

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER SECTIONS 11 AND SECTION 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 - IN RESPECT OF PAKSH DEVELOPERS PVT. LTD. AND MR. ANURAG AGARWAL - IN THE MATTER OF STERLING GREEN WOODS LTD.

1. Sterling Green Woods Ltd. (hereinafter referred to as "SGWL") is accompany having its shares listed on BSE Ltd. (BSE) and Ahmedabad Stock Exchange (ASE). SEBI had conducted investigation into the matters relating to buying, selling or dealing in shares of SGWL during the period April 01, 2009 to July 24, 2009 (hereinafter referred to as 'investigation period'). During the investigation period, the scrip was traded in different groups on the BSE. During April 01, 2009 to June 19, 2009, during April 01, 2009 to June 19, 2009 in Z group, during June 22, 2009 to July 09, 2009, in B group, and during July 10, 2009 July 24, 2009 in T group. The investigation had, *inter alia*, revealed that:
 - (1) There were 76 trading days during the investigation period. Out of the said 76 trading days only in 14 trading days the scrip was traded in normal segment (B segment). In remaining trading days only delivery based transactions were executed on BSE. During the period from April 01, 2009 to June 23, 2009, the scrip traded with an average daily volume of 4,448 shares and during period from June 24, 2009 to July 24, 2009, the average daily volume was 17,903 shares. During the investigation period, the price of the scrip rose by ₹52 in 76 trading days with average daily volume of 8,520 shares. During the investigation period, the price of the scrip rose by ₹52 in 76 trading days with average daily volume of 8,520 shares. The price of the scrip had risen mainly in the following two patches:

(a) Patch I (April 16, 2009 to May 07, 2009): During this period, the price of the scrip rose by ₹10.50/- in 14 trading days with average daily volume of only 6,240 shares as under:

Table-1

Particulars	Price (₹)	Date
Open	14.75	16/04/2009
High	25.25	07/05/2009
Low	14.75	16/04/2009
Close	23.40	07/05/2009

Patch II (May 26, 2009 to July 22, 2009): During this period the price of the scrip rose by

₹49.45/- in 42 trading days with average daily volume of 9,680 shares as following:

Table-2

Particulars	Price (₹)	Date
Open	16.55	26/05/2009
High	66.00	22/07/2009
Low	16.05	27/05/2009
Close	63.35	22/07/2009

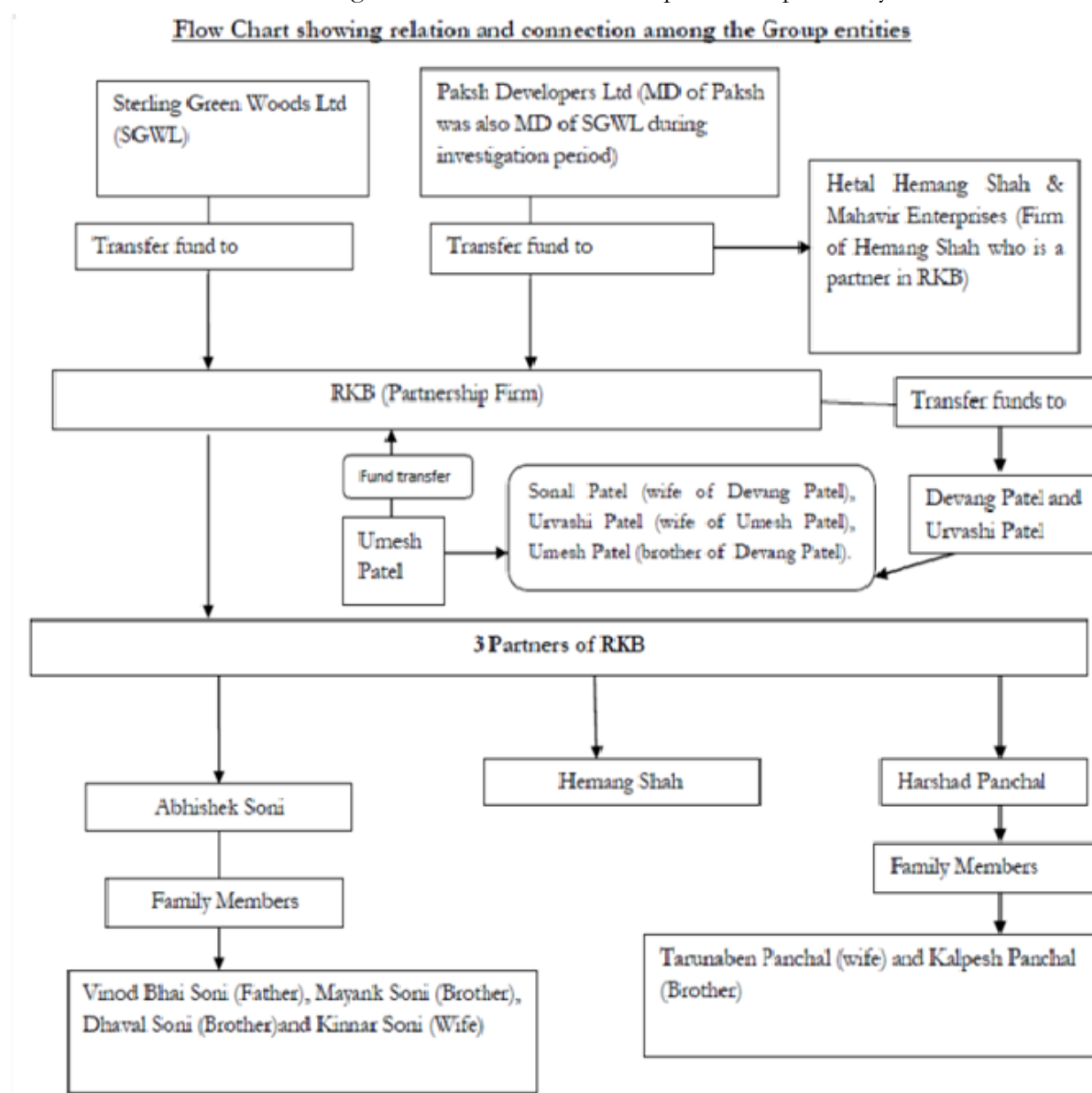
- (2) 15 entities connected with one Mr. Hemang Shah (referred as “*Hemang Shah Group*”) had collectively bought and sold shares of SGWL that represented around 58% and 53% of total market gross volume in the scrip. Trades among the *Hemang Shah Group* entities amounted to 78,149 shares (12.07% of total market volume) out of which orders for 39,931 shares (51.10% of their trades) appeared to be synchronized. *Hemang Shah Group* had significantly contributed/supported the price of the scrip during the aforesaid patches of the price rise. These 15 entities were connected/related with each other and with SGWL, its managing director Mr. Anurag Agarwal and Paksh Developer Private Limited (PDPL) as described in the following Table:-

Table-3

Name	Address	Basis of connection
1. Radhe Krishna Broking (RKB), partnership firm Partners: <i>Mr. Hemang S. Shah (50%)</i> <i>Mr. Harshad A. Panchal (25%)</i> <i>Mr. Abhishek V. Soni (25%)</i>	13 –Mansi Complex, Near Swaminarayan Mandir, Vastrapur, Ahmedabad -380015	1. RKP had received funds from SGWL and PDPL. 2. Mr. Hemang Shah (Majority partner of RKB) had received funds from PDPL through his wife Ms. Hetal H Shah and Mahavir Enterprises (Prop. Hemang Shah)
2. Mr. Hemang S. Shah 3. Ms. Hetal Hemang Shah	A/1/4, Prasiddha Apt, Satelite, Ahmedabad, Gujrat-380015	1. Entity at Sr.2 is partner of RKB 2. Entities at Sr. 2 & 3 are husband and wife
4. Mr. Harshad A. Panchal 5. Ms. Tarunaben Panchal 6. Mr. Kalpesh Panchal	C-4, Kavita Society, Near Vakhariya Nagar, Kalol, Gandhinagar, Gujrat-382721	1. Entity at Sr.4 is partner of RKB 2. Entity at Sr.4 & 5 are husband and wife 3. Entity at Sr.4 & 6 are brothers
7. Mr. Abhishek V. Soni 8. Mr. Vinodbhai Soni 9. Ms. Kinnari Soni	121, Sardar Patel Colony, Nr. Sardar Bavl, Naranpura,	1. Entity at Sr.7 is partner of RKB 2. Entity at Sr.7 & 8 is son and father 3. Entity at Sr.7 and 9 are husband and wife

Name	Address	Basis of connection
10. Mr. Mayank Soni 11. Mr. Dhaval Soni	Ahmedabad-380013	4. Entity at Sr.7, 10 & 11 are brothers 5. All are sharing same address
12. Mr. Devang Patel 13. Ms. Urvashi Patel 14. Mr. Umesh Patel 15. Ms. Sonal Patel	B/87, C P Nagar, Part-2nr, Arjun Tower, Ahmedabad, Gujarat - 380061.	1. Entity at 12 & 13 received funds from RKB. And entity at S. No 14 transferred fund to RKB 2. Entity at Sr.12 & 15 are husband and wife 3. Entity at 12 & 14 are brothers 4. Entity at Sr.13 & 14 are wife and husband. 5. All are sharing same address

(3) The connection/relation amongst the aforesaid entities represented pictorially as under:



- (4) During pre-investigation period, i.e., (February 01, 2009 to March 31, 2009), 445 trades for 79,340 shares were executed. During this period, PDPL sold 25,000 shares of SGWL at BSE of which 24,600 shares were purchased by Mr. Hemang Shah. PDPL also sold 15,000 shares of SGWL to another member of the *Hemang Shah Group*, viz. Mr. Harshad Panchal on April 02, 2009 at the beginning of the investigation period. Thus, out of 40,000 shares sold by PDPL during February 2009 to April 2009, 39600 shares had been purchased by the *Hemang Shah Group*.
- (5) During the investigation period, the total valid buy orders were for 12,08,471 shares and total valid sell orders were for 12,33,512 shares. Out of the above buy and sell orders, the *Hemang Shah Group* had altogether placed buy orders for 7,04,709 (58.31%) shares and sell orders for 7,18,087 (58.21%) shares.
- (6) During 76 trading days, 6,47,513 shares were traded. Out of the same, trades for 1,37,536 shares (21.24% of market gross volume and 38.22% of gross traded quantity by the *Hemang Shah Group* entities) were executed among the *Hemang Shah Group* entities. The gross purchase and sale done by the *Hemang Shah Group* entities were 3,77,842 shares and 3,43,514 shares respectively.
- (7) Out of 76 trading days, on 31 trading days volume of matched trades by the *Hemang Shah Group* was more than 25% of gross market volume, on 26 trading days, volume of matched trades by the *Hemang Shah Group* was in the range of 51.31% to 100% of gross market volume and on 12 trading days, volume through their matched trades was in the range of 90% to 100% of gross market volume.
- (8) *Hemang Shah Group* while trading in the shares of SGWL entered into synchronized and matched trades. Out of matched of trades for 1,37,536 shares among them, trades for 71,124 shares were such that was having less than 1 minute time difference between buy order time and sell order time. Trades for 30,907 shares were synchronized in nature. Further, out of 14 trading days when the scrip was traded in normal segment, the *Hemang Shah Group* executed Reversal/Circular trades on 5 trading days. The details of the Reversal/Circular trades are as follows:

Table-4

Date	Buyer	Seller	Qty.	% of day vol.
24-06-09	8A- Umesh Patel through Munoth	4A-Dhaval Soni through Rajvi	5267	20.64%
	4A-Dhaval Soni through Rajvi	8A- Umesh Patel through	6988	27.38%

		Munoth		
25-06-09	8A- Umesh Patel through Munoth	4A-Dhaval Soni through Rajvi	4995	24.92%
	4A-Dhaval Soni through Rajvi	8A- Umesh Patel through Munoth	2500	12.47%
	4A-Dhaval Soni through Rajvi	2A- Radhekrishna through Ajmera Associates(<i>Ajmera</i>)	2500	12.47%
30-06-09	3A- Harshad Panchal through India Infoline	2B-Hemang Shah through <i>Ajmera</i>	2000	10.40%
	2B-Hemang Shah through <i>Ajmera</i>	3A- Harshad Panchal through India Infoline	2000	10.40%
06-07-09	4A-Dhaval Soni through Rajvi	2B-Hemang Shah through <i>Ajmera</i>	901	6.18%
	2B-Hemang Shah through <i>Ajmera</i>	4A-Dhaval Soni through Rajvi	1000	6.85%
	8A- Umesh Patel through Munoth	4A-Dhaval Soni through Rajvi	1000	6.85%
	4A-Dhaval Soni through Rajvi	8A- Umesh Patel through Munoth	1400	9.60%
07-07-09	4A-Dhaval Soni through Rajvi	2A- Radhekrishna through <i>Ajmera</i>	500	11.33%
	2A- Radhekrishna through <i>Ajmera</i>	4A-Dhaval Soni through Rajvi	500	11.33%

(9) Month-wise observations on trading pattern of the *Hemang Shah Group* are as follows:

- (i) Total market traded volume was 1,20,773 shares in April 2009. Out of this total market volume, total buy quantity by the *Hemang Shah Group* was 1,14,818 shares, which represented 95% of the total market purchase volume and total sell by the *Hemang Shah Group* was 49,439 shares, which represented 41% of the total market sell volume. Further, it is observed that the *Hemang Shah Group* executed 116 matched trades for 48,341 shares, wherein buyer and seller were the *Hemang Shah Group* entities, and these matched trades represented around 40.03% of total market volume and 58.86% of total traded quantity by them. Out of 116 trades for 48,341 shares, 41 trades for 16,106 shares were having less than 1 minute time difference between buy order time and sell order time. During this period, the price has increased from ₹13.24 (opening price on April 01, 2009 to ₹20.95 (closing price on April 29, 2009) and period high was ₹21.92 on April 29, 2009. During this month average daily volume was 7104 shares.
- (ii) Total market traded volume was 75,973 shares in May 2009. Of this total market volume, total buy quantity by the *Hemang Shah Group* was 67,692 shares, which represented 89.10% of the total market purchase volume and total sell by the *Hemang Shah Group* was 32,425 shares, which represented 42.68% of the total market sell volume.
- (iii) The *Hemang Shah Group* executed 155 matched trades for 24,537 shares, wherein buyer as well as sellers were the *Hemang Shah Group* entities, and these matched trades represented around 32.30% of total market volume and 49% of total traded quantity by them. Out of

- 155 trades for 24,537 shares, 35 trades for 7,056 shares were having less than 1 minute time difference between buy order time and sell order time. During this period, the price had increased from ₹21.30 (opening price on May 04, 2009) to ₹25.25 (on May 07, 2009) then decreased to ₹18.40 (closing price on May 29, 2009). During this month average daily volume was 3999 shares.
- (iv) Total market traded volume was 1,33,287 shares in June 2009. Of this total market volume, total buy quantity by the *Hemang Shab Group* was 1,09,446 shares, which represented 82.11% of the total market purchase volume and total sell by the *Hemang Shab Group* was 47,610 shares, which represented 35.72% of the total market sell volume.
 - (v) The *Hemang Shab Group* executed 85 matched trades for 39,182 shares, wherein buyers as well as sellers were the *Hemang Shab Group* entities, and these matched trades represented around 29.40% of total market volume and 49.90% of total traded quantity by them. Out of 155 trades for 24537 shares, 38 trades for 25,992 shares were having less than 1 minute time difference between buy order time and sell order time. During this period, the price had increased from ₹19.30 (opening price on June 01, 2009) to ₹44.65 (closing price on June 30, 2009 and it was also period high price). During this month average daily volume was 6,059 shares. Majority of trades (i.e., for 94,291 shares) were executed in last 5 trading days.
 - (vi) Total market traded volume was 3,17,480 shares in July 2009. Of this total market volume, total buy quantity by the *Hemang Shab Group* was 84,174 shares, which represented 26.51% of the total market purchase volume and total sell by the *Hemang Shab Group* was 2,13,939 shares, which represented 67.39% of the total market sell volume.
 - (vii) The *Hemang Shab Group* executed 141 matched trades for 25,375 shares, wherein buyers as well as sellers were the *Hemang Shab Group* entities, and these matched trades represented around 7.99% of total market volume and 17.02 % of total traded quantity by them. Out of 141 trades for 25,375 shares, 78 trades for 21,970 shares were having less than 1 minute time difference between buy order time and sell order time. During this period, the price had increased from ₹46 (opening price on July 01, 2009) to ₹61.05 (closing price on July 24, 2009). The period high price was ₹66 on July 22, 2009. During this month average daily volume was 17,638 shares.
- (10) **First trades:**
- (i) Out of 76 trading days, on 43 trading days the first trades had been executed at a price higher than the previous day closing price.
 - (ii) Out of 43 trading days, price difference was 1% and higher than the previous day's closing price in first trades on 39 trading days.

- (iii) Out of 39 first trades, 33 trades had been executed by the *Hemang Shah Group* on buy side.
 - (iv) Out of 33 first trades, there were 13 first trades where both buyers and sellers were the *Hemang Shah Group* entities.
 - (v) Out of 39 trading days, on 29 trading days the price difference was 3% and higher than the previous day closing price which suggest that the price of the scrip was substantially increased by executing first trades.
 - (vi) Out of 29 first trades, 22 trades had been executed by the *Hemang Shah Group* on buy side. In 7 such first trades, buyers as well as sellers were the *Hemang Shah Group* entities.
 - (vii) First trades executed by the *Hemang Shah Group* had contributed to price rise substantially as more than 70% first trades establishing higher price to previous day closing price had been executed by the *Hemang Shah Group*.
- (11) There were 132 trades which resulted into discovery of new high price during the investigation period and sum of price difference of such trades was ₹52.76. Out of that, contribution of the *Hemang Shah Group* entities was ₹30.40 through 100 such trades on buy side. The *Hemang Shah Group* was also on sell side for 43 such trades. Out of 100 such trades by the *Hemang Shah Group*, there were 28 trades where both buyers and sellers were the *Hemang Shah Group* entities.
- (12) During investigation period, total 3,661 trades for 6,47,513 shares have been executed. Out of that, 1047 trades had been executed at a price higher than the last traded price. Out of 1047 trades, 719 trades had been executed by the *Hemang Shah Group*. 398 trades had been executed at a price higher than 1% or more to last traded price.
- (13) Out of 398 trades, the *Hemang Shah Group* entities were observed in these trades for 284 trades on buy side and 139 trades on sell side. There were 80 trades as where both buyers and sellers were the *Hemang Shah Group* entities.
- (14) 145 trades had been executed at a price greater than 3% or more to last traded price. Out of 145 trades, the *Hemang Shah Group* was observed in such trades for 99 trades on buy side and 45 trades on sell side. 24 trades were such where both buyers and sellers were the *Hemang Shah Group*.
- (15) In view of the above, it was alleged that the *Hemang Shah Group* created artificial volume in the scrip through matched trades, synchronized trades and reversal trades among themselves. They also increased the price of the scrip through first trades at higher price than previous day closing price, trades at a price higher than Last Traded Price and trades establishing a new high price of the scrip in the market during the investigation period.

They rigged up the price by placing both buy and sell orders at higher price. The *Hemang Shah Group* accumulated the shares while creating artificial volume in the scrip during the months April 2009 to June 2009. They also acquired substantial quantity of shares from PDPL during pre-investigation period and at the beginning of the investigation period. When the price reached at its highest level in July 2009, they sold/offloaded their shareholding in the month of July 2009 and made a profit of about ₹54 Lakhs.

(16) It was also observed that some of the aforesaid entities of *Hemang Shah Group* had received funds from SGWL and PDPL. Funds were provided to the entities of *Hemang Shah Group* through PDPL and SGWL as following:

- (i) During February 12, 2009 to March 03, 2009 PDPL transferred ₹2,70,000 to Ms. Hetal Shah, wife of Mr. Hemang Shah.
- (ii) On April 08, 2009, RKB transferred ₹50,000 to Mr. Devang Patel. On April 25, 2009, he transferred ₹25,000 to stock broker Asit C. Mehta for trading in the scrip of SGWL.
- (iii) On April 08, 2009 RKB transferred ₹50,000 and on April 17, 2009, ₹25,500 in the joint bank account of Mr. Umesh Patel and his wife Ms. Urvashi Patel. Thereafter, Mr. Umesh Patel transferred ₹75,000 (₹25,000 on April 18, 2009, ₹25,000 on April 20, 2009 and ₹25,000 April 22, 2009) to the stock broker Munoth Capital Market Ltd. for trading in the scrip of SGWL. Further, Mr. Umesh Patel transferred/returned ₹50,000/- to RKB on August 04, 2009.
- (iv) On April 28, 2009, SGWL transferred ₹4,00,000/- to RKB. On May 01, 2009, RKB transferred the same amount to its stock broker Ajmera Associates (*Ajmera*) for trading in the scrip of SGWL.
- (v) PDPL transferred ₹2,00,000 on April 16, 2009 and ₹2,70,000 on April 29, 2009 to RKB. RKB on April 22, 2009 transferred ₹2,00,000 to its stock broker *Ajmera* for trading in the scrip of SGWL.

(17) Shares of SGWL were also provided to the *Hemang Shah Group* entities through PDPL. Mr. Anurag Agarwal was the managing director of SGWL and also of PDPL during the investigation period. As per its annual return filed with the Registrar of Companies, out of total share capital of 8,30,000 shares of PDPL, Mr. Anurag Agarwal held 8,29,000 shares accounting for 99.88% of its share capital.

(18) PDPL along with Mr. Anurag Agarwal, and SGWL transferred funds and shares to the *Hemang Shah Group* who used the same to manipulate the said scrip and Mr. Anurag Agrawal alongwith PDPL and SGWL transferred funds and shares to the *Hemang Shah Group* who used the same to manipulate the said scrip.

- (19) In addition to above, it was observed that PDPL and Mr. Anurag Agarwal had acquired shares of SGWL from quarter June 2005 onwards as described in the following Table:

Table-5

Date	Entity	No of shares	Combined holding of Anurag and PDPL	% of their holding
24-5-2005	Anurag	1,96,800	1,96,800	4.56
18-8-2005	Anurag	2,00,000	3,96,800	9.20
01-7-2006	Anurag	1,03,200	5,00,000	11.79
20-9-2007	PDPL	2,00,000	7,00,000	16.51

- (a) Mr. Anurag Agarwal had admitted in his statement recorded on July 12, 2011 that he used to place orders on behalf of PDPL for transactions in the scrip of SGWL. Total share capital of SGWL at the relevant time comprised of 43,11,288 shares. In terms of regulation 7(1) of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations 1997 (hereinafter referred to as "the Takeover Regulations"), PDPL and Mr. Anurag Agarwal, who were persons acting in concert with regard to their respective acquisitions, were required to make disclosures to SGWL and the stock exchanges where its shares were listed, i.e., within 2 working days of August 18, 2005, July 01, 2006 and September 20, 2007 as their shareholding on these dates crossed stipulated 5%, 10% and 14%, respectively. However, they had failed to make the required disclosures on all the three occasions and therefore violated the provisions of regulation 7(1) of the Takeover Regulations.
- (b) Further, after acquiring 2,00,000 shares of SGWL on August 18, 2005, the shareholding of Mr. Anurag Agarwal crossed 5% benchmark and in terms of regulation 13(1) of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 (the PIT Regulations), he was required to disclose his shareholding to SGWL within two working days of such acquisition which he failed to do.
- (c) Furthermore, Mr. Anurag Agarwal was the director of SGWL when he acquired 2,00,000 shares of SGWL on August 18, 2005 and 103200 shares on July 01, 2006. There was a change in his shareholding which exceeded 25,000 shares and in terms of regulation 13(4) of the PIT Regulations, he was required to make disclosure of his shareholding and change in his shareholding to SGWL and BSE within the time specified in regulation 13(5) of the PIT Regulations. Mr. Anurag Agarwal admitted in his statement recorded on July 12, 2011 that no disclosures had been made for the said transactions under the Takeover

Regulations and the PIT Regulations. Thus, he failed to make such required disclosures in terms of regulation 13(4) of the PIT Regulations.

- (d) For the quarter ended June 2007, Mr. Anurag Agarwal was holding 11.79% shares of SGWL. For the quarter ended September 2007, Mr. Anurag Agarwal continued to hold 11.79% and his PAC, viz. PDPL held 4.72%. Thus, the combined shareholding of Mr. Anurag Agarwal alongwith PDPL (PAC) increased to 16.51% (11.79% + 4.72%) on acquisition of 2,00,000 shares by PDPL on September 20, 2007 which crossed 15% benchmark in terms of regulation 10 of Takeover Regulations. In view of the above, it was alleged that PDPL along with Mr. Anurag Agarwal failed to make public offer before acquiring more than 15% of share capital of SGWL and therefore alleged to have violated regulation 10 of the Takeover Regulations.
3. Pursuant to the investigation, adjudication proceedings were initiated against 7 of the Hemang *Shah Group* entities viz; RKB, Mr. Harshad Panchal Thaker, Mr. Hemang Shah, Mr. Abhishek Soni, Mr. Umesh Patel, Ms. Sonal Patel and Mr. Dhaval Soni for the alleged violation of regulation 3(a), (b), (c) and (d) and regulation 4(1) read with regulation 4(2) (a), (b) and (e) of the PFUTP Regulations. Adjudication proceedings were also initiated against SGWL and its managing director Mr. Anurag Agarwal for the alleged violation of regulation 3(a), (b), (c), (d), and regulation 4(1) read with 4(2) (d) and (e) of the PFUTP Regulations and section 21 of the SCRA read with clause 35 of the Listing Agreement.
4. Further, adjudication proceedings under section 15A, 15H and 15HA of the SEBI Act, 1992 and proceedings under section 11B of the SEBI Act, 1992 were initiated against:
- (a) PDPL and Mr. Anurag Agarwal for the alleged violation of regulation 3(a), (b), (c), (d), regulation 4(1) read with 4(2)(d) and (e) of the PFUTP Regulations;
 - (b) PDPL and Mr. Anurag Agarwal for the alleged non-compliance of regulation 7(1) of the Takeover Regulations;
 - (c) Mr. Anurag Agarwal for the alleged non-compliance of regulations 13(1) and (4) of the PIT Regulations;
 - (d) PDPL and Mr. Anurag Agarwal for the alleged violation of regulation 10 of the Takeover Regulations.
5. Based on the investigation, two separate show cause notices dated December 11, 2012 (hereinafter referred to as "SCNs") were issued to PDPL and Mr. Anurag Agarwal (hereinafter collectively referred to as "the noticees" or individually by their respective names). The allegations and the violations charged in the respective SCNs are listed in the following Table:-

Table-6

Sl. No.	Name of the entity	Allegation	Violation
1.	PDPL	<i>“alongwith Mr. Anurag Agarwal aided, facilitated and abeted” the manipulations by the Hemang Shah Group by providing the shares as well as the money.</i>	section 12A of the SEBI Act, 1992 read with regulations 3(a), (b), (c), (d), 4(1), 4(2)(d) and (e) of the PFUTP Regulations.
		failed to make disclosure regarding acquisition of shares of SGWL when its shareholding alongwith that of Mr. Anurag Agarwal crossed 5%, 10% and 14% shares or voting rights in SGWL.	regulation 7(1) of the Takeover Regulations.
		failed to make public offer before acquiring more than 15% of share capital of SGWL along with its PAC Mr. Anurag Agarwal.	regulation 10 of the Takeover Regulations
2.	Mr. Anurag Agarwal	<i>“alongwith Paksb (PDPL) aided, facilitated and abeted” the manipulations by the Hemang Shah Group by providing the shares as well as the money.</i>	section 12 A of SEBI Act, 1992 read with regulations 3(a), (b), (c), (d), 4(1), 4(2)(d) and (e) of the PFUTP Regulations.
		failed to make disclosure of acquisition of shares of SGWL when its shareholding alongwith that PDPL crossed 5%, 10% and 14% shares or voting rights in SGWL.	regulation 7(1) of the Takeover Regulations
		failed to make disclosure of acquisition of shares of SGWL when his shareholding crossed the 5 % benchmark on August 18, 2005 within two working days.	regulation 13(1) of the PIT Regulations
		failed to make disclosure with respect to change in his shareholding on August 18, 2005 and July 01, 2006 which exceeded 25,000 shares.	regulation 13(4) of the PIT Regulations
		failed to make public offer before acquiring more than 15% of share capital of SGWL alongwith its PAC PDPL.	regulation 10 of the Takeover Regulations

6. The noticees filed identical *interim* replies in the matter and the same is summarized as follows:

- (a) One of the reason for the volume in scrip of SGWL was the fact that many of the lands owned by SGWL are in vicinity of Sanand village and a number of MoUs are signed by the state government for setting up manufacturing units in and around Sanand area pertaining to automobile companies and other multi-national companies.
 - (b) With regard to the statement of Mr. Anurag Agarwal (managing director of PDPL) dated July 12, 2011 wherein he admitted that no disclosures have been under regulations 7(1) of the Takeover Regulations and regulation 13(1) of the PIT Regulations, PDPL has submitted that if video recording of the statement recording is seen it will falsify many statements in the minutes of statement dated July 12, 2011. The noticees also requested for a copy of the video recording to prove that what has been stated in such a statement is incorrect.
 - (c) With regard to the inter-se connection between the *Hemang Shah Group* and their connection with SGWL/Anurag Agarwal/PDPL, it is noted in the SCN that Mr. Hemang Shah (majority partner of RKB) had received funds from PDPL through his wife Ms. Hetal Shah and Mahavir Enterprises (Prop. Hemang Shah). In this regard PDPL has submitted that it is in the business of buying and selling land and gives advance money to the stock brokers as part of regular business practice. Accordingly, ₹3.25 lakh was given to Mahavir enterprises which returned it back since the deal did not materialize. Further, the said transaction was outside the investigation period.
 - (d) PDPL also requested to provide a copy of investigation report with respect to investigation conducted for SGWL.
7. Subsequently, the noticees filed identical additional replies to the SCN reiterating their earlier replies and *inter alia* submitting as follows:
- (a) SGWL was having many lands in Sanand area in Gujarat. Many automobile and multi-national companies were going to set up their manufacturing units on the Sanand Nalsarovar road. (A copy of the advertisement by a developer of land at Sanand Nalsarovar Road was also submitted by PDPL.)
 - (b) The rise in volume of the scrip is due to the ownership of land by SGWL in Sanand Area.
 - (c) Mr. Anurag Agarwal, as the managing director of SGWL, had given money to brokers in order to purchase land in Sanand Nalsarovar road area, Gujarat including ₹2.7 lakhs to Ms. Hetal Shah who alongwith her husband is in the business of land brokerage for a piece of land at Sanand. (In support of such claim the noticees have submitted a copy of affidavit dated September 28, 2012 of one of the co-owners of the land at Sanand with the relevant village form No. 7 revenue record in support of its submission.) The affidavit produced in support of the above explanation is made by Mr. Dashratbhai Atmarambhai wherein he has stated that he is the co-owner of parcel of land in Sanand Taluka, Ahmedabad. He has further stated that:

- he was approached by Mr. Hemnag Shah for purchase of the said property;
 - he had received a sum of ₹1,25,000/- towards the said land purchase account as "Jhanghad" amount.
 - he was unable to convince the other co-owners (his family members) of the property and it was not possible to execute registered agreement to sale in favor of Mr. Hetal Shah (Mr. Hemang Shah);
 - he had returned the amount of ₹1,25,000/- to Ms. Hetal Shah.
- (d) PDPL had also given ₹4,70,000/- for a parcel of land at Gandhinagar to Radhe Krishna Broking- Hemag Shah and the said advance of ₹4,70,000/- was returned by Radhe Krishna Broking since the co-owner was unable to get clear and marketable title of the said land by convincing his family members (co-owners). The noticees submitted a copy of the affidavit of one of the co-owners of the land at Gandhinagar with relevant village form No. 7 revenue record. The affidavit submitted in support of the above explanation is submitted by Mr. Vandankumar Vijaykumar wherein he has stated that he is the co-owner of parcel of land in Gandhinagar. He has further stated that he was approached by Mr. Hemnag Shah for purchase of the said property and that he had received a sum of ₹1,51,000/- towards the said land purchase account as "Jhanghad" amount. Mr. Vandankumar Vijaykumar has further submitted that he was unable to convince all of the co-owners of the property and it was not possible to execute registered agreement to sale in favor of Mr. Hemang Shah (c/o Radhe Krishna Broking) or their order and therefore, he had returned the amount of ₹1,51,000/- to Mr. Hemang Shah.
- (e) Such meager amounts which have been returned back cannot even remotely suggest or are capable of manipulation and rigging price of the SGWL scrip, more so when the scrip has been volatile several times in past.
- (f) Such transactions of giving "Jhangad" money to land brokers, land dealers, land co-owners is common business practice. The noticees submitted copies of ledger accounts of land impress and vouchers in support of his above explanation.
8. In addition to the above, Mr. Anurag Agarwal submitting that he had informed SGWL regarding its shareholding as per regulation 13(4) and 13(6) of the PIT Regulations. In support of his claims, he has submitted a copy of the said disclosures in the prescribed Form D. He also submitted that he had disclosed his shareholding to SGWL after crossing the 5%, 10% and 14% of the total shareholding. Further, Mr. Anurag Agarwal (MD of PDPL) submitted affidavits dated December 08, 2015 and February 09, 2016 *inter alia* submitting as follows:
- (i) Disclosures were made to SGWL under regulation 7(1) of the Takeover Regulations. In support of the same, copies of letters dated August 19, 2005, July 02, 2006 and

September 21, 2007 addressed to SGWL making disclosures of acquisition of shares under regulation 7(1) of the Takeover Regulations was submitted. Mr. Anurag Agarwal also submitted letter dated August 20, 2005 (along with acknowledgement) addressed to Ahmedabad Stock Exchange Ltd. disclosing acquisition of shares of SGWL on August 18, 2005, July 01, 2006 and September 20, 2007 under regulation 7(1) of the Takeover Regulations.

- (ii) Public offer was made under regulation 10 of the Takeover Regulations much prior to acquisition of target company shares. In support of his submission, a copy of public notice dated June 16, 2007 published in a newspaper "Western Times" in Ahmedabad was submitted. The said public notice is regarding open offer made by the noticees and Mr. Anurag Agarwal under regulation 10 of the Takeover Regulations as mentioned in the SCN.

9. After several adjournments of dates of hearings fixed in the matter, on August 12, 2014, Mr. Shyam K Shelat (Adv.) appeared on behalf of the noticees requested for inspection of documents in the matter. In the interest of natural justice opportunity for inspection of documents was granted to the noticees on several dates, viz. January 08, 2015, January 30, 2015, February 09, 2015, April 30, 2015, May 08, 2015 and May 15, 2015. Out of these opportunities, the noticees availed opportunities for inspection only on two dates, i.e., on February 09, 2015 and May 15, 2015. The noticees were granted the following opportunities of personal hearing after inspection of documents by them:

Table-7

Date of Hearing	Remarks
August 05, 2015	Authorized representative of the noticees appeared and sought adjournment due to non-availability of the counsel on account of personal difficulty.
September 22, 2015	Counsel of the noticees appeared for the hearing. Matter was part heard and next hearing was scheduled on November 17, 2015.
November 17, 2015	Mr. Rohit Sharma, the authorised representative appeared and sought short adjournment in the matter as the counsel for the noticees Mr. Shaym Shelat could not appear on account of ill-health. Next hearing was scheduled on December 08, 2015.
December	Counsel for the entity appeared. Counsel for the entity appeared. The

08, 2015	matter could not reach the board on account of other matters on board because of paucity of time. Next hearing was scheduled on January 06, 2016.
January 06, 2016	Counsel for the entity sought adjournment vide email dated January 05, 2016. Next hearing was scheduled on February 09, 2016.
February 09, 2016	Counsel for the entity appeared. The matter could not reach the board on account of other matters on board because of paucity of time. Next date of hearing granted as March 22, 2016
March 22, 2016	Vide email dated March 22, 2016 counsel for the noticees sought adjournment and requested to reschedule the hearing in the first week of May, 2016

10. During personal hearings on several dates as stated above, learned advocate appearing on behalf of the notices relied upon and reiterated the written replies of the noticees and contended that SGWL though necessary party is not the notice in either of the SCNs. Mr. Anurag Agarwal has not financed any monies to any of the *Hemang Shah Group* entity and they cannot explain the fund transfer by SGWL to anyone as alleged in the SCNs. He contended that fund transfers by PDPL as alleged in the SCN to it were fund transfers in normal practice of transactions as explained in the written replies. The monies were given by PDPL to Ms. Hetal Shah and RKB as land brokers and the same were returned as land deals had not materialized.
11. In view of the several opportunities of personal hearing granted to the noticees and the number of adjournments sought, the request of the noticees was not acceded to. Accordingly, vide letter dated April 06, 2016 it was communicated to the noticees and its counsel that no further opportunity of personal hearing shall be granted to it. Vide the same letter it was also communicated to the noticees that they may file further written submissions, if any, within 10 days of receipt of the said letter. I note that the noticees have not filed any written submissions subsequently. Considering these facts and circumstances, I am of the view that the noticees have been accorded sufficient opportunities, therefore, principles of natural justice have been duly complied with in this matter and the matter can be proceeded with on the basis of SCNs, replies/submissions of the noticees and relevant material available on record.
12. I have carefully considered the SCNs issued to the respective noticees, their replies/submissions and the relevant material available on record. I note that the separate SCNs to the noticees have been issued on the basis of same facts, same set of transactions in the same scrip, during the same investigation period. The charge of aiding, facilitating and abetting the manipulation of

traded volume and price of the scrip during the investigation period has been leveled against the notices on the basis of common alleged factor of providing shares and funds by SGWL and PDPL to some of the entities of *Hemang Shah Group* for their dealings in the scrip. Further, the charge against Mr. Anurag Agarwal is solely on the basis that he was managing director of both these companies during the relevant period. Furthermore, the charge of alleged violation of regulations 7(1) and 10 of the Takeover Regulations against the noticees is based on the sole foundation that both of them were persons acting in concert with each other with regard to acquisitions of Mr. Anurag Agarwal during 2005-06 and the acquisition of PDPL on September 20, 2007. In these facts and circumstances, when basis of charges or common and factors therefor or interlinked and inter- connected parties are alleged to be acting in concert, the common SCN should have been issued rather than separating the charges in two different SCNs against connected parties. I, therefore, deem it appropriate to deal with the two SCNs issued to the notices, separately, by way of this common order.

13. Before dealing with merits of the case, I deem it necessary to deal with a preliminary contention of the noticees, i.e., with regard to furnishing copy of the Investigation Report. In this regard, I note that the Investigation Report is not the evidence relied upon in the SCNs issued to the noticees. The findings of the Investigation Report have been narrated in the respective SCNs. The SCNs also mention the provisions of law alleged to have been violated by the respective noticee and the basis of charges against them as alleged therein. I further note that an opportunity of inspection of the documents was also provided to the noticees when they had inspected the Investigation Report amongst other materials. Considering these facts and circumstances, I am of the view that no prejudice has been caused to the noticees if the Investigation Report was not provided to them.
14. Coming to the merits of the case, it is noted from the facts and circumstances as described in the SCNs, that they level three independent charges and allegations against the noticees; namely-
 - a) Violation of section 12 A of SEBI Act, 1992 read with regulations 3(a), (b), (c), (d), 4(1), 4(2)(d) and (e) of the PFUTP Regulations by - aiding, facilitating and abetting the entities of *Hemang Shah Group* for creating artificial volume and rigging the price;
 - b) Failure of the noticees to make requisite disclosures under regulation 7(1) of the Takeover Regulations and failure of Mr. Anurag Agarwal to make disclosures under regulation 13(1) and 13(4) of the PIT Regulations; and
 - c) Failure of the noticees to make public announcement as required under regulation 10 of the Takeover Regulations.

15. With regard to the first charge, i.e., violation of the PFUTP Regulations, it is noted that one of the basis of this charge is fund transfer from SGWL and PDPL to some of the entities of *Hemang Shah Group* as described in the SCNs and summarized in the following Table:

Table-8

Sr. no.	Date	From	To	Amount (₹)
1.	12.02.2009-03.03.2009	PDPL	Ms. Hetal Shah	2,70,000
2.	16.04.2009	PDPL	RKB	2,00,000
3.	28.04.2009	SGWL	RKB	4,00,000
4.	29.04.2009	PDPL	RKB	2,70,000

16. The noticees have not denied the aforesaid fund transfers. However, they have claimed that the alleged fund transfers were for genuine purposes and not to facilitate trading of entities of *Hemang Shah Group* in the scrip during the investigation period as alleged. With regard to the fund transfer to the tune of ₹2,70,000/- from PDPL to Ms. Hetal Shah, wife of Mr. Hemang Shah during February 12, 2009 to March 03, 2009, the noticees have claimed that Mr. Anurag Agarwal, as MD of SGWL, had given ₹2,70,000/- to Ms. Hetal Shah (who along with her husband Mr. Hemang Shah was in the business of land brokerage) for purchase of a piece of land at Sanand area in Gujarat. They have also claimed that PDPL had given advance money to brokers as part of regular trade practice. In support of such claim they have submitted an affidavit of one Mr. Dashratbhai Atmarambhai wherein he has stated that he is the co-owner of land in Sanand Taluka, Ahmedabad. He was approached by Mr. Hemnag Shah for purchase of the said property and he had received a sum of ₹1,25,000/- towards the said land purchase account as "*Jhanghad*" amount. Since he was unable to convince the other co-owners (his family members) it was not possible to execute registered agreement to sale in favor of Ms. Hetal Shah (Mr. Hemang Shah) he had returned the amount of ₹1,25,000/- to Ms. Hetal Shah. It is noted that on the one hand PDPL has claimed that Ms. Hetal Shah was acting as land brokers for it and the said money was given by it to Ms. Hetal Shah for acquisition of land in Sanand, on the other hand the purported co-owner of the land has claimed on oath that he could not transfer land to Ms. Hetal Shah who admittedly was not a prospective buyer of the land but only a land broker. Such contradictory statements, coupled with fact that the affidavit does not even attempt to justify the total amount financed by PDPL to Ms. Hetal Shah and that it does not specify the specific land that was to be purchased, suggest that such claim is only an afterthought and such financing remains unexplained. Further, apart from the affidavit, there is no document

to show the flow of funds from Ms. Hetal Shah to the land owners and return of the same by them to Ms. Hetal Shah and from her to PDPL. There is not even a claim that monies so transferred to landowners came back to PDPL who had originally transferred the same to Ms. Hetal Shah.

17. With regard to transfer of ₹4,70,000 on April 15 and April 29, 2009 to RKB, PDPL has submitted that it had given ₹4,70,000 to RKB as advance for a land at Gandhinagar to RKB who was acting as a land broker and the said advance of ₹4,70,000 was returned by RKB since the co-owner was unable to get clear and marketable title of the said land by convincing his family members (co-owners of land). On perusal of the said affidavit, it is noted that the same is regarding a sum of ₹1,51,000/- transferred by RKB to one Mr. Vandankumar Vijaykumar and it does not explain transfer of ₹4,70,000/- to RKB by PDPL as alleged in the SCN. Further, apart from the affidavit, there is no document to show the flow of funds from/to RKB to the land owners and return of the same by land owners to RKB.
18. In view of the above, I find that PDPL has made *ipse dixit* denials with regard to the aforesaid fund transfers and the financing by it prior to investigation period (₹2,70,000) and during investigation period (₹4,70,000) remains unexplained and unsubstantiated that the fund transfers were for normal transactions with regard to land purchase. However, it is noted that the fund transfer to the tune of ₹2,70, 000/ from PDPL to Ms. Hetal Shah, wife of Mr. Hemang Shah during February 12, 2009 to March 03, 2009 was before the investigation period. Another ₹2,70,000/ were transferred by PDPL to RKB on April 29, 2009, i.e., during the investigation period. These fund transactions, though remain unexplained and unsubstantiated by the noticees, the same are not alleged or charged in the SCNs to have been used for trading by the entities of *Hemang Shah Group* in the scrip during the investigation period.
19. The SCNs also rely upon following fund transfers from RKB to its broker *Ajmera* through which it had traded only in the scrip of SGWL during investigation period and to other entities of *Hemang Shah Group* who had traded in the scrip during the investigation period-

Table-9

Sr. no.	Date	From	To	Amount (₹)
1.	08.04.2009	RKB	Devang Patel	50,000
2.	08.04.2009	RKB	Umesh/Urvashi	50,000
3.	17.04.2009	RKB	Umesh/Urvashi	25,500

4.	18.04.2009	Umesh	Munoth Capital	25,000
5.	20.04.2009	Umesh	Munoth Capital	25,000
6.	22.04.2009	Umesh	Munoth Capital	25,000
7.	22.04.2009	RKB	<i>Ajmera</i>	2,00,000
8.	25.04.2009	Devang Patel	Asit C. Mehta	25,000
9.	01.05.2009	RKB	<i>Ajmera</i>	4,00,000
10.	04.08.2009	Umesh	RKB	50,000

20. From the above Tables-8 and 9 it is unclear as to how the aforesaid fund transfers, except the fund transfer of ₹2,00,000 on April 22, 2009 and ₹4,00,000 on May 01, 2009, can be inferred to be flowing from the noticees to RKB and then to other entities of *Hemang Shah Group* mentioned in the aforesaid Table.

21. I note that the basis of the charge of aiding, facilitating and abetting the manipulative transactions of *Hemang Shah Group* entities in the scrip during investigation period is only the financing of ₹2,00,000 received by RKB from PDPL on April 16, 2009 that was transferred by RKB to its broker *Ajmera* on April 22, 2009 and ₹4,00,000/received by RKB from SGWL on April 28, 2009 that was transferred by it on May 01, 2009 to its broker *Ajmera* through which it had traded only in the scrip of SGWL during the investigation period. With regard to ₹4,00,000/received by RKB from SGWL on April 28, 2009 it is noted that although SGWL is not a noticee in these proceedings, Mr. Anurag Agarwal who was managing director of SGWL has not offered any explanation on its behalf. I note that, in case of director, courts have usually held that he is, *prima facie*, deemed to be in charge and responsible for the conduct of business and management of the company and therefore liable for defaults. {*Garda Chemical Pvt LTD V. R Parthasarthy, Asst. Collector Central Excise [1984] 2 ECC 384 [Bom]*}.

22. In the SCNs it has been mentioned that the noticees sold 40,000 shares during February 2009 to April 2009. Out of these 40,000 shares, 39600 shares were purchased by the *Hemang Shah Group* entities. However, the SCNs have failed to establish as to how these share purchase were used as a device to aid, facilitate and abet the manipulative transactions of *Hemang Shah Group* entities.

23. The noticees and SGWL are connected with the entities of *Hemang Shah Group* on the basis of the factors mentioned hereinabove and also on the basis of financing transactions between SGWL/PDPL and RKB. The financing for manipulative transactions by the connected/related parties who were acting in league and concert cannot be just coincidence and the role of the noticees in aiding, abetting and facilitating the transactions of *Hemang*

Shah Group during the investigation period to the extent of financing by SGWL and PDPL cannot be ruled out.

24. In this regard, it is settled position that there must be convincing preponderance of probability to support the allegation of fraud and fraudulent practices. Having regard to the gravity of the wrong doing higher must be the preponderance of probabilities in establishing such charges. In this regard, I note that in the matter of *Mousam Singha Roy v. State of West Bengal* (2003) 12 SCC 377, the Hon'ble Supreme Court held that- "*It is also a settled principle of criminal jurisprudence that the more serious the offence, the stricter the degree of proof, since a higher degree of assurance is required to convict the accused. This principle applies to civil cases as well where the charge is to be established not beyond reasonable doubt but on the preponderance of probabilities. The measure of proof in civil or criminal cases is not an absolute standard and within each standard there are degrees of probability.*"
25. It is also settled position that the show cause notice should be clear and unambiguous and should be on reasonable basis. Further, the SCN should contain the precise and specific charge. In this context it is relevant to mention the observations made by Hon'ble Supreme Court in the case of *Canara Bank Vs. Debasis Das* (2003) 4SCC 557 that- "*.....the first and foremost principle is what is commonly known as audi alteram partem rule. It says that no one should be condemned unheard. Notice is the first limb of this principle. It must be precise and unambiguous. It should apprise the party determinatively of the case he has to meet.*". To comply with the principles of natural justice and to serve the show cause notice containing precise and unambiguous charge is the obligation of the *quasi-judicial* body and any order stands vitiated if it is passed on the basis of a vague show cause notice. In this case, on perusal of the SCNs it is noted that they are vague, ambiguous and contradictory in several respects as mentioned hereinafter.
26. Admittedly, Ms. Hetal Shah has not traded during the investigation period. The SCNs allege that PDPL had transferred ₹2,70,000/ during February 12, 2009 to March 03, 2009 to Ms. Hetal Shah. However, it concludes that SGWL had funded this amount to Mr. Hemang Shah through his wife Ms. Hetal Shah. The SCNs are, thus, vague and ambiguous as to how the funding of PDPL could be attributed by SGWL particularly when there is no allegation or material to even suggest that PDPL had received this fund from SGWL. The SCNs are further ambiguous with regard to fact that though this fund transfer and the transfer of another ₹2,70,000 from PDPL to RKB on April 29, 2009 remain unexplained and unsubstantiated the same are not alleged or charged in the SCNs to have been used for trading by the entities of *Hemang Shah Group* in the scrip during the investigation period. It is also unclear and ambiguous as to how the fund transfers from RKB to other *Hemang Shah Group* entities as stated in SCNs and Table -9 hereinabove, except the fund transfer of

₹2,00,000 on April 22, 2009 and ₹4,00,000 on May 01, 2009, can be inferred to be flowing from the noticees to RKB and then to other entities of *Hemang Shah Group*.

27. Further, as per the SCNs another basis of this charge is that the noticees provided shares of SGWL to *Hemang Shah Group* entities. I note that but for a bald statement in this regard that- “*shares of SGWL were also provided to Hemang Shah Group entities through Paksh (PDPL)*” - the SCNs are totally silent about how, when and by whom such shares were provided and, thus, this basis is unfounded. The SCNs are contradictory to the extent that in the SCN to PDPL it has been alleged that *PDPL alongwith Mr. Anurag Agarwal* aided, facilitated and abetted the manipulative transactions of *Hemang Shah Group* entities *by providing the shares as well as money*, however, in the SCN to Mr. Anurag Agarwal it has been alleged that he *along with PDPL* aided, facilitated and abetted the manipulative transactions of *Hemang Shah Group* entities *by providing the shares as well as money*. The SCNs are also vague as they charge Mr. Anurag Agarwal of financing such transactions in his individual capacity though the common allegation in the SCNs is that SGWL and PDPL had provided funds to the tune of total ₹6,00,000/to RKB which has been used in the manipulative transactions in this case.
28. Mr. Anurag Agarwal was the managing director of SGWL as well as PDPL during the investigation period. However, there is neither any reference nor any narration to suggest that the SCN dated December 11, 2012 was issued to him in his capacity as managing director of SGWL. This SCN has been issued to him in his individual capacity without mentioning any fact suggesting financing in his individual capacity. Even in the SCN issued to PDPL, wherein he was the managing director, he has not been averred as a noticee at all. The SCNs are, thus, vitiated for this reason. I note that the Karnataka High Court in the case of *Nucor Wires Vs HMT [1998] 30 CLA, 319, [KAR]* has held that there must be specific allegation against a director and vague submissions are liable to be set aside. Further, while alleging vicarious liabilities on the directors for violations by the company, the company should also be proceeded with for its defaults (*U.P. Pollution Control Board vs. Modi Distillery AIR 1998 SC 1128*). However, in this case, though both the SCNs charge SGWL for the transfer of ₹4,00,000/ to RKB as aforesaid but SGWL is not made a noticee at all in either of the SCNs.
29. In this regard, it is also noted that in the SCNs, a great deal of material and facts have been narrated about the manipulative transactions of 15 *Hemang Shah Group* entities who had been found to be involved in the manipulative trading in the scrip during investigation period and who had made unlawful profit of ₹ 54 lac on account such trading. However, they are not party in these proceedings and merely adjudication proceedings have been initiated against only 7 of them viz; RKB, Mr. Harshad Panchal Thaker, Mr. Hemang Shah, Mr. Abhishek Soni, Mr.

Umesh Patel, Ms. Sonal Patel and Mr. Dhaval Soni and rest all have been not proceeded with under the SEBI Act. Further, with regard to allegation of financing by SGWL only adjudication proceedings have been initiated against it. However, with regard to financing by PDPL adjudication proceedings as well as instant proceedings have been initiated against it. In addition, adjudication proceedings as well as instant proceedings have been initiated against Mr. Anurag Agarwal.

30. Considering narrations and allegations in the SCNs and other factors as aforesaid, I am of the view that the direction on the basis of such SCNs cannot be issued against the noticees on account of this charge. In this case, it is pertinent to note that except for the aforesaid financing to the tune of ₹6,00,000 the magnitude of manipulative transactions on account of such financing has not been made out in the SCNs. I am of the view that the adjudication proceedings against the noticees in the matter would be sufficient course of action with regard to this allegations against them. It is also noted that in the adjudication proceedings against aforesaid 7 entities of *Hemang Shah Group*, penalty of ₹5, 00,000 was imposed upon each of the said 7 entities vide order dated June 05, 2013. In the appeal filed by them against the order of the adjudicating officer, Hon'ble Securities Appellate Tribunal (SAT), vide its order dated December 18, 2013 set aside the order dated July 05, 2013 passed by the adjudicating officer and remanded the matter back to him for passing fresh order on merits and in accordance with law and the proceedings are pending adjudication. In the adjudication proceedings against SGWL, Mr. Anurag Agarwal and PDPL, vide another order dated June 05, 2013, the adjudicating officer imposed a penalty of ₹10,00,000 upon SGWL and a penalty of ₹5, 00,000 each upon Mr. Anurag Agarwal and PDPL. While SGWL had paid the penalty imposed upon it, Mr. Anurag Agarwal and PDPL had challenged, before Hon'ble SAT, the order dated June 05, 2013 passed by the adjudicating officer against them. Hon'ble SAT, vide its aforesaid order dated December 18, 2013 set aside the order passed by the adjudicating officer and remanded the matter back to him for passing fresh order on merits and in accordance with law and the proceedings are pending adjudication. Thus, the matter in issue in present proceedings against Mr. Anurag Agarwal and PDPL is also pending for determination before the adjudicating officer. The adjudicating officer may, therefore, decide the matter independently on merits in accordance with law as directed by Hon'ble SAT.
31. With regard to the second charge, I note that the alleged non disclosures are not the basis of charge of manipulative transactions and they are separate and independent of the other two charges. The alleged failure pertained to the year 2005, 2006 and 2007. There is no allegation that such failures were active concealment as a device of any fraudulent activity and the material on record also do not suggest so. I further note that separate adjudication proceedings have been initiated against the noticees with regard to those defaults also. Considering the facts and

circumstances as alleged in the SCNs, I am of the view that inquiry and adjudication under Chapter VIA of the SEBI Act would be commensurate course of action for those alleged defaults. It is noted that in the adjudication proceedings initiated against the noticees for alleged failure in compliance of regulation 7(1) of the Takeover Regulations, the adjudicating officer had, vide his order dated June 05, 2013, imposed a penalty of ₹1,50,000 upon each of them. Further, vide the said order, for the alleged failure of Mr. Anurag Agarwal to make disclosures under regulation 13(1) and 13(4) of the PIT Regulations, the adjudicating officer had imposed a penalty of ₹2,00,000 upon him. In the appeal filed by Mr. Anurag Agarwal and PDPL against the said order of the adjudicating officer, Hon'ble SAT, vide its aforesaid order dated December 18, 2013 set aside the order passed by the adjudicating officer and remanded the matter back to him for passing fresh order on merits and in accordance with law and the proceedings are pending adjudication. Thus, the matter in issue in present proceedings against Mr. Anurag Agarwal and PDPL is also pending for determination before the adjudicating officer. The adjudicating officer may, therefore, decide the matter in terms of the order of Hon'ble SAT.

32. Coming to the third charge of non-compliance of regulation 10 of the Takeover Regulation, it is noted the SCNs seek charge the noticees on the premise that they both were *persons acting in concert* (PAC) with regard to the acquisition of PDPL dated September 20, 2007. However, two separate SCNs have been issued to the noticees- one to Mr. Anurag Agarwal and other to PDPL- without specifically mentioning as to who was acquirer and who was PAC with the acquirer. Nevertheless, it is noted that since the acquisition in question is specific and the name of the acquirer i.e. PDPL is mentioned in the SCNs, they are not vitiated on this ground with regard to this charge. The acquisition of PDPL dated September 20, 2007 is not disputed in this case. Admittedly, at the relevant time, Mr. Anurag Agarwal was the managing director of SGWL and also of PDPL. Further, as per its annual return filed with the Registrar of Companies, out of total share capital of 8,30,000 shares of PDPL, Mr. Anurag Agarwal held 8,29,000 shares accounting for 99.88% of its share capital. Thus, in respect of acquisition of 2,00,000 shares of SGWL by PDPL on September 20, 2007, Mr. Anurag Agarwal was a '*persons acting in concert*' with PDPL, as defined in regulation 2(1)(e) of the Takeover Regulations. It is noted that the noticees have admitted the fact that on September 20, 2007, the combined shareholding of the noticees increased from 11.79% to 16.51%, i.e., an increase beyond the threshold of 15% specified under regulation 10 of the Takeover Regulations.

33. In this regard, Mr. Anurag Agarwal, has submitted that the public offer was given in leading newspaper and submitted a copy of Public Notice published in "Western Times" newspaper circulated in Ahmedabad. It is relevant to mention that the mandatory Public Announcement under regulation 10 read with regulation 14 of the Takeover Regulations, must be made within prescribed time and in accordance with the Takeover Regulations. The scheme of the Takeover

Regulations, as enshrined in regulation 14, clearly shows that the time limit provided for public announcement is related to the finalization of the agreement or entering into agreement to acquire shares or decision to acquire shares. Thus, for the purpose of this case, the date (i.e. September 20, 2007) when the combined shareholding of the noticees increased beyond the threshold of 15% was the starting point for the purpose of discharge of obligation of the noticees to make public announcement so as to give exit opportunity to the shareholders of SGWL at the best offer price. Regulation 15 provides for the requirements of public announcement of offer. Such public announcement is required to be made in all additions of one English Daily with wide circulation, one Hindi Daily with wide circulation and one Regional Daily with wide circulation at the place where the registered office of the target company is situated and the place of the stock exchange where the shares of the target company are most frequently traded. Simultaneously with such publication a copy of the public announcement should be submitted to SEBI through a registered merchant banker and should be sent to all stock exchanges and the target company for placing the same before the Board of Directors of the target company. Regulation 16 lists the contents of the public announcement of offer. In terms of regulation 18(1) and 18(2), within, 14 days from the date of the public announcement the acquirer is required to file, through its merchant banker, with SEBI a copy of the draft letter of offer containing disclosures as specified by SEBI. The letter of offer is required to be dispatched to the shareholders not earlier than 21 days from its submissions to SEBI provided that if SEBI specifies any change in the draft letter of offer the merchant banker and the acquirer have to carry out such changes before the letter of offer is dispatched to the shareholders. Regulation 20 deals with offer price and regulation 21 deals with minimum number of shares to be acquired in the public offer. Regulations 22, 23, 24 deals with the general obligations of the acquirer, board of directors of the target company and the merchant banker, respectively. The public offer has to complete on acquisition of shares tendered by the shareholders in the public offer and payment of consideration to the shareholders by the acquirer within the time scheduled stipulated in the Takeover Regulations.

34. In this case, the noticees had issued only a public notice which did not satisfy the requirements of the requisite public announcement with regard to its contents and other procedures. Mere publication of the notice in any newspaper as sought to be contended by the noticees is not a compliance of the Takeover Regulations. Admittedly, the shares have not been acquired by the noticees from the shareholders pursuant to any public offer so as to give exit opportunity to the shareholders in accordance with the Takeover Regulations. In fact, none of the requirements of the Takeover Regulations have been complied with by the noticees in respect of their acquisition dated September 20, 2007. I, therefore, find that the noticees have failed to make the mandatory public announcement within 4 days from September 20, 2007 in accordance with the provisions of the Takeover Regulations. Thus, the noticees have contravened the provisions of regulation

10 read with regulation 14(1) of the Takeover Regulations thereby making them liable for action under regulations 44 and 45 of the Takeover Regulations 1997 (relevant as on the date of acquisition) read with the corresponding provisions in regulations 32 and 35 of Takeover Regulations, 2011 and sections 11 and 11B of the SEBI Act.

35. I note that regulation 44 read with regulation 45 of the Takeover Regulations, which provide consequences of breach of Takeover Regulations, give flexibility to SEBI to enforce regulation 10 by way of several directions including - (a) disinvestment of shares acquired in breach of regulations; (b) transfer of any proceeds or securities to the investors protection fund; (c) making open offer for acquiring shares of the target company, etc. and penalties by way of actions including monetary penalty through adjudication proceedings under section 15H of the SEBI Act. In this case, it is noted that adjudication proceedings under section 15H of the SEBI act were also initiated against the noticees and the adjudicating officer had, vide his order dated June 05, 2003, imposed a penalty of ₹1 crore upon them to be paid jointly and severally by them. In the appeal filed by them challenging this order of the adjudicating officer, Hon'ble SAT, vide its order dated December 18, 2013 set aside the same and remanded the matter to the adjudicating officer for passing fresh order on merits and in accordance with law. To date, this matter is also pending adjudication by the adjudicating officer.

36. I note that the guiding principles for the directions in regulations 44 and 45 read with section 11 and 11B of the SEBI Act are the interest of the investors and securities market which are the statutory guiding principles as inbuilt in the SEBI Act, the Takeover Regulations. In this context, the following guiding principles propounded by the Hon'ble Securities Appellate Tribunal in its order dated September 08, 2011 in the matter of *Nirvana Holdings Private Limited vs. SEBI* (Appeal no. 31/2011) is relevant:

"It must be remembered that whenever an acquirer violates Regulation 10, 11 or 12 of the takeover code by not making a public announcement, he should be directed to comply with the provision by making a public offer. The words "unless such acquirer makes a public announcement" appearing in Regulations 10 and 11(1) make these provisions mandatory and a public announcement has to be made. Similar words appear in Regulation 12 as well. These provisions make the acquisition conditional upon a public announcement being made. The primary object of the takeover code is to provide an exit route to the public shareholders when there is substantial acquisition of shares or a takeover. This right to exit is an invaluable right and the shareholders cannot be deprived of this right lightly. It is only when larger interest of investor protection or that of the securities market demands that this right could be taken away. Therefore, as a normal rule, a direction to make a public announcement to acquire shares of the target company should issue to an acquirer who fails to do that. The Board need not give reasons as to why such a direction is being issued because that is the mandate of Regulations 10, 11 and 12. However, if the issuance of such a direction is not in the interest of the

securities market or for the protection of interest of investors, the Board may deviate from the normal rule and issue any other direction as envisaged in Regulation 44 of the takeover code. In that event, the Board should record reasons for deviation."

37. It is settled position that adjudication proceedings and other directions under regulation 44 and 45 are civil actions and the directions are not barred by pending adjudication proceedings. The mandatory public announcement may be dispensed with and any other action could be taken only if the facts and circumstances lead to conclusion that public announcement would be a futile exercises or will not be in the interest of investors. In this case, had the noticees made the mandatory public announcement within the time stipulated in regulation 14 of the Takeover Regulations, the price offered to the shareholders in the open offer could have been determined in terms of regulation 20 of the Takeover Regulation. It is noted that, admittedly, the acquisition on September 20, 2007 was at the price of ₹8 per share. Presently, the shares of SGWL are infrequently traded on BSE and trading is at price that is within the range of ₹5 per share. Accordingly, the offer price in the public offer alongwith applicable interest on account of delayed public offer will be more than the prevailing market price and, thus, the public offer will be in the interests of the shareholders as it would provide them an exit opportunity at a better price as provided by law. In the facts and circumstances of the present case, I do not find any reason to deviate from the normal rule to make a public announcement to acquire shares of the target company in accordance with the provisions of the Takeover Regulations, and issue any other direction as envisaged in regulation 44. In these facts and circumstances of this case, in my view, the pending adjudication proceedings can not be substitute for mandatory exit opportunity to shareholders as required under regulation 10.
38. In the present case, had the noticees made the public announcement within a period of 4 days from September 20, 2007 in accordance with the Takeover Regulations and complied with all related activities within the timelines specified therein, all formalities with respect to their public announcement and the open offer would have been completed by December 26, 2007, i.e., 97 days from the date of making the public announcement. I am also of the view that since the public announcement now would provide a delayed exit opportunity to the shareholders of the target company, the noticees should pay interest, in terms of regulation 44 (i), on the consideration amount to the shareholders who tender their shares in the open offer and who are eligible for interest as per law.
39. Considering the above facts and circumstances, I, in order to protect the interest of investors and the integrity of the securities market, in exercise of powers conferred upon me by virtue of section 19 of the Securities and Exchange Board of India Act, 1992 read with sections 11 and

11B thereof and regulations 44 and 45 of the Takeovers Regulations, 1997 read with regulation 35 of the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 hereby issue the following directions to the noticees:

- (i) The noticees shall make a public announcement to acquire shares of Sterling Green Woods Limited in accordance with the provisions of the Takeover Regulations, 1997, within a period of 45 days from the date of this order;
- (ii) The noticees shall, alongwith the applicable consideration amount, pay interest at the rate of 10% per annum from December 26, 2007 to the date of payment of consideration, to the shareholders who were holding shares in the target company on the date of violation and whose shares are accepted in the open offer, after adjustment of dividend paid, if any, to them.

40. This order shall come into force with immediate effect. A copy of this order shall be served upon the noticees for ensuring compliance with the above directions.

Sd/-

DATE: JULY 5th, 2016

PLACE: MUMBAI

**RAJEEV KUMAR AGARWAL
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**