12,999 0.43%	0	1,51,389 5.04%
02.11.2007	0 0.00%	1,55,230 5.17%	0	1,55,230 5.17%

13.11.2007	62,148 2.07%	1,57,047 5.23%	1,38,600 4.46%	80,595 2.68%
15.11.2007	86,160 2.87%	1,72,820 5.76%	0	2,58,980
27.11.2007	2,21,485 7.38%	0	68,010 2.26%	1,53,475 5.11%

41. The Noticee vide his abovementioned reply denied the allegations of violation of aforesaid SAST and PIT Regulations. The Noticee contended that he did verification of his manual records containing his shareholding in GIL with the details mentioned in the SCN and found some variations therein. Besides that the Noticee specifically disputed that he never held the shares of the GIL beyond 5% and hence, not required to make any disclosures under the SAST and PIT Regulations. The Noticee had not disputed specifically about his disposal of more than two per cent shares of the Company, but merely denied about his liability for not making disclosures under the PIT Regulation.
42. Before examining the issue of alleged violations of the SAST and PIT Regulations by the Noticee, it is relevant to mention here that a table containing the relevant details of his share holding i.e. date, number of shares purchased/sold with percentage before and after such purchase/sale in the scrip were mentioned in the SCN and these details were also available in the Annexures attached with the SCN. It is also important to mention here that such details of sale /purchase are not disputed by the Noticee except about some variation in his records, without mentioning the details of such variation. Further, he has not produced any evidence before me in support of his contention about such variation. Therefore, in the facts and circumstances of the case I am of the opinion that the plea of the Noticee about the said variation is not justified in absence of any corroboration by him.
43. 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 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 the allegations against the Noticee, I have perused the evidences/Depositories Statements on record and observed as under.
- i. That Noticee acquired 45, 000 shares of GIL on 27/02/2007 as shown in Depository statement of Central Depository Services (I) Limited (CDSL) bearing Client ID 00013422 (DP ID: 12028500), and prior to such acquisition he was holding 1,30,000 shares as shown under Client ID 12469630 (DP ID: Axis Bank Ltd.) of National Securities Depository Limited (NSDL). Therefore, it is clear from said Depositories Statements that the Noticee was holding a total of 1,75,000 shares on 27/02/2007 which works out to 5.83% of the paid up capital of GIL.

ii. That the Noticee acquired 1,55,230 shares of GIL on 02/11/2007 as is evident from the Depository statement of CDSL bearing Client ID 00003614 (DP ID: 12047100) for 1,05,230 shares and bearing Client ID 00013422 (DP ID: 12028500) for 50,000 shares. Thus, it is evident that the Noticee was holding atleast 1,55,230 shares of GIL on 02/11/2007, which was 5.17% of the paid up capital of GIL.

iii. That the Noticee acquired 1,72,820 shares of GIL on 15/11/2007 as is evident from the Depository statement of CDSL bearing Client ID 00003614 (DP ID: 12047100) and prior to such acquisition he was holding 86,160 shares. Therefore, it is evident from the above that the Noticee was holding 2,58,980 shares of GIL on 15/11/2007 which was 8.6% of the paid up capital of GIL.

It has also been alleged in the SCN that on 20/08/2007 the Noticee acquired 12,999 shares resulting into his total holdings increasing to 1,51,389 shares i.e. 5.04% of the paid up capital of the Company. I have perused the available material on record and observed that there is no supporting document to confirm the said acquisition by the Noticee.

44. Therefore, in light of the above, I have come to the conclusion that the Noticee crossed the shareholding/voting rights in the Company beyond 5 % on atleast three occasions. On crossing the bench mark of 5 %, 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. 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, but he has failed to do so. Therefore, the Noticee has also violated/contravened the provisions of regulation 13(1) of the PIT Regulations.

45. Further, for determining the alleged violation of regulation 13 (3) & (5) of the PIT Regulations, I have perused the evidences/Depositories Statements on record and observed as under:

- The Noticee acquired 1,57,047 shares of GIL on 13/11/2007 as is evident from the Depository statement of CDSL bearing Client ID 00003614 (DP ID: 12047100) for 1,44,047 shares and under client ID 00013422 (DP ID: 12028500) for 11,000 and under client ID 12469630 (DP : Axis Bank Ltd.) for 2,000 shares, and prior to such acquisition he was holding 62,148 shares. Therefore, the Noticee was holding 2,19,195 shares of GIL on 13/11/2007. Thereafter, on the same day the Noticee sold 1,38,600

shares as shown under Client ID 00003614 (DP ID: 12047100) which was 4.46% of the paid up capital of GIL.

It has also been alleged in the SCN that the Noticee sold 68,010 shares i.e. 2.26 % of paid up capital on 27/11/2007 and since prior to such sale he was holding 2,21,485 shares (7.38% of the paid up capital), therefore, after such sale by the Noticee the requirement of regulations 13(3) and (5) were triggered. However, I have noted from the available Depository Statements that on that day the Noticee sold only 33,480 shares which is approximately 1% of the paid up capital. Therefore, based on the available material/information, it cannot be inferred that the Noticee was under obligation to make the required disclosures for his alleged acquisition on 27/11/2007 under the said PIT regulations.

46. From the above observations, I come to the conclusion that the Noticee had sold more than 2% shareholding/voting rights in GIL on atleast one occasion, but failed to make the required disclosures to the Company in terms of the provisions of regulation 13(3) read with regulation 13(5) of PIT Regulations. Therefore, it is evident that the Noticee has violated/contravened the provisions of regulation 13(3) read with regulation 13(5) of the PIT Regulations.
47. 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

48. 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.*

49. Regarding penalty under section 15HA of the SEBI Act for indulging in fraudulent and unfair trade practices, it is noted from 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. As far as the promoter group entities are concerned they had offloaded around 24,80,480 shares during the relevant period. The price of the GIL shares was ₹ 2.94 on June 28, 2006 and those were sold on different dates by the promoter group entities and they had thus made unlawful gains to the tune of ₹ 4.46 crore. 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. Further, there is nothing on record to show that the Noticee has indulged in this practice repetitively.
50. Therefore, based on the facts and circumstances of the case, 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.
51. Regarding penalty under section 15A (b) of the SEBI Act for failure to make disclosures in terms of regulation 7(1) & (2) of SAST Regulations and regulation 13 (1), (3) & (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 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

52. 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.
53. In terms of Rule 6 of the Adjudication Rules, copies of this order are sent to the Noticee and also to SEBI.

Date: October 13, 2010

Place: Mumbai

**Satya Ranjan Prasad
ADJUDICATING OFFICER**