

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

Under Sections 11(1), 11(4) and 11B of Securities and Exchange Board of India Act, 1992

In the matter of Finalysis Credit & Guarantee Co. Ltd.

In respect of:

Sl. No.	Noticee	PAN
1	Finalysis Credit & Guarantee Co. Ltd.	AABCF9494P
2	Bipin Pushpasen Divecha	AABPD5165A
3	Vinayak Trimbak Sarkhot	AWYPS1812Q
4	Sham Sadharam Gandhi	AAAPG8353J
5	Dilip Shah	AJAPS4111R
6	Jiger Dilip Shah	BBOPS1405H
7	Sajjad Abdul Qadir Pavne	AABPQ7739B
8	Sharad Ramchandra Ghadi	AIQPG6396R
9	Mohammad Rafi	BMEPM7501B

10	Roma Shamshad Khan	AHMPP8481F
11	Mohd Salim Khan	AVRPK7818C
12	Amir Hamza Hakim Khan	ASXPK2912L
13	Abdul Hakim Khan	AHAPK0293Q
14	Abdul Zameer Hakim Khan	ASXPK2911K
15	Talat Wahadatali Mohamad	AAHPM1979K
16	Wahadatali Gulamrasool	AAMPK1965E
17	Rehana Khan	BVFPK4495L
18	Santosh Jayaram Sawant	AZHPS1796B

1. Background

1.1. The matter emanates from an inspection carried out by SEBI of Link Intime India Pvt. Ltd (**‘Link Intime’**), a SEBI registered Registrar to Issue and Share Transfer Agent (**‘RTA’**), in respect of the processes being followed by Link Intime in executing investor requests, viz. share transfer, transmission, issue of duplicate shares, dematerialisation and rematerialisation.

1.2. During the said inspection, it was observed that many investor complaints were pending with respect to the company - Finalysis Credit & Guarantee Co. Ltd., the Noticee No. 1 (the **‘Company’**/ **‘Finalysis’**). In this respect, it is stated that the

Company was incorporated on April 07, 1988 as Finalysis Credit & Guarantee Company Private Limited. The name of the Company was changed on August 23, 1995 to Finalysis Credit & Guarantee Company Limited. The Company was listed on June 19, 1996 at the Bombay Stock Exchange ('**BSE**') and was suspended on May 13, 2002 for not complying with the terms of the Equity Listing Agreement. Subsequently, upon an application from the Company, the said suspension was revoked on March 28, 2012; however, the listing of the Company was again suspended on September 9, 2014.

1.3. The said complaints had been filed with SEBI by public shareholders of the Company during the period August 2012 to May 2013, after their requests for transfer/dematting of shares were rejected on the ground that the shares had already been dematted or transferred. Accordingly, in order to arrive at the circumstances leading to the rejection of transfer and demat requests, and any other consequential violations, an investigation was ordered in the matter on November 20, 2014, and the investigation period was determined to be August 29, 2012 to May 08, 2013.

1.4. The Investigation Report observed that certain Noticees, namely, Dilip Shah, Jiger Shah and Sham Gandhi, held about 6.84 lakh shares of Finalysis. Upon the absconding of the promoter of the Company, Mukesh Kothari, the abovementioned Noticees devised a Scheme to initiate fraudulent sale of 93% of the shareholding of Finalysis, constituting a total of 51,20,394 shares held by public shareholders, even though the said Noticees held about 6.84 lakh shares of Finalysis. With the said objective, the above named Noticees took the help of

Vinayak Sarkhot (Noticee No. 3) and Bipin Divecha (Noticee No.2) to find purchasers for the said 93% stake and to get the suspension of trading on BSE revoked. Further, the Investigation Report also observed that Sajjad Pavane (Noticee No. 7) was the Managing Director of Finalysis at the time of receipt of the complaints of the public shareholders, and a large number of shares had been transferred to Sajjad Pavane's related entities, the Noticee Nos. 9 to 17 herein. Thus, the investigation concluded that the Noticees had devised a scheme to defraud the original public shareholders by issuing forged consolidated share certificates and thereafter, fraudulently selling these forged consolidated share certificates to purchasers brought by Bipin Divecha making them believe that the shares transferred to them were original, though they were not so.

- 2. Summary of Show-cause Notice- (i) The Scheme [Para Nos. 2.2(I) A to 2.2(I) H]**
(ii) The Modus Operandi [Para Nos. 2.2 (II) I to 2.2 (II) N]
(iii) The Fund Flow [Para No. 2.2 (III) O]
(iv) The Sajjad Pavne Group [Para Nos. 2.2 (IV) P to 2.2 (IV) R]
(v) The Complaints of Public Shareholders [Para Nos. 2.2 (V) S to 2.2 (V) V]

2.1. Consequent to the conclusion of the abovementioned investigation, a common Show-cause Notice dated March 17, 2017 (“**SCN**”) was issued to the Noticees calling upon them to show cause as to why suitable directions under Sections 11(4) and 11B of the SEBI Act should not be passed against them for violating the provisions of Section 12 A (a), (b) and (c) of the SEBI Act read with Regulation 3(a), 3(b), 3(c) and 3(d) and Regulation 4(1) and 4(2)(h) of the PFUTP Regulations, 2003.

2.2. In this regard, the SCN relying on the Investigation Report and the statements of the Noticees has alleged that the Noticees devised a scheme to defraud the original public shareholders by issuing forged consolidated share certificates and thereafter, fraudulently selling these forged consolidated share certificates to purchasers brought by Bipin Divecha in the following manner:

2.2 (I) - *The Scheme*

- A. Dilip Shah, the Noticee No. 5 advanced more than Rs. 1 crore during 1996-99 to Mukesh Kothari, who was the promoter of Finalysis. Dilip Shah also gave Mukesh M Kothari an additional Rs.50 lakh for which they did not enter into any agreement. Mukesh M Kothari, in return for the receipt of the aforesaid amounts, gave 10,000 shares of Finalysis to Dilip Shah and 2,00,000 shares of Finalysis to Dilip Shah's son, Jiger Dilip Shah, the Noticee No. 6, in parts during the period 1996 to 2000.
- B. Sham Gandhi, the Noticee No. 4, advanced an amount of Rs. 30 lakh in 1996-97 to Mukesh Kothari against which Mukesh Kothari gave Sham Gandhi 4,84,000 shares of Finalysis having face value of Rs. 10, all fully paid up, in the year 2001, along with blank transfer deeds signed by various transferors. Some of the shares were in Mukesh Kothari's name and some in the name of his family members.
- C. As stated above, Dilip Shah, his son- Jiger Shah and Sham Gandhi had been allotted shares in Finalysis in consideration of the amounts advanced by them to Mukesh Kothari. With the promoter of Finalysis, Mukesh Kothari having

absconded, the above named Noticees devised a scheme for the selling of the shares of Finalysis.

- D. During that time, another company of Mukesh Kothari, Solid Carbide Tools Ltd (**“Solid Carbide”**) was under liquidation and Dilip Shah had been appointed Administrator for Solid Carbide by the Bombay High Court. So, Dilip Shah along with his son, Jiger Shah and Sham Gandhi (who was also a creditor of Solid Carbide) met Vinayak Sarkhot, Noticee No. 3 for arranging finances for Solid Carbide. Vinayak Sarkhot was a consultant for relisting of companies on BSE. So, the above named Noticees approached Vinayak Sarkhot to arrange for relisting of Finalysis at BSE and to sell the shares of Finalysis to potential buyers. For the same, a commission of Rs. 25 lakh was promised to him.
- E. Vinayak Sarkhot brought in Bipin Divecha, Noticee No. 2 to find and arrange for purchasers for buying 93% shares of Finalysis. It was agreed upon that for arranging the buyers, Bipin Divecha would be given 2% of equity of Finalysis.
- F. Accordingly, it came to be agreed upon amongst the said Noticees that Bipin Divecha would find purchasers for the sale of 93% of shares of Finalysis constituting a total of 51,20,394 shares for a total consideration amount of Rs. 4.60 crore, at an average of approximately Rs. 9 per share.
- G. Thus, the Scheme that came to be devised was a) to revoke the suspension of the Company on BSE; and b) sell 93% of the shares of the Company (substantial part of which was already held by public shareholders) to various people with a motive to make illegal gains.

H. It has been, thus, alleged by the SCN that the said Noticees, namely, Dilip Shah, Jiger Shah and Sham Gandhi, even though had limited number of shares, had with the aid and abetment of the other Noticees fraudulently undertook the sale of the shares held by the public shareholders, without the knowledge or consent of those public shareholders. The underlying motive included liquidation of Finalysis shares held by certain Noticees themselves.

2.2 (II) - *The Modus Operandi*

- I. In order to get Finalysis relisted at BSE, Sarkhot showed the names of Jiger Shah, Sham Gandhi and himself as promoters of Finalysis. To comply with the requirement of minimum 3 directors, Sarkhot joined Finalysis as promoter cum Executive Director cum Compliance Officer; Jiger Dilip Shah also became the Executive Director at Finalysis and one Sharad Ghadi, Noticee No.8 was inducted as Director of Finalysis. All the three (3) appointments of Directors at Finalysis were done with retrospective effect from 2001.
- J. Sarkhot then completed all the compliances at BSE. Sham Gandhi and Dilip Shah gave him a list of shareholders, in the year 2000, based on which he prepared shareholding pattern, quarterly results, other compliance documents, etc. for the period from 2001 till 2011. The documents were submitted to BSE and BSE issued letter approving the in-principle revocation of suspension of Finalysis on December 01, 2011. The suspension was, thus, revoked by BSE, with effect from March 28, 2012.

- K. Similarly, with respect to the sale of shares, Sham Gandhi and Dilip Shah then gave Bipin Divecha the list of the shareholders in Finalysis of the 93% shareholding, from which the shares were to be transferred to the clients brought in by Bipin Divecha.
- L. In line with above, Bipin Divecha would send the transfer deeds of the buyers identified by him to Vinayak Sarkhot after filling the buyers' details in the transfer deeds. Vinayak Sarkhot would then complete the transfer deeds with the details of the transferors and witnesses. Thereafter, Vinayak Sarkhot would give the transfer deeds to Jiger Shah, who would then give Vinayak Sarkhot the transferred share certificates. Vinayak Sarkhot then used to complete the transfer deeds with the details of the share certificates, distinctive numbers and number of shares and accordingly stamp duty was calculated and affixed. The transfer deeds were then sent to Jiger Shah, son of Dilip Shah, for his custody at the residence of the Shahs at Teen Batti, Walkeshwar, Mumbai. The share certificates, after endorsing the transfer, were then given to Bipin Divecha with covering letter signed by Vinayak Sarkhot, and Bipin Divecha in turn used to send them to the respective transferees, totaling around 250, to whom the shares had been sold.
- M. Vinayak Sarkhot was using the office of Vibrant Investments at Rajabandur Mansion, near BSE building for paper work related to Finalysis and other companies. Vinayak Sarkhot knew Santosh Sawant who was working as peon at Vibrant Investments. Santosh Sawant along with another person was brought in to assist in the formalities for the transfer of shares. Santosh Sawant, Noticee

No. 18, would sign as a witness in many of the transfer deeds for transferring shares to the client brought by Bipin Divecha.

N. Once the share certificates were transferred, the buyers identified by Bipin Divecha applied for demat of shares, which was approved by Jiger Shah and Vinayak Sarkhot. During this time, the entire process of transfer and demat of shares were taking place in-house by Finalysis from the residence of Dilip Shah and Jiger Shah and Sarkhot would approve these transfers and dematting of shares done in 2012. In this respect, Link Intime, the RTA, which had been appointed around the year 2000 was providing only electronic connectivity. All the physical records were with Sarkhot, Dilip Shah and Sham Gandhi. The whole exercise was done during February- April 2012.

2.2 (III) - *The Fund Flow*

O. The consideration for the sale of the shares that came to the Noticees (as transferors) is as shown in the table placed hereunder. The details have been submitted to SEBI by both Bipin Divecha and Vinayak Sarkhot. The same details have also been submitted by Bipin Divecha to the EOW also. Further, these details are also part of the attachments in the emails exchanged amongst Bipin Divecha, Vinayak Sarkhot, Sham Gandhi, Dilip Shah, Jiger Shah and Sajjad Pavne.

Table - 1

03-Feb-12	Cash	Vinayak Sarkhot	300000

10-Feb-12	Cash	Jiger Shah	500000
14-Feb-12	RTG	Vinayak Sarkhot	900000
16-Feb-12	Cash	Vinayak Sarkhot	1000000
23-Feb-12	Cash	Sham Gandhi	1000000
24-Feb-12	Cash	Vinayak Sarkhot	350000
24-Feb-12	Cash	Sham Gandhi	400000
27-Feb-12	Cash	Vinayak Sarkhot	350000
28-Feb-12	Cash	Sham Gandhi	500000
07-Mar-12	Cash	Sham Gandhi	500000
12-Mar-12	RTG	Market Pulse — Bipin Divecha	500000
12-Mar-12	Cash	Dilip Shah	1000000
30-Mar-12	Cash	Vinayak Sarkhot	500000
30-Mar-12	Cash	Vinayak Sarkhot	600000
10-Apr-12	Cash	Vinayak Sarkhot	500000
24-Apr-12	Cash	Vinayak Sarkhot	150000
24-Apr-12	Cash	Vinaj Sarkhot	350000
25-Apr-12	Cash	Jiger Shah	1000000
02-May-12	Cash	Vinayak Sarkhot	1500000
03-May-12	Cash	Vinayak Sarkhot	500000

12-May-12	Cash	Dilip Shah	2000000
14-May-12	Cash	Jiger Shah	1000000
17-May-12	Cash	Dilip Shah	1500000
23-May-12	Cash	Vinayak Sarkhot	50000
28-May-12	RTGS	Dilip Shah	5000000
29-May-12	RTGS	Dilip Shah	5000000
30-May-12	RTGS	Dilip Shah	3000000
02-Tun-12	RTGS	Dilip Shah	3000000
26-Jul-12	Cash	Jiger Shah	1000000
Aug-12	Cash	Vinayak Sarkhot (Commission)	2500000
13-Nov-12	Cash	Dilip Shah	50000
		TOTAL	36500000

2.2 (IV) - *The Sajjad Pavne Group*

P. As per their arrangement, Bipin Divecha asked Jiger Dilip Shah, Sham Gandhi and Sarkhot to hand over all the related documents to him with a cut-off date to enable his taking charge of Finalysis. Subsequently, the records of the shareholders were handed over to Link Intime in 2012, and Jiger Shah and Dilip

Shah interacted with Link Intime in this regard. Further, the master data of members in Finalysis was also prepared at Dilip Shah's house. Also, the correspondences to BSE and other agencies were made by Jiger Shah and Dilip Shah under the direction of Vinayak Sarkhot. Also, till that time, Dilip Shah, Vinayak Sarkhot and Sham Gandhi, neither gave control of Finalysis nor the promoters' shares to Divecha.

Q. Sarkhot then introduced Sajjad Pavne and Salim Khan to the other management team members of Finalysis, namely, Sham Gandhi, Dilip Shah, Jiger Shah in August 2012 for buying shares of Finalysis including the promoters' shares. Pavne joined as MD of Finalysis in September 2012. Further to his appointment, the address of Finalysis was shifted from Shanti Nagar, Walkeshwar, the place of residence of Dilip Shah and Jiger Shah, to Damji Shamji, LBS Marg, Kurla (which was an office space of Sajjad Pavne). Windfall Information Technology Systems Pvt. Ltd., of which Sajjad Pavne was the CEO, was a company based in Mumbai having the same address as that of Finalysis and having email ID as sajjad@email.com.

R. Between September 12, 2012 to March, 2014, large number of Finalysis shares, including the promoter shareholding were transferred by Vinayak Sarkhot (and his relations), Sham Gandhi and Jiger Shah in off-market transactions to known persons of Sajjad Pavne. The said known persons of Sajjad Pavne were Mohammad Rafi (Noticee No. 9), Mohd Salim Khan (Noticee No. 11), Amir Hamza Hakim Khan (Noticee No. 12), Abdul Hakim Khan (Noticee No. 13), Abdul Zameer Hakim Khan (Noticee No. 14), Talat Wahadatali Mohamad

(Noticee No. 15), Wahadatali Gulamrasool (Noticee No. 16) and Rehana Khan (Noticee No. 17).

2.2 (V) - *Complaints of Public Shareholders*

- S. The complaints from public shareholders of Finalysis regarding rejection of requests of transfer and dematting of shares started coming to Finalysis. The first complaint as per SEBI's SCORES system was received on August 29, 2012 and the last was received on May 08, 2013. Finalysis, Noticee No.1 after receiving the requests for transfer of shares and the complaints from the public shareholders, referred the same to the EOW, Mumbai Police.
- T. As complaints were received by Finalysis from public shareholders, Link Intime, the RTA stopped servicing Finalysis and then Universal Capital Securities was appointed as the RTA. In November - December 2012, Sajjad Pawne, who had been appointed as the MD of Finalysis resigned from his position. The resignation letter was given to Vinayak Sarkhot, which was not accepted because of non-resolution of several complaints. The complaints were still pending for resolution and the Company was again suspended by BSE on September 9, 2014, on account of non-compliance with Clause 41 of the Listing Agreement.
- U. Thus, as already stated above, an inspection was carried out by SEBI of Link Intime, and subsequently SEBI carried out investigation to arrive at the circumstances leading to the rejection of transfer and demat requests, and any other consequential violations.

V. Accordingly, it has been alleged in the SCN that the above Noticees had amongst themselves aided and abetted in defrauding the original public shareholders by issuing forged consolidated share certificates and thereafter, fraudulently selling these forged consolidated share certificates to buyers making them believe that the shares transferred to them were original, thereby violating the provisions of the SEBI Act and Regulation 3(a), 3(b), 3(c) and 3(d) and Regulation 4(1) and 4(2)(h) of the PFUTP Regulations, 2003.

3. Replies of the Noticees and Personal Hearing

3.1. In response to the SCN, replies have been received from the Noticees mentioned hereunder.

3.2. Sham Gandhi, Noticee No.4 has submitted his replies by way of letters dated June 15, 2017, November 01, 2017, December 06, 2017, December 08, 2017, December 12, 2017, March 05, 2018 and additional written submissions by way of letter dated May 06, 2019. Sham Gandhi in his replies has primarily stated that a) Mukesh Kothari had given him 4,84,000 shares that were in the name of Mukesh Kothari and his family members along with blank signed Transfer Deeds, so the said deeds could have been used only for transferring the shares in the name of Mukesh M Kothari and his family members and not those shares belonging to others; b) it has been wrongly stated in the SCN that he was one of the two persons holding 'majority' of the shares of Finalysis; c) the sale of the shares of Finalysis was undertaken by Vinayak Sarkhot with Bipin Divecha and he had no role with respect to it; and d) he denies any role in the forgery/counterfeiting of shares and that he employed a deceptive scheme to defraud the investors.

3.3. Roma Shamshad Khan, Noticee No. 10 submitted her reply by way of a letter dated November 29, 2018. The above mentioned Noticee has in her reply primarily stated that she was an educated individual and has her own personal choice in taking decisions, and as such she bought the shares without any intention or action of fraudulent activity in the process of purchasing the shares. Further, it has been stated by her that the only reason for her co-ordinating the share transfers from the promoters to her family members and people known to her was because such people had sought her help, and her role was to be a one-point contact to the promoters, with Vinayak Sarkhot being the point of contact from the promoters side.

3.4. The following Noticees have submitted their replies by way of letters as tabulated hereunder:

Table- 2

Noticee	Reply
Mohammad Rafi, Noticee No. 9	November 29, 2018
Mohd. Salim Khan, Noticee No. 11	November 29, 2018 and April 13, 2017
Amir Hamza Hakim Khan, Noticee No. 12	November 29, 2018 and April 13, 2017
Abdul Hakim Khan, Noticee No. 13	November 29, 2018
Abdul Zameer Hakim Khan, Noticee No. 14	November 29, 2018 and April 13, 2017

Talat Wahadataali Mohamad, Noticee No.15	November 29, 2018
Rehana Khan, Noticee No.17	November 29, 2018

The above mentioned Noticees have primarily stated that the shares in Finalysis were legitimately bought and all decisions with respect to the buying of shares were made individually, without the coaxing of family members or any associate, and no one except the Noticees have any right over the shares.

3.5. Further, letter dated December 8, 2018 has been received from Pradnya Vinayak Sarkhot, the wife of Vinayak Trimbak Sarkot, informing about the demise of the said Noticee on August 08, 2017. A copy of the death certificate as issued by the Municipal Corporation of Kalyan-Dombivli certifying the death of the deceased has been provided along with the said letter.

3.6. Similarly, letters dated November 29, 2018 and November 18, 2019 have been received from Roma Shamshad Khan, informing the death of her husband, Sajjad Abdul Qadir Pavne on July 31, 2017, and her father Wahadataali Gulamrasool on November 09, 2013. Copies of the death certificates issued by the Municipal Corporation of Greater Mumbai with respect to the above mentioned Noticees have been provided.

3.7. From the available record, it is seen that the other Noticees have not submitted any replies to the subject SCN.

3.8. An opportunity of personal hearing in the matter was provided to all the Noticees on April 23, 2019. However, on the said date none of the Noticees except Sham Gandhi entered appearance.

3.9. In this regard, it is further stated that from the records that certain Noticees, namely, Dilip Shah and Jiger Shah had sought a clarification from SEBI as to whether the reply sent to the Adjudicating Officer ('AO') would suffice or not. In the present proceedings, I note that the aforesaid Noticees have not filed a reply nor appeared for the personal hearing. The AO proceedings being different from the nature and scope of a proceeding under Section 11B, it was imperative on the side of the said Noticees to file a reply or appear for the personal hearing so as to defend themselves. The said Noticees had to rightly take a counsel's opinion with respect to the question as to whether a separate reply to the Section 11 B proceeding is required or not instead of consulting the enforcing regulatory authority itself. The records reveal a letter dated July 21, 2017 from SEBI was sent to Jiger Shah, son of Dilip Shah and Noticee No. 6 in the matter, clarifying the query, same as the one posed by Dilip Shah.

4. Relevant Provisions

4.1. Provisions of the SEBI Act

Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.

“12A. No person shall directly or indirectly—

- (a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;
- (b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;
- (c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder”

4.2. Provisions of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003

Regulation 3(a), (b), (c) and (d)

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

- (a) buy, sell or otherwise deal in securities in a fraudulent manner;
- (b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative

or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;

(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;

(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.

Regulation 4 (1), 4(2)(h)

4. Prohibition of manipulative, fraudulent and unfair trade practices

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

(2) Dealing in securities shall be deemed to be a manipulative fraudulent or an unfair trade practice if it involves any of the following:—

....

(h) selling, dealing or pledging of stolen, counterfeit or fraudulently issued securities whether in physical or dematerialized form: Provided that if:-

- (i) the person selling, dealing in or pledging stolen, counterfeit or fraudulently issued securities was a holder in due course; or
- (ii) the stolen, counterfeit or fraudulently issued securities were previously traded on the market through a bonafide transaction,
- (iii) such selling, dealing or pledging of stolen, counterfeit or fraudulently issued securities shall not be considered as a manipulative, fraudulent, or unfair trade practice;

5. Issues

I. Whether the shares belonging to the public shareholders were counterfeited/forged by all or some of the Noticees for illegal gains?

II. If the answer is in the affirmative:

A. Whether Noticee Nos. 2 to 6, 8, and 18 were involved in the counterfeiting/forgery of the share certificates for illegal gains and what role did the said individual Noticees play?

B. Whether Noticee No.1, Finalysis in its capacity as the Company, can be held liable for the fraudulent dealing in securities, in terms of the provisions contained in the SEBI Act and the SEBI PFUTP Regulations?

C. Whether Noticee Nos. 7, and 9 to 17 were involved in the counterfeiting/forgery of the share certificates for illegal gains; if not, is there any other role played by these Noticees which will make them liable for violation of the PFUTP Regulations ?

5.1. Evidence Appreciation and Limitations- Before getting into the consideration of issues, I have taken a look at the overall evidence in the matter. To begin with, the alleged transactions took place during the period February to April, 2012. The investigation was initiated on November 20, 2014 and the SCN was issued on March 17, 2017, wherein multiple actions have been proposed against the Noticees. In this regard, I find that despite the receipt of SCN, Noticees Nos. 1, 2, 5, 6, 8 and 18 have not given any reply to the allegations made in the subject SCN. Similarly, despite the service of Notices of Hearing, no Noticee except Sham Gandhi appeared before me for the personal hearing granted on April 23, 2019. As on date, I understand that the Hon'ble SAT has passed an order dated November 08, 2019 in an appeal filed by Sham Gandhi, Noticee No.4, (Appeal No.106 of 2019) who is alleged to have played an important role in the circulation of counterfeit and forged shares of the public shareholders. From a perusal of the said order, I find that the Hon'ble SAT has upheld the findings of SEBI – Adjudicating Officer, even though, relief by way of waiver of penalty imposed has been granted to him. In the instant proceedings, Sham Gandhi has provided a detailed reply and submissions denying the allegations made in the SCN, but has acknowledged the receipt of funds, the sharing of the shareholders' list, the receipt of emails and acquaintance with Noticees, namely, Vinayak Sarkhot and Bipin Divecha, who have been alleged to have facilitated the sale of the counterfeited/forged shares belonging to the public shareholders. In this respect, it is mentioned that Vinayak Sarkhot, an important link in the matter, passed away on August 08, 2017. Yet another important link, Sajjad Pavne, Noticee no. 7 had passed away on July 31,

2017. In these circumstances, even though, Sham Gandhi had sought the cross-examination of Vinayak Sarkhot and Bipin Divecha, the same was not granted as Vinayak Sarkhot had passed away and no replies had been received from Bipin Divecha in this matter. So, without the full set of Noticees, the whole exercise of adducing factual evidence would not have been fruitful. In the absence of detailed replies, failure of the Noticees to appear for the personal hearing and the limiting factors as mentioned above, I have looked at the available documents, namely, the emails exchanged amongst the Noticees, the flow of funds, draft Memorandum of Understanding circulated amongst certain Noticees and the statements of the Noticees to consider the issues framed above.

6. Issue- I: Whether the scheme involved counterfeiting or forgery of shares of Finalysis that were held by the public by some of the Noticees for illegal gains?

6.1. As stated in the background, this investigation commenced on the basis of complaints received. There were a total of twenty (20) complaints with respect to rejection of transfer/demat requests pertaining to the shares of Finalysis. Out of the said twenty complaints, a total of thirteen (13) complaints were pending resolution during the investigation period, i.e. August 29, 2012 to May 08, 2013.

6.2. I also note that the Company was listed on the Bombay Stock Exchange in 1996 and from the time of its listing till the appointment of Link Intime Pvt. Ltd as the Registrar and Share Transfer Agent (RTA) in July 2012, the share transfer/demat requests were being processed internally by the Company, and Link Intime prior to their appointment as RTA, was only providing electronic connectivity to

depositories for the Company. Link Intime resigned as the RTA to the company in December 2012, and thereafter Universal Capital Services (“**Universal**”) was appointed as the RTA.

6.3. It is noted that when Finalysis was called upon to furnish the records relating to the complaints before SEBI, it failed to furnish the same stating that the records had been destroyed by white ants and the floppy disc containing the electronic data had got corrupted. Thereafter, the RTA, Universal was asked to furnish the records available with them relating to the transfer requests/demat requests that had been entertained for the shares having the same distinctive numbers as those contained in the complaints looked at by SEBI. Universal has furnished copies of most of the transfer deeds and demat request forms, including copies of the share certificates relating to the shares having same distinctive numbers as those underlying the complaints before SEBI. From the information furnished by Universal, it was noted that most of the share transfer requests/demat requests underlying the complaints were rejected citing the reason that the shares had already been dematted in favour of other shareholders.

Transfer Requests Processed in Violation of SEBI Norms

6.4. The individual complaints were examined in detail and it was observed as under-

Table- 3

S. No.	Complainant	Quantity	Dematted by	Demat Date
1	Hina M Sheth	100	ANISH ASHVINBHAI DALAL	09-Jul-12
2	Kanta Harji Varsani	50000	JUMARMAL RAJENDRA KUMAR	11-Jun-2012
3	Kanta Harji Varsani	50000	RAJENDRA KUMAR BAGMAR	11-Jun-12
4	Kanta Harji Varsani	50000	RAJKUMAR SHYAMNARAYAN SINGH	10-May-12
5	Kanta Harji Varsani	50000	RITA RAJKUMAR SINGH	10-May-12
6	Anil Agarwal	1000	ANIL B AGARWAL	13-Dec-12
7	Kanta A Desai	1000	JINAL AMIT SHAH	10-May-12
8	Hina M Sheth	500	NA	NA
9	Pankaj A Desai	5000	KALPESH RASIKLAL SHAH	15-May-12
10	Pankaj A Decal	9000	SANJAY SUBHASHCHAND GUPTA	10-May-12
11	Pankaj A Desai	5000	SANJAY SUBHASHCHAND GUPTA	10-May-12
12	Kanta A Desai	4000	POOJA ARVIND GOYAL	19-Jul-12
13	Praful A Desai	8600	URVASHI SANJAY GUPTA	10-May-12
14	Kanta A Desai	6000	SHARES ARE STILL IN THE NAME OF KANTA A DESAI IN PHYSICAL FORM	

15	Anantraï L Desai	1000	MOHMAD JUNUS KHATRI	10-May-12
16	Anantraï L Desai	8000	MOHMAD JUNUS KHATRI	10-May-12
17	Kanta A Desai	6000	YASIN MOHAMED KHATRI	19-Jul-12
18	Kanta A Desai	4000	YASIN MOHAMED KHATRI	19-Jul-12
19	Praful A Desai	5300	URVASHI SANJAY GUPTA	10-May-12
20	Kanta A Desai	10000	YASIN MOHAMED KHATRI	19-Jul-12
21	Praful A Desai	100	SANJAY SUBHASHCHAND GUPTA	10-May-12
22	Praful A Desai	2900	SANJAY SUBHASHCHAND GUPTA	10-May-12
23	Praful A Desai	4600	SANJAY SUBHASHCHAND GUPTA	10-May-12
24	Kirtida P Desai	100	SHARES ARE STILL IN THE NAME OF KANTA A DESAI IN PHYSICAL FORM	-
25	Kirtida P Desai	900	SHARES ARE STILL IN THE NAME OF KANTA A DESAI IN PHYSICAL FORM	-
26	Kanta A Desai	10000	KALPESH RASIKLAL SHAH	15-May-12
27	Anantraï L Desai	10000	MOHMAD JUNUS KHATRI	10-May-12
28	Kanta A Desai	10000	KALPESH RASIKLAL SHAH	15-May-12
29	Hansraj Goyal	200	HANSRAJ GOYAL	08-Aug-13
30	Hansraj Goyal	300	YASH GUPTA	08-Aug-13
31	Hansraj Goyal HUF	5000	SHARES ARE IN THE NAME OF SHEELA CHANDRESH IN PHYSICAL FORM	-

32	Suman R Jethani	5900	VINAYAK TRIMBAK SARKHOT	31-Dec-11
33	Suman R Jethani	7600	VINAYAK TRIMBAK SARKHOT	31-Dec-11
34	Suman R Jethani	300	VINAYAK TRIMBAK SARKHOT	31-Dec-11
35	Suman R Jethani	2100	VINAYAK TRIMBAK SARKHOT	31-Dec-11
36	Suman R Jethani	4700	VINAYAK TRIMBAK SARKHOT	31-Dec-11
37	Suman R Jethani	4000	VINAYAK TRIMBAK SARKHOT	31-Dec-11

6.5. One shareholder, namely, Kanta A Desai had filed a complaint relating to the rejection of demat request made by her. Two demat requests had been made by the Complainant through the DP on August 02, 2002 with respect to the following shares:

Table - 4

Certificates nos.		Distinctive nos.		Quantity
From	To	From	To	
16311	16320	2994801	2995800	1000
20399	30338	4393601	4397600	4000
30829	30888	4446601	4452600	6000
31113	31172	4475001	4481000	6000

31173	31212	4481001	4485000	4000
31413	31512	4505001	4515000	10000
32427	32526	4606401	4616400	10000
32827	32926	4646401	4656400	10000
				51000

The DP informed the complainant shareholder that the Company had rejected the demat request on November 18, 2011.

6.6. On inspection of the records provided by Universal, it was noted that out of the above 51,000 shares, for 20,000 shares a share transfer request from one **Yasin Mohammed Khatri** was entertained, where the transferor mentioned was Kiritida P Desai. The details of such transfer are as under:

Table -5

Certificates nos.		Distinctive nos.		Quantity
From	To	From	To	
46975		4505001	4515000	10000
46974		4475001	4485000	10000
				20000

6.7. On examination of the documents underlying the transfer request made by ***Yasin Mohammed Khatri***, it was noted by the investigation that:

- The name of the transferor was mentioned as Kiritida P Desai. However, the said shares were originally in the name of Kanta A Desai and not Kiritida P Desai.
- The signature of Kiritida P Desai did not match with Ms. Desai's signature as appearing in her PAN Card.
- Signature attestation box in the transfer deed was blank as also the column for "Signature tallied by".
- No stamp, signature or date mentioned on the deed as regards its receipt by the company or the STA.
- No date of approval of transfer was mentioned on the transfer deed.
- The witness was one Santosh of Vibrant Investments, Mumbai having its office in the same building as that of Finalysis.
- There was no signature of the official confirming the transfer on the transfer deed.
- The shares with distinctive nos. 4475001 to 4485000 were in a single certificate no. 46974 and it was mentioned in the certificate "Issued in lieu of share certificate no. 31113 to 31212 consolidated";

- Similarly, the shares with the distinctive nos. 4505001 to 4515000 were in a single certificate no. 46975 and it was mentioned in the certificate, "Issued in lieu of share certificate no. 31413 to 31512 consolidated".
- Both the individual share certificates referred to above were originally in the name of Kanta A Desai and were issued on Jan. 15, 1998, and the shares stood transferred to Yasin Mohammed Khatri on January 20, 2011.
- The 20000 shares, were subsequently dematted by the transferee on July 11, 2012 and the same was done by Link Intime.

6.8. So, from the above, the following findings of facts emerge:

- a. the complainant public shareholder holding the shares is Kanta A Desai, while the transferor of the said shares, as per the transfer deed, has been shown to be Kiritida P Desai;
- b. many anomalies are apparent in the processing of the transfer requests; and
- c. the witness to the transfer deed is Santosh Sawant, Noticee No 18, who worked as a peon in Vibrant Investments, and was brought by Vinayak Sarkhot, Noticee No. 3 to act as a witness.

6.9. With respect to 6.8 (a) and (b) above, reference is drawn to the Norms for processing of transfers as contained in RTI Circular No. 1 (2000-2001) dated May 09, 2001. The relevant provisions are placed hereunder:

Norms for processing of transfers

<i>TRANSFER DEED & SHARE CERTIFICATE</i>		
Sr. No.	Description	Can Co./STA return as Company Objection
40	<p>If the name of the transferor(s) in the share certificate and the name in the transfer deed(s) differs materially (appears as two different names.)</p> <ul style="list-style-type: none"> Addition or deletion of more than two alphabets on the transfer deed 	No, if alterations / corrections are attested by the Introducing Member, on the transfer deed and if signature of the transferor tallies with the specimen signature/s.
41	<p>Spelling mistakes in the name of the Company, number of shares and name of the transferor on the transfer deed and not resembling the word stipulated in the share certificate, as enumerated below:</p>	No, if alterations / corrections are attested by the Introducing Member, on the transfer deed and if signature of the transferor tallies with the specimen signature/s.

	<ul style="list-style-type: none"> • TELCO - TISCO – BAD • FIFTY - FEEFTEEN – BAD • RAMESH - RAJESH – BAD 	
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6.10. Thus, as per serial number 40 of the “Norms for Processing of Transfers”, if the name of the transferor in the share certificate and the name in the transfer deed differ materially i.e., addition or deletion of more than two alphabets on the transfer deed, it calls for an objection. Similarly, as per serial no. 41 of the norms of transfers, if there are spelling mistakes in the name of the transferor on the transfer deed and as such does not resemble the word stipulated in the share certificate, e.g. TELCO – TISCO, in such circumstance it would call for an objection. In the above circumstances, an objection can be obviated if alterations / corrections are attested by the Introducing Member, on the transfer deed and if signature of the transferor tallies with the specimen signature. In the present case, it is evident that the shares were in the name of Kanta A Desai and the name of the transferor as per the transfer deed was Kiritida P Desai, an addition/deletion of more than two alphabets. Similarly, even if the name on the transfer deed was considered as a spelling error, the same would be BAD as per the provision in serial no. 41 of the norms of transfers mandating an objection. The only way the transfer could have happened without an objection was if alterations / corrections were attested by the

Introducing Member, on the transfer deed and if signature of the transferor tallied with the specimen signature. In the present case, despite there being a material difference, it was not attested; in fact, the signature attestation box in the transfer deed was blank. Thus, the Company while processing transfer requests gave scant regard to the norms stipulated by SEBI for the processing of transfer requests, and as such under no circumstances could the Company have effected transfers of the said shares.

6.11. With respect to Santosh Sawant, Noticee No. 18 being a witness to the above mentioned transfer of shares, it is relevant to mention that Santosh Sawant in his statement has said that *“In the year 2011, Shri Sarkhot told me to sign as witness on some transfer deeds pertaining to the shares in the scrip of Finalysis. I had signed around 20-25 filled in transfer deeds in the office of Vibrant Investments (where he worked as a peon)”*. The same has also been corroborated by Vinayak Sarkhot in his statement. Thus, the witness in the instant transfer deed was a common witness, who had been specifically instructed to sign as a witness on a number of transfer deeds by Vinayak Sarkhot, and therefore cannot be presumed to have in fact witnessed the transfer of the said shares from the supposed transferor i.e, Kiritida P Desai to the transferee.

No Commercial Sense for Transferors to Sell Shares at Nominal Prices

6.12. A draft MoU was forwarded to Sham Gandhi by Divecha vide email dated December 10, 2012. The MoU essentially stated that the Sellers, ie. Dilip Shah, Jiger Shah, Sham Gandhi, Sarkhot and Ghadi had agreed to sell 51,20,394 shares

of the company representing 93% of the equity paid up of the Company to Divecha for a consideration of Rs. 4.60 crore at rate of Rs. 8.98 per share.

6.13. Further, an email was sent by Sarkhot to Jiger Shah and Sham Gandhi dated July 13, 2012 enclosing the list of shares delivered to Divecha for the buyers identified by him. The enclosed list clearly states that the total shares committed to be delivered is 93% out of which 69.89% has already been delivered.

6.14. Though, the draft MoU was never signed by the parties, the terms of the draft MoU and amount of the shares to be delivered by sellers as per the draft MoU are reflected in the email dated July 13, 2012 referred above.

6.15. Thus, it emerges that a) the Noticees, who were not the transferors as per the transfer deeds, were strangely committing to transfer those shares to the buyers brought by Bipin Divecha; b) the shares, contrary to any commercial rationale, were being sold for an approximate price of Rs. 9 per share, which was much less than the prevailing market price of the share during 2012, which was between Rs. 30 (lowest) and Rs. 139 (highest).

Sale Consideration Flowing to Persons who are not Transferors

6.16. As already stated, Dilip Shah and Sham Gandhi were looking to sell shares constituting 93% of the equity share capital of the Company and for this purpose they approached Divecha through Vinayak Sarkhot, who agreed to get buyers for the said shares. This is corroborated by the email sent by Sarkhot to Jiger Shah and Sham Gandhi dated July 13, 2012 enclosing the name-wise list of shares delivered

to Bipin Divecha and his associates and the number of shares. The enclosed list clearly states that the total shares committed to be delivered is 93% out of which 69.89% has already been delivered. This excluded the promoter holding of 19.69 %, which is shown as not yet delivered, being the shares that were actually held by the operators.

6.17. The flow of funds amongst the Noticees has already been brought out in the earlier part of this order. In this regard, it is further noted that Jiger Shah vide email dated March 04, 2013 sent at 11:54 am forwarded an attachment containing details of the payments received from the purchasers brought by Bipin Divecha as consideration for the sale of shares of Finalysis. It is stated in the body of the email that as per the list “*31.7 Lacs have gone to V.Sarkhot Bhai out of which we are aware of 14.2 lacs.*” The email also requests Sarkhot to confirm the payments received by him so that the accounts can be reconciled. Sarkhot replied to this by way of email dated March 04, 2013 sent at 1:09 pm stating that “*I confirm that I have received only 17 lac , not recheck with shambhai and your records again as money received for fcgl were Collected by you/dilipbhai/shambhai within hours of receipt from me.*” To this email, Sham Gandhi responds vide email March 04, 2013 sent at 3:14 pm stating inter alia that “*I suggest you give a detailed account of what moneys you have received and how it has been spent. This way we will reach the bottom very soon.*”

6.18. The above mentioned exchange of emails confirms that the money being transferred by purchasers brought by Divecha to Sarkhot, Dilip Shah, Jiger Shah and Sham Gandhi was the consideration for acquiring the shares held by the public

shareholders and not the promoter holdings, which were still with the above-named Noticees.

6.19. Thus, the inferences that flow from the aforesaid sequence of events are: a) Finalysis as a Company was not following any norm for processing of transfer requests; b) a common witness was used to witness the transfer deeds, lending little credibility to the transfer of shares by way of such deeds; c) the Noticees, and not the transferors mentioned in the transfer deeds, are seen to be taking decisions with respect to the sale of the shares; d) the Noticees determined the price for the sale of the shares, which was lower than the then market price; e) The sale consideration for the sale of the shares moved to certain Noticees and not to the transferors, the supposed owners of the shares.

6.20. Accordingly, a collective evaluation of the abovementioned sequence of facts persuades me to conclude that the transferors who supposedly sold the shares, did not in fact own such shares, and certain Noticees counterfeited/forged,, by way of consolidation of shares or otherwise, the shares belonging to the genuine public shareholders and sold it to a set of purchasers brought by Divecha claiming them to be genuine shares, in order to make illegal gains.

7. Issue II- A. Whether Noticee Nos. 1 to 6, 8, and 18 were involved in the counterfeiting/forgery of the share certificates for illegal gains and what role did the said individual Noticees play?

Dilip Shah (Noticee No. 5)/ Jiger Shah (Noticee No. 6)

7.1. The SCN has alleged that Dilip Shah and his son Jiger Shah along with other Noticees had defrauded the original shareholders by issuing forged consolidated share certificate/s, and also fraudulently made the buyers of these forged consolidated share certificate/s to believe that the shares transferred to them were original, though they were not so.

7.2. Accordingly, the SCN has alleged that the Noticees together employed a deceptive scheme to defraud the investors in the shares of Finalysis, thus, violating the provisions of section 12 A(a), (b) and (c) of the SEBI Act read with regulation 3(a), 3(b), 3(c) and 3(d) and regulation 4(1) and 4(2)(h) of the PFUTP Regulations, 2003.

7.3. As already stated, Dilip Shah had advanced money to Mukesh Kothari, pursuant to which he and his son, Jiger Shah respectively received 10,000 and 2,00,000 shares of Finalysis. Jiger Shah (Noticee No. 6), as per the MCA website, was a director of the Company from October 02, 2000 onwards. Similarly, Dilip Shah, father of Jiger Shah was shown as a promoter of the Company, as per the filing made by the Company before the BSE.

7.4. In this regard, reference is drawn to the statement given by Jiger Shah to SEBI. During the deposition, Jiger Shah was asked: “ As per the statement recorded by Shri Bipin Divecha, Shri Divecha was told by Shri Sarkhot that they had handed

over the records of the shareholders to the RTA Link Intime in 2012 and you and Shri Dilip Shah were interacting with Link Intime. Further all the complaints received from investors/shareholders were being handled by you and Shri. Dilip Shah under the direction of Shri Sarkhot.” To this query of SEBI, Jiger Shah replied that, *“Yes, this is a fact. However, Shri. Dilip Shah was not involved in all these affairs.”*

7.5. Further, during the deposition, Jiger Shah was asked: “As per the statement recorded by Shri Bipin Divecha, his clients had sent the shares for transfer in their name to you and Shri Sarkhot. The shares got transferred and were sent back to the transferees. His clients then applied for demat of shares, which was approved by you and Shri Sarkhot. During this time, all the process of transfer and demat of shares were taking place in-house by Finalysis from the residence of Shri. Dilip Shah and you. Shri. Sandesh Sawant and Shri. Sikander were two supervisors who were working under Shri Dilip Shah and you were doing all the transfer and demat related work of Finalysis. Comment on this deposition of Shri Divecha.” To this Query Jiger Shah replied: *“Shri Sandesh Sawant used to have full data of the Finalysis shareholders and Shri Sikander used to help him. I know Shri Sikander as he used to work for Solid Carbide Tools Ltd. till 2011. I do not have relationship with Shri. Sandesh Sawant. However, he used to come to our home for preparation of master data for sending it to Link Intime. No work as regards transfer and demat of shares of Finalysis was done from our home. All shares related work of Finalysis was done only from Shantinagar office of Finalysis.”*

7.6. Thus, admittedly, the master data of shareholders that was provided to Link Intime was prepared at the house of Jiger Shah/Dilip Shah; Sikander, who was known to Jiger Shah, was involved in the compilation of the master data along with one

Sandesh Sawant; and Jiger Shah was interacting with Link Intime with respect to the transfer of shares.

7.7. Also, reference is drawn to **email dated February 15, 2013** by Vinayak Sarkhot to Bipin Divecha and Roma Khan, with copies to Jiger Shah and Sham Gandhi. The email reads,

“ Dear Sir

Please find detail list of shares transferred in favour of clients of Bipinbhai with distinctive no's and name of transferor and transferee

This shares have been transferred and delivered by Mr Dilipbhai/Mr. Jigerbhai

Regards

Sarkhot”

7.8. Further reference is drawn to **email dated March 11, 2013** addressed by Bipin Divecha to Jiger Shah, Vinayak Sarkhot, Sham Gandhi, with copies to Roma Khan and Mihir Shah. The said email reads,

“Dear Sir/s,

As informed to you about the physical share certificates of FICNR lying with Ahmedabad party from whom received 2000 certificates (with details) out of 44,000 shares. Pl find an attachment of each folios.

<i>Folio No. of Shares</i>	<i>Certificate No.</i>	<i>Name of the shareholder/s</i>	<i>Dist Nos.</i>	
0012211000	013548 to 013557	SADHNA	00002718501	TO
		DODEJA	00002719500	
0012241000	013578 to 013587	REKHA	00002721501	TO
		DODEJA	00002721600	

Pl check your old records and confirm the same”

7.9. Also, reference is drawn to **email dated February 04, 2013** addressed by Bipin Divecha to Vinayak Sarkhot with copies to Jiger Shah and Roma Khan, containing therewith, an excel file bearing the name, “finalysis shareholding received from jigar.xlsx”. In reply to the said email, Vinayak Sarkhot by way of email dated February 05, 2013 addressed to Bipin Divecha with copies to Jiger Shah and Roma Khan stated,

“Dear Bipinbhai

Please find copy of share holding with nil records received from Jiger shah

Part of folio’s appearing in the list as informed earlier you can verify from the same

Now Mr. Dilipbhai only can explain movement of shares from this list

Mean time you restrict damage by purchasing this lot”

7.10. Furthermore, reference is drawn to the **email dated May 23, 2013** addressed by Bipin Divecha to Jiger Shah, Sham Gandhi. In the said email, it has been stated that “ *As it was brought to your notice and particular to Mr. Dilip Shah for receiving of letters of the registrars to various shareholders whose names were appeared in the books of registrars while dematerialisation of shares. The shares were already dematerialised by the registrars to the shareholders with the approval.*

Now, other parties have started claiming for the same shares with same certificate & folios numbers, for which the explanation was asked to Mr. Dilip Shah during the last meeting held as well we were assured by you during the meeting held in Hyat hotel for resolving all cases where there are such kind of problem.

Now, the other party has also started sending legal notice to the holders whose name appeared & dematerialised the shares by them with the approval of your good selves.”

7.11. The above referred emails demonstrate that, a) Jiger Shah had knowledge and records pertaining to the shareholding of Finalysis; b) the information on shareholding as communicated by Jiger Shah had “NIL” records against certain folio numbers, however, complaints on the said folio numbers came to be received from the public shareholders; and c) the shares had been transferred and delivered by Jiger Shah/Dilip Shah.

7.12. It has already been elaborated in the previous part of the Order that the sale consideration for the sale of the shares to the purchasers brought by Bipin Divecha, were received by the Noticees, namely: Dilip Shah, Jiger Shah, Sham Gandhi, Vinayak Sarkhot and Bipin Divecha. In this regard, it is also observed from the

fund transfer details that Dilip Shah and Jiger Shah together received a total amount of Rs. 2,40,50,000 , which is the highest amongst all the Noticees.

7.13.Lastly, when the complaints were received from Pankaj A. Desai and related entities, it has been stated by the complainant that Jiger Shah and Dilip Shah visited the house of the complainant, and further to the same they had issued fresh consolidated certificates for 6000 and 1000 shares respectively with the same folio numbers, as the original share certificates.

7.14.Thus, from an overall evaluation of the facts, it is clear that Jiger Shah and Dilip Shah were acting in unison, and as such were having custody of records pertaining to the shareholders of Finalysis; gained maximum benefit from the sale of the shares; were instrumental in the transfer and delivery of the shares to the buyers identified by Bipin Divecha; and tried to address the complaints being received from the public shareholders by issuing fresh shares.

7.15.Therefore, I find that Jiger Shah and Dilip Shah acted with the common objective of selling 93% of the shares of Finalysis at an approximate price of Rs.9 per share by forging/counterfeiting the shares of the public shareholders, and subsequently selling them to the buyers identified by Bipin Divecha to make profits from the whole process.

7.16.Accordingly, I find that the said Noticees have violated the provisions of section 12 A(a), (b) and (c) of the SEBI Act read with regulation 3(a), 3(b), 3(c) and 3(d) and regulation 4(1) and 4(2)(h) of the PFUTP Regulations, 2003.

Sham Gandhi (Noticee No. 4)

7.17.The SCN has alleged that Sham Gandhi along with the other Noticees had defrauded the original shareholders by issuing forged consolidated share certificates, and also fraudulently made the buyers of these forged consolidated share certificate to believe that the shares transferred to them were original, though they were not so.

7.18.Accordingly, the SCN states that the Noticees together employed deceptive scheme to defraud the investors in the shares of Finalysis, thus, violating the provisions of section 12 A(a), (b) and (c) of the SEBI Act read with regulation 3(a), 3(b), 3(c) and 3(d) and regulation 4(1) and 4(2)(h) of the PFUTP Regulations, 2003.

7.19.Sham Gandhi in his replies has contended as below:

- a. The allegation that he gave the list of shareholders to Vinayak Sarkhot has no merit as the statements by Vinayak Sarkhot and Bipin Divecha did not specify when and where such a list was given.
- b. Vinayak Trimbak Sarkot and Bipin Pushpasen Divecha were the office bearers of the Company in 2011-2013. The letter dated March 19, 2013 of Finalysis confirming to SEBI that all records including the CD maintained by the previous RTA were destroyed, itself belies the statements of Vinayak Trimbak

Sarkot and Bipin Pushpasen Divecha that the Noticee (Sham Gandhi) handed over the list of shareholders to them.

- c. There was no proof or evidence with respect to him having aided and abetted 'dealings' in the shares of Finalysis in a fraudulent manner. He did not buy nor sell a single share, and got possession of the 4,84,000 shares from Mukesh M Kothari in an off market transaction, which did not involve any cash, and subsequently he was compelled to part with his shares to Sajjad Pavne and others on the promise of payment which too did not materialize.
- d. Mukesh M Kothari gave him the shares that were held in his name along with his family members accompanied by blank signed Transfer Deeds. The Transfer Deeds could have been used only for transferring the shares held in the names of Mukesh M Kothari and his family members and not of others.
- e. The letter dated November 24, 2011 issued by the Company to the RTA categorically calls upon the RTA to follow a procedure for transfer of shares by issuing Notice to the original shareholder if the market value of the shares was above Rs. 50000 /-. Hence, unless Link Intime was called upon to explain the procedure followed by them, charging him for activating any fraudulent transfers was illegal and baseless.
- f. No confirmation was sought from the RTA, Link Intime with respect to the statement made in paragraph 11 (k) of the SCN that Link Intime was providing electronic connectivity since 2000. Further, the Noticee (Sham Gandhi) has

raised the question as to who was paying the RTA from 2000 onwards and what were the transfers that it had supported electronically.

- g. The Noticee received the amount of only Rs 19 lakh towards a personal loan and was not a recipient of any other funds from the alleged sale of shares. The Noticee has stated that the money received by him was in cash and the same was mentioned in an email, because of which he became panicky at the brazenness in keeping accounts of cash payments. So, he decided to end the financial transaction with Bipin Pushpasen Divecha, and repaid the funds given by Bipin Pushpasen Divecha by means of Bank RTGS.
- h. Varsani (Hirji) family lodged a complaint for 2,00,000 shares (Jumbo certificates) in SCORES whereas as per discussions in the meetings and as per Vinayak Trimbak Sarkhot, the Varsani family holding was 5,00,000 shares. The name of the Varsani family does not appear in any list suggesting that the family had sold the shares earlier.
- i. The allegation that he employed deceptive scheme to defraud the investors in FCGC shares has been made without showing what the scheme was. No complaint against him has been brought on record to show that he had defrauded and cheated any investor. The investigation by the Oshiwara Police station had failed to establish that he had sold even one share to Bipin Pushpasen Divecha, and hence they closed the matter.

7.20. As already pointed out in the previous part of the order, Sham Gandhi in his statement to SEBI stated that against an amount of Rs. 30 lakh advanced by him

in 1996-97 to Shri Mukesh Mansukhlal Kothari, he received 4,84,000 shares of Finalysis in 2001.

7.21. He has further informed that *“In 2011, I told Shri Sarkhot regarding the shares in Finalysis lying with me (as given to me by Shri Kothari). Shri Dilip Shah also told that he has 2 lac shares of Finalysis with him. Shri Sarkhot offered to revive Finalysis, including starting operations there and getting the shares suspension revoked at BSE.”*

7.22. Thus, it is clear that Sham Gandhi knew Vinayak Sarkhot and acknowledged that he was capable of revoking the suspension of Finalysis at BSE. Sham Gandhi along with Dilip Shah had met Vinayak Sarkhot and also informed Vinayak Sarkhot of the shares held by him, and the 2 lakh shares held by Dilip Shah. Sarkhot had accordingly undertaken to revoke the suspension and revive Finalysis.

7.23. In this regard, the **email dated July 13, 2012** from Vinayak Sarkhot to Jiger Shah (with a copy to Sham Gandhi) provides details with respect to the completion of the sale of 69.89 % of the shares of the Company. Further, the **email dated September 29, 2012** addressed by Bipin Divecha to Sham Gandhi enclosing thereto a letter dated September 07, 2012 to all the directors and promoters bearing the subject *“Handing over process and cut of date”*. The letter enumerated the issues and matters to be sorted out, as decided at the meeting held on September 07, 2012. The following issues were mainly enumerated in the said letter *“preparation of MOU and to be signed by the directors on approval; Signature confirming on list of 93% holding of the company handed over various clients for shareholders against payment receipt; Confirmation of payment given to the promoters of the company; purchase of promoter shares and*

arrangement of payment”. The letter ends with the lines, “With vote of thanks the meeting got over with full quorum and we all thanked Mr Sham Gandhi & his family for the delicious meal provided to all of us.”

7.24. Further, by way of **email dated December 10, 2012** Bipin Divecha emailed a copy of a draft MOU to Sham Gandhi and Jiger Shah. As per the draft MOU, the buyer- Bipin Divecha, authorised representative of the incoming shareholders, was agreeable to buy from the seller(s), namely Dilip Shah, Jiger Shah, Sham Gandhi, Vinayak Sarkhot and Sharad Ramchandra Ghadi a total of 51, 20, 394 equity shares of Rs. 10 each (constituting 93% of the fully paid up equity capital of the Company) at a total consideration of Rs. 4, 60,00,000.

7.25. Thus, from the email dated September 29, 2012, it is clear that subsequent to the sale of 69.89 % of the shares, the concerned Noticees (Sham Gandhi, Dilip Shah, Jiger Shah, Vinayak Sarkhot and Bipin Divecha) had earmarked pending issues for resolution, namely the final sale of the remaining promoter share-holding that shall conclude the sale of 93% of the shares of Finalysis and the payment thereto. In this respect, it is also clear that Bipin Divecha through whom the sale of 69.89 % of the shares have been carried out, was seeking the intervention of Sham Gandhi by calling a meeting and resolving the said matter.

7.26. In this regard, it is stated that around September, 2012, complaints were received by the Company from the public shareholders of the Company stating that their shares contained in physical share certificates had been transferred to other persons, even though they had not transferred it.

7.27. An **email dated September 29, 2012** from Bipin Divecha to Sham Gandhi stated that *“Hope the said attachment must have received from Mr. Jiger Shah, as it was informed to forward to you. Since i got your mail id, it is for me to send once again a copy of scan for your reference and sorting out the issue. The folio and certificate nos shown in a letter is showing in another shareholders name. Pl clarify.”* This was followed by another email from Bipin Divecha to Sham Gandhi on the same date stating that *“you are requested to call for a meeting immediately instead of banging down the phone without listening anything on the issues.”* Further, it has been stated in the email that *“Your payment is due which we very well know, shall be made in day or two as our party/financier has assured us finally to give payment of Rs. 10 L. even though your non compliance of the issues as mentioned”*

7.28. Further, the **email dated December 28, 2012** addressed by Vinayak Sarkhot to Sham Gandhi and Bipin Divecha with respect to an email forwarded by Mukesh Zota bearing the subject line **“FRAUD OF MY EQUITY SHARES- FINALYSIS CREDIT AND GUARANTEE CO. LTD.”** states as under:

“ dear sir

please find complaint received by investor

this is not yet resolved can create big problem to everybody

please do the needful”.

7.29. In the **email dated September 11, 2013** addressed by Bipin Divecha to Sham Gandhi, Bipin Divecha has stated that *“ The matter of Mr. Pankaj Desai is long pending & requires to resolve immediately by your good selves as old matters are known to you...Please*

be noted that this is not only one matter which has come across, but more than 8 cases have been filed in various depts...Please neither ignore the matters this time nor escape from your financial responsibilities.”

Analysis of Emails Relating to Transfer of Funds Amongst the Noticees

7.30. An **email dated May 30, 2012** was sent by Jiger Shah to Sham Gandhi and Bipin Divecha and in response thereto, an **email dated May 31, 2012** was issued by Sham Gandhi to Jiger Shah and Bipin Divecha tabulating the SMSes received with respect to the transfer of funds from Bipin Divecha.

7.31. Further, the **email dated September 10, 2012** issued by Jiger Shah to Bipin Divecha provides a table listing the payments made by Bipin Divecha, and to whom. It is relevant to state that as per the table, payments were made to SG-Sham Gandhi on February 22, 24, 28 and March 07, 2012 for Rs. 10 lakh, Rs. 4 lakh, Rs. 5 lakh and Rs. 5 lakh respectively totalling to Rs. 24,00,000.

7.32. Thus, it is evident from the complaints and emails exchanged amongst the Noticees that the shares being sold belonged to public shareholders. It is also evident that Sham Gandhi was involved with the arrangement for transfer of 93% of the shareholding of the Company to the buyers brought by Bipin Divecha. He was part of the original group that contacted Vinayak Sarkhot for the revival of the Company and he was aware of the sale of the shares of the public shareholders and had assured resolution of issues, if they arose in said matter. Furthermore, it is observed that payments were received by Sham Gandhi from the sale of shares effected through Bipin Divecha. It must be stated that the said payments were not

in respect of the 4,84,000 shares held by Sham Gandhi as the arrangement for the sale of promoter shareholding was still underway as on September 2012, as would be evident from the above paragraphs, while the payments to Sham Gandhi had been made in February and March, 2012.

7.33. Having considered the involvement of Sham Gandhi in the matter, it is relevant to address the essential contentions raised by Sham Gandhi in his replies.

7.34. It has been stated by the Noticee in his reply that the payments received of Rs. 19 lakh was part of a personal loan, and that the same had been repaid. In this respect, it is stated that categorising the money received as a “personal loan” appears to be an afterthought. The email exchanges on record amongst the various Noticees do not anywhere mention the grant of any money in the nature of loan to Sham Gandhi. It is also not clear as to who advanced the loan to him. In this connection, reference is again drawn to **email dated September 11, 2013** referred above, wherein it has been stated by Bipin Divecha to Sham Gandhi that *“Your payment is due which we very well know, shall be made in day or two as our party/financier has assured us finally to give payment of Rs. 10 L. even though your non compliance of the issues as mentioned”*. There is an obvious underlying transaction for which valid quid-pro-quo in the form of cash was being discussed by Sham Gandhi and Bipin Divecha. Accordingly, it cannot be said that the payments received by Sham Gandhi were in the nature of a personal loan.

7.35. Incidentally, with respect to the specific assertion made in the SCN that the share certificates which were transferred to various entities bore three signatures and the

three signatures resemble the names of Sham Gandhi, Dilip Shah and Jiger D Shah, and on many of these certificates, Sham Gandhi had affixed his initials, which match with the signature on his written statement given to SEBI in the matter; it has been contended by the Noticee that the alleged signatures do not belong to him and for this, he has placed reliance on certain forensic reports. In this connection, I note that the resemblance of the signature on the share certificates with the sign of Sham Gandhi is one of the observations of the investigation, amongst several other facts brought out revealing his role. My consideration of the aforesaid Noticee's role is independent of the observation in the Investigation Report regarding the comparability of the signatures on the counterfeit share certificates with that of Sham Gandhi.

7.36. Accordingly, I am inclined to make an overall evaluation of the role of Sham Gandhi as brought out above by analyzing the email correspondences, the fund transfers and the fact that there were meetings and common concerns with respect to issues raised by public shareholders etc. undisputedly shows the involvement of Sham Gandhi in the scheme for the forging/counterfeiting the shares of the public shareholders, and getting enriched by fraudulently selling off such forged/counterfeited shares to the buyers identified by Bipin Divecha. In my view, Sham Gandhi, being a retired banker, was party to some informal and a sham arrangement of transferring 93% of public company to Bipin Divecha. Admittedly, Sham Gandhi has monetarily benefitted, though, he styles it as a personal loan. The closure of the Oshiwara Police Station proceedings is also not relevant to the present matter.

7.37. Accordingly, I find that the Noticee has violated the provisions of section 12 A(a), (b) and (c) of the SEBI Act read with regulation 3(a), 3(b), 3(c) and 3(d) and regulation 4(1) and 4(2)(h) of the PFUTP Regulations, 2003.

Vinayak Sarkhot (Noticee No. 3)

7.38. The SCN has alleged that Vinayak Sarkhot along with other Noticees defrauded the original shareholders by issuing forged consolidated share certificate, and also fraudulently made the buyers of these forged consolidated share certificate to believe that the shares transferred to them were original, though they were not so.

7.39. Accordingly, the SCN has alleged that Vinayak Sarkhot violated the provisions of section 12 A(a), (b) and (c) of the SEBI Act read with regulation 3(a), 3(b), 3(c) and 3(d) and regulation 4(1) and 4(2)(h) of the PFUTP Regulations, 2003.

7.40. As already mentioned in the previous part of the Order, Sham Gandhi in 2011, told Vinayak Sarkhot regarding the shares in Finalysis lying with him and that Dilip Shah also told him that he had 2 lakh shares of Finalysis with him. It is also seen that Vinayak Sarkhot had offered to revive Finalysis, and getting the suspension of Finalysis' shares revoked at BSE.

7.41. In this respect, it has been stated by Vinayak Sarkhot in his statement to SEBI that

“ I was asked by Shri Sham Gandhi and Shri Dilip Shah to find buyers for 93% shares of Finalysis. I then approached Shri Divecha whether he was interested in buying Finalysis.....According to the deal, Shri Sham Gandhi and Shri Dilip Shah were supposed to arrange 93% of the holding in Finalysis for consideration of Rs. 4.60 crores, out of which I was supposed to get Rs. 25 lac as my service charges.”

7.42. So, from the above, it is evident that Vinayak Sarkhot was involved right at the stage of initiation of the scheme i.e., from the revocation of the suspension of Finalysis till he arranged the sale of 93% of the shares in Finalysis.

7.43. Further, it has been deposed by Vinayak Sarkhot in his statement to SEBI that he completed all the formalities required for the revocation of the listing suspension imposed on Finalysis at BSE. Pursuant to the same, Vinayak Sarkhot, became the compliance officer as well as a director in Finalysis. This resulted in the revocation of the listing suspension on Finalysis at BSE.

7.44. Similarly, with respect to the sale of shares of Finalysis, Vinayak Sarkhot in his statement to SEBI has said “ *I used to complete the transfer deeds with the details of the transferors and witness. I then used to give the transfer deeds to Shri. Jiger Dilip Shah and then he used to give me the transferred share certificates. I then used to complete the transfer deeds with the details of the share certificates, distinctive numbers and number of shares and accordingly stamp duty was calculated and affixed. The transfer deeds were then sent to Jiger Dilip Shah for his custody at the residence of Shri Shah at Teenbatti, Walkeshwar, Mumbai. The transferred share certificates were then given to Shri. Divecha with covering letter signed by me and Shri. Divecha in turn used to send them respective transferees. The whole exercise was done during Feb-April 2012.*”

7.45. This is corroborated by the statement of Santosh Jayaram Sawant, Noticee No. 18. In his statement to SEBI he has stated that “*In the year 2011, Shri. Sarkhot told me to sign as witness on some transfer deeds pertaining to the shares in the scrip of Finalysis. I have signed around 20-25 filled in transfer deeds in the office of Vibrant Investments, which was*

then located at 47, Tamrind Lane, Raja Bahadur Mansion, 2nd Floor, Fort, Mumbai-400001. At that time I was not aware that Shri. Sarkhot is the director of Finalysis". Vinayak Sarkhot has not denied knowing Santosh Jayaram Sawant. In this respect, Vinayak Sarkhot in his statement has stated that "I was using office of M/s Vibrant Investments at Rajabhadur Mansion, near BSE building for paper work related to Finalysis and other companies. Shri. Santosh was working as peon at Vibrant Investments."

7.46. Further, to the question, "You are being shown sample of some letters of Finalysis to the RTA, wherein Finalysis has confirmed the signatures of the transferors. Also, the confirmation letter does not contain any certificate number and distinctive numbers. Offer your comments on what basis were the signatures of transferor's confirmed." In response, Vinayak Sarkhot had indicated in his statement to SEBI that, *"These certificates generally belonged to Shri. Mukesh Kothari which were consolidated and were transferred in different names belonging to people known to me or Shri. Dilip Shah or Shri. Sham Gandhi. Since we knew the transferors, the signatures were verified by me. I used to get the transfer deeds with the details and signatures of transferors from Shri. Dilip Shah or Shri. Sham Gandhi, so there was no point in checking back with them as regards signatures of the transferors."*

7.47. So, from the above, it is evident that a) details of the transferors were filled by Vinayak Sarkhot in the transfer deeds; b) pursuant to such execution of transfer deeds, Jiger Shah sent the transferred share certificates to Vinayak Sarkhot; and c) upon such receipt of transferred certificates, the same were sent to Bipin Divecha for onward transmission to the buyers.

7.48. Furthermore, it has been stated by Sarkhot in his statement to SEBI that the share certificates generally belonged to Shri. Mukesh Kothari which were consolidated and transferred in different names belonging to people known to him or Dilip Shah or Sham Gandhi. He used to get the transfer deeds with the details and signatures of the transferors from Shri Dilip Shah or Shri Sham Gandhi. Since, they knew the transferors, there was no point in checking back with them as regards signatures of the transferors.

7.49. Reference is made to the statement by Vinayak Sarkhot to SEBI, wherein he has stated that *“I was given 4 lac shares of Finalysis by Shri Sham Gandhi and Shri Dilip Shah in 2010 as security for my payment and service charges- 2 lac in my name, 1 lac in my younger brother name (Shri Yashwant Trimbak Sarkhot), 1 lac in my nephew’s name (Shri Jagdish Dilip Sarkhot). The shares were consolidated share certificates of 1998 and were in the name of Shri. Mukesh Kothari. No transfer deed was signed for this and I was only given the transferred share certificates. I asked for the transfer deeds which they did not give at that time. I did not insist on getting the transfer deeds. I got the shares dematted in 2012 before relisting.”*

7.50. In this respect, specific mention is made of certificate number 46569 containing 10,000 shares with distinct numbers from 000029995801 to 00003005800. The said physical share certificate reads, *“This is to certify that the person(s) named below or the last transferee(s) whose name (s) is / are duly recorded in the Memorandum of Transfers on the reverse hereof is/ are the Registered Holder (s) of the within mentioned Share(s) bearing the distinctive number(s) herein specified in the above Company hereon has been paid up on each such share.”* Curiously, the Memorandum of Transfers on the reverse of the said share certificate mentions the name of Jagdish D Sarkhot and the date of transfer to be

15/11/2000. From the facts on record, and the also the statement of Vinayak Sarkhot, it is clear that Vinayak Sarkhot was involved in the affairs of Finalysis only around 2010; and the shares allotted to him and persons related to him was subsequent to him joining the Company. Accordingly, the said transfer of shares to Jagdish D Sarkhot, Vinayak Sarkhot's nephew could not have taken place prior to 2010. This lends credence to the allegation that the share certificates were forged/counterfeited and the details contained therein had been tampered with. Moreover, the whole scheme of revocation of suspension and transferring the shares of public shareholders was plotted by the Noticees in the absence of Mukesh Kothari, who was the promoter of Finalysis and had borrowed money from Dilip Shah and Sham Gandhi, and later went absconding.

7.51. Vinayak Sarkhot was the compliance officer and director of Finalysis. He was the person who was involved in effecting of transfers and filling out the transfer deeds with respect to the buyers brought by Bipin Divecha. He advanced the false claim that most of the transferors were related to Mukesh Kothari. The fact that there were several complaints from public shareholders that their shares were fraudulently transferred clearly indicates that these shareholders were, in no way, related to the promoters. It is, thus, apparent from all the facts brought out here that the forgery/counterfeiting of the shares of the public shareholders could not have happened without the active participation and connivance of Vinayak Sarkhot.

7.52. Furthermore, from the emails referred to in para no. 2.2 (III) above, it is seen that a total of Rs. 95,50,000 was received by Vinayak Sarkhot out of the sale

consideration from the sale of the shares of the public shareholders of Finalysis. So, the above participation and connivance for committing the forgery/counterfeiting of the shares of the public shareholders and their fraudulent sale to the purchasers brought in by Bipin Divecha was with an aim of enrichment as stated above.

7.53. Accordingly, I find that the Noticee has violated the provisions of section 12 A(a), (b) and (c) of the SEBI Act read with regulation 3(a), 3(b), 3(c) and 3(d) and regulation 4(1) and 4(2)(h) of the PFUTP Regulations, 2003. However, a letter dated December 8, 2018 has been received from Pradnya Vinayak Sarkhot, the wife of Vinayak Trimbak Sarkot, informing the demise of the said Noticee on August 08, 2017. A copy of the death certificate as issued by the Municipal Corporation of Kalyan-Dombivli certifying the death of the deceased has been provided along with the said letter. In the said circumstances, I am not inclined to pass any directions against Vinayak Sarkhot, Noticee No. 3.

Bipin Divecha (Noticee No. 2)

7.54. The SCN has alleged that Bipin Divecha defrauded the original shareholders by issuing forged consolidated share certificates, and also fraudulently made the buyers of these forged consolidated share certificates to believe that the shares transferred to them were original, though they were not so.

7.55. Accordingly, the SCN has alleged that Bipin Divecha violated the provisions of section 12 A(a), (b) and (c) of the SEBI Act read with regulation 3(a), 3(b), 3(c) and 3(d) and regulation 4(1) and 4(2)(h) of the PFUTP Regulations, 2003.

7.56. Bipin Divecha was a director of the Company from October 10, 2011 onwards, when the transfers of shares were effected.

7.57. In this regard, reference is made to the statement given by Bipin Divecha to SEBI on June 18, 2015 wherein he has stated that *“Through Shri. Sarkhot, they approached me in Jan 2012 for arranging the buyers for buying the 93% shares of Finalysis and also agreed to give 2% of equity of Finalysis, if they receive from the shareholders.”*

7.58. Further, he has stated that *“I used to sell these 93% shares to my known people/clients for the consideration of approximately Rs. 9 per share. The total consideration amount was Rs. 4.60 crore for total 51, 20, 394 shares of Finalysis, which is app. 93% of the total equity in Finalysis. However, out of the above 51,20, 394 shares of Finalysis, promoters’ holdings (Shri. Jiger Dilip Shah, Shri Sham Gandhi, Shri Sarkhot, Shri. Jagdish Sarkhot, Shri. Yashwant Trimbak Sarkhot (brothers of Shri. Sarkhot) were 10, 84,000 shares which were not given to me.”*

7.59. From the above, it is evident that Bipin Divecha was also party to the employing of the scheme for the sale of shares of Finalysis along with Dilip Shah, Jiger Shah, Sham Gandhi and Vinayak Sarkhot.

7.60. As already mentioned above, by way of **email dated July 13, 2012** sent by Vinayak Sarkhot to Jiger Shah with a copy to Sham Gandhi, details with respect to the initial sale of 69.89 % of the shares of the Company were provided. Further, by way of **email dated September 29, 2012**, enclosing therewith a letter dated September 07, 2012 to all the directors and promoters, which enumerated issues to be considered including the purchase of promoter shares and arrangement of payment was addressed by Bipin Divecha to Sham Gandhi. So, pursuant to the

above arrangement, Bipin Divecha was involved in identifying and arranging buyers for purchasing the shares of Finalysis.

7.61. However, as Bipin Divecha was getting buyers to buy the shares of Finalysis, complaints of the public shareholders were received simultaneously. In this regard, reference is drawn to **email dated September 25, 2012** addressed by Bipin Divecha to Jiger Shah asking him to take action with respect to the letters received from the public shareholders. Also, reference is drawn to **email dated November 23, 2012** addressed by Bipin Divecha to Jiger Shah, Vinayak Sarkhot and Sham Gandhi with the subject “ Fwd: FW: kirtida desai Finalysis credit & guarantee co. ltd” informing receipt of mail for a complaint and asking the recipients to answer the same and sort out the matter. Reference is also drawn to **email dated November 24, 2012** addressed by Sajjad Pavne from the email id, info@finalysis.in to Bipin Divecha, Jiger Shah, Vinayak Sarkhot and Sham Gandhi stating therein, *“As informed by Mr. Sarkhot that the matters pending with regards to Mrs Desai & Mr. Anil Aggarwal are resolved, kindly confirm the same so that we can have it communicated.”* Reference is drawn to the **email dated November 21, 2012** addressed by Roma Khan from the email id, info@finalysis.in addressed to Vinayak Sarkhot and Dnyanesh Gharote of Link Intime, with copies to Sajjad Qadir and Bipin Divecha. The email narrates the conversation that Roma Khan had with Vinayak Sarkhot and Dnyanesh Gharote of Linkintime with respect to the letters and reminders thereto, in respect of Kirtida Desai’s complaint and the discussion on the matter between one Mr. Naik of Link Intime and the complainant’s husband. On this, Roma Khan stated that *“This needs serious investigation to be carried out. We would want*

clarification from Mr. Naik on his account of discussion with Mr. Desai since this could lead to being accused of forgery. I have assured Mr. Desai that his complaint will be dealt with sensitivity and effectiveness and the action will be taken instantly.”

7.62. It is evident from the above email exchanges that Bipin Divecha was well aware of the complaints of the public shareholders regarding the rejection of their transfer/demat requests on the grounds that such shares had already been transferred/dematted.

7.63. Bipin Divecha being well aware of the complaints received from the public shareholders sent an **email dated December 10, 2012** to Sham Gandhi and Jiger Shah containing therewith a draft MOU for the sale of shares of Finalysis. As per the proposed MOU, the buyer Bipin Divecha was the authorised representative of incoming shareholders, and the sellers, namely Dilip Shah, Jiger Shah, Sham Gandhi, Vinayak Sarkhot and Sharad Ramchandra Ghadi, agreed for the sale of a total of 51, 20, 394 equity shares at a total consideration of Rs. 4, 60,00,000.

7.64. The MOU, even though, not signed or executed is indicative of the intent of Bipin Divecha to go ahead with the sale of the shares of Finalysis while he had the knowledge that some of the public shareholders had already filed complaints about their shares having been transferred without their knowledge. However, despite such knowledge, he continued with the arrangement of facilitating the sale of shares of Finalysis to the buyers that he was bringing in. The sharing of the draft MoU by Bipin Divecha with the others who are part of the scheme can be seen only as an attempt to shield himself from the allegation of unauthorised transfers

and feign ignorance of the inherent defect in the shares, i.e. that those are counterfeit shares.

7.65. It is relevant to mention that Bipin Divecha in his statement has stated that “*It was also decided that on making the entire payment by me and my clients, I, along with Shri Sham Gandhi, Shri Jiger Dilip Shah and Shri Dilip Shah, would enter into a Share Purchase Agreement (SPA) and all the promoters, viz. Shri Sham Gandhi, Shri Jiger Dilip Shah and Shri Dilip Shah would transfer the control of Finalysis to me. I showed my interest in the deal.*” Thus, the keen interest shown by Bipin Divecha to continue to sell the shares of Finalysis even after knowing about various complaints from the public shareholders, could be attributed to the promise that he would be given the promoters’ shareholding and the control of the Company.

7.66. Lastly, admittedly Bipin Divecha became a Director in Finalysis on October 10, 2011 and on becoming a Director was allotted shares of Finalysis. In this respect, Bipin Divecha has in the statement to SEBI has stated that “*I got 1,75,000 shares of Finalysis in physical form transferred in my name in 2011 when I was given the Directorship in Finalysis. The shares were in the name of Ms. Kanta Desai and Shri Annatrai Desai. The payment at Rs. 9 per share was made by me to Finalysis in Jan 2012. The payment was made through cheque starting from Jan 31, 2012.*” Furthermore, in the said statement given by Bipin Divecha to SEBI, it has also been stated that “*I do not have the copy of share certificate. I do not have details of the folio number, certificate number and the distinctive numbers for these shares.*” It is stated that the shares were transferred for a sum of Rs.9 per share, which was far below the market price. It is pertinent to note here that during 2012, the share of Finalysis was lowest at Rs. 30 and highest at Rs. 139. Thus, such

a sale defies any commercial logic as no shareholder would sell the shares at such a price especially when the lowest market price of the same share was at least three times the consideration amount of Rs. 9 per share. It is observed that though the transferors of the shares were Kanta Desai and Annatrai Desai, the consideration was passed onto Finalysis, indicating that the transferors were not aware of such a transfer. Moreover, Bipin Divecha did not have the details of the folio number, the certificate number and the distinctive numbers for the said shares, thereby showing that the transfer of shares to his name was fraudulent.

7.67. Therefore, considering the above facts, I find that the Noticee was not only dealing with the shares with the knowledge that they were forged/counterfeit but also played a crucial role in circulating the shares to identified investors.

7.68. Accordingly, I find that the Noticee has violated the provisions of section 12 A(a), (b) and (c) of the SEBI Act read with regulation 3(a), 3(b), 3(c) and 3(d) and regulation 4(1) and 4(2)(h) of the PFUTP Regulations, 2003.

Sharad Ramchandra Ghadi (Noticee No. 8)

7.69. The SCN has alleged that Sharad Ghadi defrauded the original shareholders by issuing forged consolidated share certificates, and also fraudulently made the buyers of these forged consolidated share certificates to believe that the shares transferred to them were original, though they were not so.

7.70. Accordingly, the SCN has alleged that Sharad Ghadi violated the provisions of section 12 A(a), (b) and (c) of the SEBI Act read with regulation 3(a), 3(b), 3(c) and 3(d) and regulation 4(1) and 4(2)(h) of the PFUTP Regulations, 2003.

7.71. Sharad Ghadi is shown to be one of the directors in the Company. The records in the matter do not contain any reply of Sharad Ghadi to the SCN. The correspondence as available on record, and the flow of funds do not reveal any transfer of funds to him.

7.72. However, Sharad Ghadi in his statement to SEBI has stated that “ *Shri Sarkhot asked me whether I would like to become Director at Finalysis. I agreed to the offer of Shri Sarkhot and gave him my consent letter in Fort, Mumbai. He then gave me a copy of Form 32 (via email) and I became the director in Finalysis.*” He has further stated “*I have never attended any board meetings at Finalysis. I have even not visited the office of Finalysis even once.*” However, no evidence with respect to the non-attendance of board meetings has been provided by the Noticee.

7.73. Further, reference is drawn to the statement of Vinayak Sarkhot wherein he has stated that to comply with the requirement of minimum three directors, he had approached Sharad Ramchandra Ghadi to become a director in Finalysis. It has been further submitted by Vinayak Sarkhot that since, Sharad Ghadi had a DIN number, he was brought in to become a director in Finalysis with effect from 2001. In this respect, it would be relevant to mention that, as per the MCA website, Sharad Ghadi is a director in certain other companies, namely, The Thana Electric Supply Company Limited, Ceetee Trading and Leasing Pvt Ltd, Richtone Fintrade

and Investment Private Limited, Udan Door and Vneerr Private Limited and Tuvik Investments Private Limited.

7.74. Sharad Ghadi, admittedly, has been part of the Board of the Company and was instrumental in ensuring compliance with all legal requirements including that of having a minimum number of directors as a listed company. It is seen from the facts of the case that the said compliances have helped the Company to lift the suspension imposed by the BSE, as a prelude to planting the fraudulent device in the securities market.

7.75. Thus, the misutilisation by the Noticee of his DIN Number and the Noticee's breach of fiduciary duties lend credence to the presumption that the said Noticee by way of the above actions afforded an opportunity to the other Noticees to employ a deceptive scheme to counterfeit/forged share certificates and consequently thereof deal in such counterfeited/forged share certificates. I also note that Sharad Ghadi's name is also part of the draft MoU, as part of the sellers to Bipin Divecha. It is therefore hard to believe that his name is included as a part of the sellers without him being involved in the fraudulent scheme.

7.76. Accordingly, in view of the above, I find that the Noticee has violated the provisions of Section 12 A (a), (b) and (c) of the SEBI Act, 1992 read with Regulation 3(a), 3(b), 3(c) and 3(d) and Regulation 4(1) and 4 (2) (h) of the PFUTP Regulations, 2003.

Santosh Jayaram Sawant (Noticee No. 18)

7.77.The SCN has alleged that Santosh Sawant defrauded the original shareholders by issuing forged consolidated share certificates, and also fraudulently made the buyers of these forged consolidated share certificates to believe that the shares transferred to them were original, though they were not so.

7.78.In this regard, reference is drawn to the statement of Santosh Jayaram Sawant. It has been stated by him that *“I know Shri. Vinayak Sarkhot as he is a friend of Mr. Pawan Poddar, proprietor of Vibrant Investments. Vibrant Investments is a sub-broker of Angel Broking Ltd. I am working with Vibrant Investments since 2007 as peon. Shri. Sarkhot used to sit for full day in the office of Vibrant Investments. Shri. Poddar had given a computer to him for doing office job. I am not aware what was the profession or occupation of Shri. Sarkhot. In the year 2011, Shri. Sarkhot told me to sign as witness on some transfer deeds pertaining to the shares in the scrip of Finalysis. I have signed around 20-25 filled in transfer deeds in the office of Vibrant Investments, which was then located at 47, Tamrind Lane, Raja Bahadur Mansion, 2nd Floor, Fort, Mumbai-400001. At that time I was not aware that Shri. Sarkhot is the director of Finalysis”*

7.79.Further, it has been stated by Santosh Jayaram Sawant that *“I was in no way related to or knew the transferors and/or transferees as mentioned on any of the transfer deeds.”*, and that *“I was not promised any return by Shri Sarkhot in return for signing on the transfer deeds as witness. I also did not ask anything from Shri Sarkhot in return for signing on the transfer deeds.”*

7.80. Reference is also made to the statement of Vinayak Sarkhot. In his statement it has been stated by Vinayak Sarkhot that *“I was using office of M/s Vibrant Investments at Rajabhadur Mansion, near BSE building for paper work related to Finalysis and other companies. Shri. Santosh was working as peon at Vibrant Investments.”*

7.81. A perusal of the emails exchanged amongst the main Noticees, namely Noticee Nos. 2 to 6 as accessed by SEBI, does not bear any mention of Santosh Jayaram Sawant. Further, there is nothing on record to point to any transfer of funds to the said Noticee. Even though the said Noticee has signed the transfer deeds as a witness, upon a holistic consideration of the facts, especially the position of the Noticee as a peon; the coherence in his submissions; the absence of contradictions and inconsistencies thereof, with the Noticee's clear lack of knowledge of the larger scheme of sale of forged shares, I am of the view that the acts of the Noticee as alleged in the SCN do not stand proved.

7.82. Thus, I am inclined to believe that Santosh Jayaram Sawant was not involved in the counterfeiting or forgery of share certificates of Finalysis and their fraudulent sale to the transferees brought by Bipin Divecha.

7.83. Accordingly, I find that the Noticee has not violated the provisions of Section 12 A (a), (b) and (c) of the SEBI Act, 1992 read with Regulation 3(b), 3(c) and 3(d) and Regulation 4(1) and 4 (2) (h) of the PFUTP Regulations, 2003.

8. Issue II – B. Whether Noticee No.1, Finalysis as the Company, can be held liable for the fraudulent dealing in securities, in terms of the provisions contained in the SEBI Act and the SEBI PFUTP Regulations?

Finalysis Credit & Guarantee Co. (Noticee No. 1)

8.1. The SCN has alleged that the Company through the activities of its directors and promoters has effected fraudulent consolidation of shares and further fraudulent transfer and demat of such consolidated shares thereby violating the provisions of section 12 A(a), (b) and (c) of the SEBI Act read with regulation 3(a), 3(b), 3(c) and 3(d) and regulation 4(1) and 4(2)(h) of the PFUTP Regulations, 2003.

8.2. In this regard, the SCN notes that the Noticees, namely, Bipin Divecha, Sharad Ghadi, Jiger Shah and Vinayak Sarkhot were directors in the Company: Similarly, the SCN notes that Dilip Shah and Sham Gandhi were promoters of the Company.

8.3. The Company is bound by the fraudulent actions of its directors and promoters along with certain others, which culminated in its share certificates being forged or counterfeited and transferred unauthorizedly to certain persons other than the original shareholders. The company further did not have a regular RTA or STA and failed to furnish the details of the shareholders who were the shareholders prior to the delisting. All the compliances shown by the company to the Stock Exchange for getting itself relisted are also fraudulent in nature. Moreover, the company failed to address the grievances of its shareholders which ultimately culminated in the investigation by SEBI.

8.4. In the above circumstances, I find that the allegations in the SCN against the company are justified and the directors (Noticees Nos.3, 6 and 8) and Promoters (Noticee Nos 3, 4 and 6) along with the Company shall also be held liable for the fraudulent activities brought out during the investigation. Accordingly, I find that the Noticee Company has violated the provisions of Section 12 A (a), (b) and (c) of the SEBI Act, 1992 read with Regulation 3(b), 3(c) and 3(d) and Regulation 4(1) and 4 (2) (h) of the PFUTP Regulations, 2003.

9. Issue II – C. Whether Noticee Nos. 7, and 9 to 17 were involved in the counterfeiting/forgery of the share certificates for illegal gains; if not, is there any other role played by these Noticees, which will make them liable for violation of the PFUTP Regulations ?

9.1. The SCN has alleged that Sajjad Pavne (Noticee No. 7) and certain entities known to him, namely, Mohammad Rafi (Noticee No. 9), Roma Shamshad Khan (Noticee No. 10), Mohd Salim Khan (Noticee No. 11), Amir Hamza Hakim Khan (Noticee No. 12), Abdul Hakim Khan (Noticee No. 13), Abdul Zameer Hakim Khan (Noticee No. 14), Talat Wahadatali Mohamad (Noticee No. 15), Wahadatali Gulamrasool (Noticee No. 16), Rehana Khan (Noticee No. 17) along with other Noticees had defrauded the original shareholders by issuing forged consolidated share certificate, and also fraudulently made the buyers of these forged consolidated share certificate to believe that the shares transferred to them were original, though they were not so. Accordingly, it has been alleged that the above-mentioned Noticees employed a deceptive scheme to defraud the investors in the shares of Finalysis, thus, violating the provisions of section 12 A(a), (b) and (c) of

the SEBI Act read with regulation 3(a), 3(b), 3(c) and 3(d) and regulation 4(1) and 4(2)(h) of the PFUTP Regulations, 2003.

9.2. In this regard, the summary of the replies filed by the above Noticees is as under:

- a. Mohd Salim Khan (Noticee No. 11), Amir Hamza Hakim Khan (Noticee No. 12), Abdul Zameer Hakim Khan (Noticee No. 14) by way of their respective replies to the SCN dated November 29, 2018 and April 13, 2017 have submitted that a) allegations made against them were wrong; b) the shares of Finalysis were bought by fair means with hard earned money, which now was lost ; c) no illegitimate means was practiced or employed to buy shares of the company; d) all decisions to buy the shares were made individually, without any coaxing from any family member or any associate; and e) no one was either a partner to such shares or had any right over it.
- b. Mohammad Rafi (Noticee No. 9), Abdul Hakim Khan (Noticee No. 13), Talat Wahadatali Mohamad (Noticee No. 15) and Rehana Khan (Noticee No. 17) by way of their respective letters dated November 29, 2018 have reiterated the submissions as made by the Noticees in paragraph no. 9.2 (a) above. Additionally, these four Noticees have submitted that they came to know of Sarkhot, who was arranging finance for their family. Sarkhot agreed to sell the shares to them, and was ready to wait for the sale consideration, and informed that they could take loans against the shares and pay him back.
- c. Roma Shamshad Khan (Noticee No. 10) by way of her reply dated November 29, 2018 has submitted that, a) she had her own personal choice in taking

decisions, and did not need to consult her husband (Sajjad Abdul Qadir); b) she bought the shares in the Company, legitimately and through proper channels; c) SEBI had no right to club all the members of the family and demand disclosure, as the decisions of her relatives to buy shares of the Company were their own, even though they might have shared the same address; d) the only reason for her coordinating the share transfers from the promoters to her family members and people known to her was because such people had sought her help, and her role was to be a one-point contact to the promoters, with Vinayak Sarkhot being the point of contact from the promoters side; and e) once the transfers were completed, acknowledgments were sent to the promoters, and as far as she was informed, there was benefit to both parties.

9.3. In this respect, it would be relevant to provide details with respect to the relationship amongst the related entities of Sajjad Pavane:

- a. An email was sent by Roma Khan (wife of Sajjad Pavne, also known as Roma Shamshad Khan and Shamshad Begum Khan) to Vinayak Sarkhot on July 16, 2013 wherein she had asked Vinayak Sarkhot to transfer the shares to Amir Hama Khan, Abdul Zameer Hakim Khan and Rehana Khan. In the email, she had also asked Vinayak Sarkhot to do the needful for other Noticees also.
- b. As per the MCA website, Windfall Information Technology Systems Pvt. Ltd., a company based in Mumbai had the same address as that of Finalysis, viz. 17, Damji Shamji, Kurla West, Mumbai with its email ID as sajjad@gmail.com.

- c. Sajjad Pavne was the CEO of the above company (as per his LinkedIn profile) which had Mohd. Salim Abdul Hakim Khan and Talat Wahadatali Mohammad as directors. Gulam Rasul Wahadat Ali Khan was the father of Talat Wahadatali Mohammad (as per MCA website). Further, the addresses of Gulam Rasul Wahadat Ali Khan and Talat Wahadatali Mohammad were same as the residential address of Sajjad Pavne.
- d. Another Mumbai based company by the name, Kasturi Fine Arts Pvt. Ltd. had as directors, Amir Hamza Abdul Hakim Khan and Talat Wahadatali Mohammad. Talat Wahadatali Mohammad was also the director in Windfall Information Technology Systems Pvt. Ltd. as mentioned above. Further, Amir Hamza Abdul Hakim Khan was the same person in whose account Roma Khan had asked Sarkhot to transfer the shares of Finalysis.
- e. Both Amir Hamza Abdul Hakim Khan and Abdul Zameer Hakim Khan shared the same address.
- f. The mobile numbers of Mohd. Salim Khan, Abdul Hakim Khan, Abdul Zameer Hakim Khan and Amir Hamza Hakim Khan were the same.
- g. The email IDs of Mohd. Salim Khan, Abdul Hakim Khan, Abdul Zameer Hakim Khan and Amir Hamza Hakim Khan were same and it was salimabdulhakimkhan@gmail.com.

h. The address of Mohammad Rafi was the same as Sajjad Pavne's, and as stated by Sajjad Pavne in his statement to SEBI, Mohammad Rafi was his brother-in-law.

Hence, in the SCN all these Noticees viz., Noticee No. 7 and Noticee Nos. 9 to 17 have been treated as a group.

II C Whether Noticee No. 7, and 9 to 17 were involved in the counterfeiting/forgery of shares?

9.5. Reference is drawn to the **email dated July 13, 2012** from Vinayak Sarkhot to Jiger Shah and Sham Gandhi as mentioned in the foregoing paragraphs of this Order. The said e-mail informed that the shares comprising 69.89% had been delivered and the shares earmarked for delivery comprised of 19.69%, which was the holding of the promoters, namely, Vinayak Sarkhot, Yashwant Sarkhot, Jiger Shah, Dilip Shah and Sham Gandhi as per the company's filing with BSE for the quarter ending June 2012. Thus, as on July 13, 2012 a predominant portion of the shares, 69.89% had been transferred to the purchasers brought by Bipin Divecha.

9.6. In this regard, it is stated that the appointment of Sajjad Pavne as the Managing Director of the Company happened in September 2012 by which time the complaints of the public shareholders had started coming.

9.7. Also, the first time the name of any of the Sajjad Pavne related entities came up in any correspondence, was in an **email dated November 21, 2012**. The said email had been addressed from the email id, info@finalysis.in by Roma Khan to Vinayak Sarkhot and Dnyanesh Gharote of Link Intime, with copies to Sajjad Pavne and

Bipin Divecha, in respect of Kirtida Desai's complaint and the discussion on the said matter between one Mr. Naik of Link Intime and the complainant's husband.

9.8. Thus, from the above, it is evident that the role of the Sajjad Pavne related entities emerges only after the sale of the substantial portion of the shares, 69.89% in July 2012 by Noticee Nos.2 and 6 to 8. Accordingly, it cannot be stated that Sajjad Pavne or the Sajjad Pavne related entities were instrumental in the counterfeiting or forgery of shares belonging to the public shareholders.

II C Whether Noticee Nos. 7, 9 to 17 dealt in counterfeit shares?

9.9. Reference is again drawn to the **email dated November 21, 2012** referred above.

In the said email, commenting on the complaints received, Roma Khan stated that *“This needs serious investigation to be carried out. We would want clarification from Mr. Naik on his account of discussion with Mr. Desai since this could lead to being accused of forgery. I have assured Mr. Desai that his complaint will be dealt with sensitivity and effectiveness and the action will be taken instantly.”*

9.10. The said email clearly demonstrates the appreciation of Roma Khan of the complaint and the gravity of such complaint.

9.11. Further, reference is drawn to **email dated November 23, 2012** addressed by Bipin Divecha to Jiger Shah, Vinayak Sarkhot and Sham Gandhi informing them that *“Received mail from the party as well as from our Ghatkopar office for the below mentioned complaint. You are requested to answer the same and also requested to sort out the matter at the earliest.”* In reply to the same, an email was addressed from info@finalysis.in to Bipin Divecha with a copy to Sajjad Pavne stating the following:

“ Thanks Bipin Bhai,

We hope it to be resolved as committed.

Rgards

Roma”

9.12.The email correspondences of November 24, 2012 and November 30, 2012

from the email id, info@finalysis.in with the signature of Sajjad Pavne, in respect of the complaints from “Mrs. Desai and Mr. Anil Aggarwal”, further convey the knowledge of Sajjad Pavne and Roma Khan of the complaints of the original shareholders. On the same matter, by way of **email dated December 02, 2012** from the email id, info@finalysis.in and signed by Roma Khan, Bipin Divecha was instructed to ask Jiger Shah to reply on the resolution of issues with respect to the complaints of Mr. Anil Agarwal and Mrs. Desai.

9.13.Furthermore, emails dated February 15, 2013 and March 02, 2013, deal with

the list of shares and shareholders to whom the shares of Finalysis were transferred by Bipin Divecha and the payments received thereto. These emails were also marked to Sajjad Pavne and his wife Roma Khan. The said emails demonstrate that Sajjad Pavne and his wife Roma Khan also had knowledge of the dealings in forged consolidated share certificates by Bipin Divecha, Vinayak Sarkhot, Sham Gandhi, Dilip Shah and Jiger Shah.

9.14.Thus, from the above, it is clear that not only Sajjad Pavne and Roma Khan, had full knowledge of the complaints received from the shareholders, and the nature

of such shareholder complaints but also the dealings in forged consolidated shares certificates by Bipin Divecha, Vinayak Sarkhot, Sham Gandhi, Dilip Shah and Jiger Shah. Also, Sajjad Pavne and Roma Khan had viewed the complaints seriously, prompting Roma Khan to state that the non-resolution of the complaints “could lead to being accused of forgery”. Armed with the knowledge of the complaints and the seriousness of the same, Sajjad Pavne and Roma Khan could have backed out of the deal struck with Bipin Divecha and others to buy the shares. Their continuing interest in the deal is a clear pointer to their complicity in dealing in counterfeit shares.

9.15. In this context, it is stated that by way of **email dated July 16, 2013**, instructions were given by Roma Khan to Vinayak Sarkhot to transfer shares to the related entities of Sajjad Pavne. Further, in their replies some of the related entities have stated that Sarkhot had agreed to sell the shares and was ready to wait for the consideration money and had informed them that they could take loans against the shares and pay him back subsequently.

9.16. Pursuant to the same, the SCN observes that transfer of the complete promoters’ holdings of 10,69,000 shares, as per the quarter ending June 2013, was made to Sajjad Pavne related entities. The said transfers were made by Vinayak Sarkhot and related entities, namely, Jagdish Sarkhot, Yashwant Sarkhot, and Sham Gandhi and Jiger Shah as shown below:-

Table – 6

Date	Dp Id	Client Id	First Holder Name	Dp Id	Client Id	First Holder Name	Number Of
17-Jul-2013	In300159	10565707	Vinayak Sarkhot	12053300	00022227	Amir Harnza	1,50,000
18-Jul-2013	12026200	00120996	Jiger Dilip Shah	12072900	00006009	Mohammad Rafi	1,79,000
18 Jul-2013	12026200	00120996	Jiger Dilip Shah	12072900	00006009	Mohammad Rafi	6,000
26-Jul-2013	In300484	12532510	Sham S Gandhi	12059200	00074576	Rehana	1,00,000
26-Jul-2013	In300484	12532510	Sham S Gandhi	12072900	00005803	Talat Wahadataali	2,00,000
26-Jul-2013	In300484	12532510	Sham S Gandhi	12068100	00052809	Abdul Zameer	1,00,000
26 Jul-2013	12035200	00100131	Vinayak Sarkhot	12059200	00074576	Rehana	50,000
27 Jul-2013	In301549	33826112	Sarkhot Jagdish	12059200	00074576	Rehana	1,00,000
27-Jul-2013	In301549	18525262	Yashwant T Sarkhot	12068100	00052809	Abdul Zameer Hakim Khan	1,00,000
07-Aug-2013	In300484	12532510	Sham S Gandhi	In301549	36646524	Wahadataali Gulamrasool	84,000
							10,69,000

9.17.Further, the SCN observes that there were more entities related to Sajjad Pavne, who had dealt in the shares of Finalysis. The extracts of such shareholding patterns are as under:-

Table – 7

S · N o .	Name of Entity	Sep-12		Dec-12		Mar-13		Jun-I3		Sep-13		Dec-13		Mar-14	
		No.of shares held	%	No.of shares held	%	No.of shares held	%	No.of shares held	%	No.of shares held	%	No.of shares held	%	No.of shares held	%
1	Shamshad Begum Khan	172712	3.14	172712	3.14	177712	3.23	66912	1.22						
2	Mohd Salim Khan	82900	1.51	96760	1.76	121337	2.2	125991	2.29	234886	4.27	184386	3.35	184386	3.35
3	Amir Hanna Hakin Khan	63500	1.15	66881	1.21	102887	1.87	86087	1.56	236087	4.29	205081	3.72	205081	3.72
4	Abdul Hakim Khan			66590	1.21	77915	1.42	74315	1.35	74315	1.35				
5	Abdul Zameer Hakim Khan	63500	1.15	66091	1.2	76133	1.38			217763	3.96	207763	3.77	207763	3.77
6	Mohammad Rafi					55815	1.01	75815	1.38	260815	4.74	260815	4.74	145970	2.65
7	Talat Wabadatali Mohamad					61040	1.11			223115	4.05	223115	4.05	173705	3.15
8	Wahadatali Gulamrasool Khan									110378	2	109378	1.99	79069	1.44
9	Rehana Khan									250000	4.54	250000	4.54	250000	4.54
		382612	6.95	469034	8.52	672839	12.22	429120	7.8	1607359	29.2	1440538	26.16	1245974	22.62

9.18. From a perusal of the above tables with respect to the sale of shares to the Sajjad Pavne related entities, it is observed that the total stake of the Sajjad Pavne related entities at the end of the September, 2102 quarter was 6.95 %. As already established above, Sajjad Pavne and Roma Khan had become aware of the complaints from the shareholders and the forgery of the shares in November of 2012. Subsequent to November of 2012, the stake of the Sajjad Pavne related

entities steadily increased and reached as high as 29.2 % at the end of the March, 2013 quarter. Thus, the bulk of the sale of the shares to Sajjad Pavne related entities happened after November of 2012, when it was clearly known to Sajjad Pavne and Roma Khan that there was a spate of complaints from the original shareholders.

9.19. In their replies, it has been contended by the said entities that the decision to buy shares were made individually without the coaxing of any family member or any associate and no one is either a partner to such shares or has any right over it. Further, it has been stated by some of the entities that they sought help of Vinayak Sarkhot, who was arranging finance for their family, and Sarkhot agreed to sell the shares and was ready to wait for the consideration money and informed that they could take loans against the shares and pay back Sarkhot. Furthermore, Roma Khan in her reply has stated that the only reason for her co-ordinating the share transfers from the promoters to her family members and people known to her was because such people had sought her help, and her role was to be a one-point contact to the promoters, with Vinayak Sarkhot being the point of contact from the promoters side.

9.20. It is a fact, as evident from the email dated July 16, 2013, that instructions were given by Roma Khan to Vinayak Sarkhot to transfer shares to the related entities of Sajjad Pavne. In their replies, some of the entities have stated that Vinayak Sarkhot had agreed to sell the shares and was ready to wait for the consideration money and informed that they could take loans against the shares and pay back Sarkhot. However, from the records available before me, it is not clear as to the

quantum of loans taken by the entities associated to Sajjad Pavne and Roma Khan for payment of the purchase of shares.

9.21. The above set of facts ought to be seen in the context of the fact that Sajjad Pavne in his own statement has stated that he was “Managing Director” of the Company from September 2012. Furthermore, Roma Khan was actively involved in the affairs of Finalysis as is evident from the emails. Both Sajjad Pavne and Roma Khan were in a position of considerable influence in Finalysis during the time the said transfers to the related entities took place.

9.22. Thus, in such circumstance where Sajjad Pavne and his wife are in a position of such influence, the transfer of shares to related entities, without insistence on immediate payment by the sellers (agreeing for deferred payment), clearly demonstrates that the sale was for their benefit with the related entities being proxies. Also, Noticee Nos. 9 and 11 to 17 have not been able to explain as to how they got in touch with Vinayak Sarkhot. Further, I note that subsequent to November of 2012, the stake of the Sajjad Pavne related entities steadily increased and reached as high as 29.2 % at the end of the March, 2013 quarter.

9.23. Therefore, upon an overall evaluation, it is clear that the entities namely, Mohammad Rafi (Noticee No. 9), Mohd Salim Khan (Noticee No. 11), Amir Hamza Hakim Khan (Noticee No. 12), Abdul Hakim Khan (Noticee No. 13), Abdul Zameer Hakim Khan (Noticee No. 14), Talat Wahadatali Mohamad (Noticee No. 15), Wahadatali Gulamrasool (Noticee No. 16), Rehana Khan (Noticee No. 17) by buying shares as agents have dealt in securities that were

counterfeited/fraudulently issued have violated the provisions of the SEBI Act and the PFUTP Regulations.

9.24. Furthermore, it has been stated by Roma Khan in her replies that she was coordinating the share transfers from the promoters to her family members and people known to her. She has further stated that she coordinated the above mentioned transfer because such people had sought her help, and her role was to be a one-point contact to the promoters. Similarly, Sajjad Pavne being the Managing Director at the relevant time had failed in his fiduciary duties as a director towards the original public shareholders by allowing the transfer of shares to his related entities.

9.25. Thus, Sajjad Pavne by allowing the transfer of shares to Noticee Nos. 9 and 11 to 17, with the knowledge that there were complaints filed, has provided assistance in the selling of the shares that were known to be counterfeited/forged thereby violating the provisions of PFUTP Regulations. Similarly, Roma Khan by coordinating between Vinayak Sarkhot (and related entities), Sham Gandhi and Jiger Shah, with the knowledge that shares had been forged, has provided assistance in the selling of the shares that were known to be counterfeited/forged thereby violating the provisions of PFUTP Regulations

9.26. In view of the above, the Noticee Nos. 7, and Noticee Nos. 9 to 17 are in violation of Section 12 A (c) of the SEBI Act read with Regulation 3(a), 3(d), 4(1), 4 (2) (h) of the PFUTP Regulations. However, as the facts on record do not demonstrate that the Noticees had conspired for the counterfeiting/fraudulent issuance of

securities and the creation of such counterfeit/fraudulently issued shares. Thus, the allegation of violation of Sections 12 A (a) and (b) read with Regulation 3(b) and 3(c) of the PFUTP Regulations do not stand proven.

10. Conclusion

10.1. It has emerged from the facts that Jiger Shah, Dilip Shah and Sham Gandhi got in touch with Vinayak Sarkhot to get the Company relisted on BSE and to sell 93% of the shares, which was held by public shareholders. Consequent to the same, Bipin Divecha was brought in for getting buyers who would buy the 93% shares. This scheme is clearly evident from a collective reading of the emails exchanged and from the draft MoU circulated amongst the Noticees, where Jiger Shah, Dilip Shah, Sham Gandhi, Vinayak Sarkhot and Sharad Ghadi have been shown as the sellers and Bipin Divecha as the buyer for the sale of the 93% shares held by the public shareholders. Further to the above scheme, the share certificates held by genuine public shareholders were counterfeited/forged/consolidated without authorization by the above-mentioned Noticees to make illegal gains. The counterfeiting/forgery/consolidation without authorisation of the shares emerge from the facts that the Company was not following any norm for processing of transfer requests; a common witness was used to witness the transfer deeds; the Noticees namely Jiger Shah, Dilip Shah, Sham Gandhi, Vinayak Sarkhot and Bipin Divecha, and not the transferors mentioned in the transfer deeds were seen to be taking decisions with respect to the sale of the shares; the said Noticees determined the price for the sale of the shares, which was lower than the then market price;

and the sale consideration for the sale of the shares explicitly moved to above-mentioned Noticees and not to the transferors/original shareholders.

10.2. Further, the facts have also brought out the role played by each of the Noticees in the scheme for the counterfeiting of the shares and their sale to purchasers brought in by Bipin Divecha. Both Jiger Shah and Dilip Shah were acting in unison, and had custody of the records pertaining to the shareholders of Finalysis and were instrumental in the transfer and delivery of the shares to the buyers identified by Bipin Divecha. They also received the maximum amount from the sale of the shares.

10.3. Similarly, Sham Gandhi was part of the original group that contacted Vinayak Sarkhot for the revival of the Company and he was aware of the sale of the shares of the public shareholders and had assured resolution of issues, if they arose in said matter. Also, it is observed that payments were received by Sham Gandhi from the sale of shares effected through Bipin Divecha.

10.4. Vinayak Sarkhot was the compliance officer and director of Finalysis and was the person who was involved in effecting transfers and filling out the transfer deeds with respect to the buyers brought by Bipin Divecha, going by his own statement to SEBI. He also received payment for the sale of the shares. Similarly, Bipin Divecha, who brought the buyers for the sale of the counterfeited shares, was not only dealing with the shares with the knowledge that they were forged/counterfeit/fake, but also played a crucial role in circulating the tainted shares to identified investors.

10.5.Sharad Ghadi, admittedly, was part of the Board of the Company and was instrumental in ensuring compliance with all legal requirements including that of having a minimum number of directors as a listed company. The facts demonstrate that the said compliances helped the Company to lift the suspension imposed by the BSE, as a prelude to planting the fraudulent device in the securities market. With respect to the Company, it is an established principle that a company is bound by the fraudulent actions of its directors and promoters.

10.6.Sajjad Pavne, even though may not have been involved in the counterfeiting or forgery of share certificates, allowed the transfer of shares to Noticee Nos. 9 and 11 to 17, with the knowledge that there were complaints filed from the original shareholders. Similarly, Roma Khan by coordinating between Vinayak Sarkhot (and related entities), Sham Gandhi and Jiger Shah, with the knowledge that shares had been forged, provided assistance in the selling of the shares that were known to be counterfeited/forged. Lastly, Noticee Nos. 9 and 11 to 17 by buying shares as agents of Sajjad Pavne and Roma Khan have dealt in securities that were counterfeited/fraudulently issued, thereby violating the provisions of law.

10.7.In the present matter the acts of the directors and promoters culminated in the share certificates of public shareholders being forged/counterfeited/consolidated without authorization and transferred unauthorizedly to certain persons other than the original shareholders, thereby making the Company liable.

11. Directions

11.1. In view of the above, I, in exercise of the powers conferred upon me under section 19, read with sections 11(1), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992, hereby direct as below:

11.1.1. Finalysis Credit & Guarantee Co. Ltd. (Noticee No.1), Bipin Divecha (Noticee No. 2), Sham Gandhi (Noticee No. 4), Dilip Shah (Noticee No. 5), Jiger Shah (Noticee No. 6) and Sharad Ghadi (Noticee No. 8) shall be restrained from accessing the securities market, and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, and associating with the securities market in any manner, whatsoever, for a period of 5 years ;

11.1.2. Bipin Divecha (Noticee No. 2), Sham Gandhi (Noticee No. 4), Dilip Shah (Noticee No. 5), Jiger Shah (Noticee No. 6) and Sharad Ghadi (Noticee No. 8) shall also be restrained for a period of 5 years from holding any position of Director or key managerial personnel in any listed company or any intermediary registered with SEBI, and during the said period shall be restrained from associating themselves with any listed public company or a public company which intends to raise money from the public or any intermediary registered with SEBI;

11.1.3. the Noticees, namely, Bipin Divecha (Noticee No. 2), Sham Gandhi (Noticee No. 4), Dilip Shah (Noticee No. 5) and Jiger Shah (Noticee No. 6):

- a. shall individually disgorge the amounts indicated in the table appearing hereunder:

Noticee	Amount (INR)*
Jiger Shah	66,42,520
Dilip Shah	3,90,01,084
Sham Gandhi	45,54,871
Bipin Divecha	9,48,931

**The respective amounts have been computed based on payments received by the above-mentioned Noticees, as brought out in the SCN, and interest thereof @ 12 % p.a from November 13, 2012 i.e., the last date of receipt of payments till the date of this Order.*

- b. shall pay the said amounts within 45 days from the date of this Order either by way of demand draft drawn in favour of “Securities and Exchange Board of India”, payable at Mumbai or by e-payment # to SEBI account as detailed below:

Name of the Bank	Branch Name	RTGS Code	Beneficiary Name	Beneficiary Account No.
Bank of India	Bandra Kurla Branch	BKID 0000122	Securities and Exchange Board of India	012210210000008

Noticees who are making e- payment are advised to forward the details and confirmation of the payments so made to the Enforcement department of SEBI for their records as per the format provided in Annexure A of Press Release No. 131/2016 dated August 09, 2016 which is reproduced as under:

1. Case Name:	
2. Name of the payee:	

3. <i>Date of payment:</i>	
4. <i>Amount paid:</i>	
5. <i>Transaction No:</i>	
6. <i>Bank Details in which payment is made:</i>	
7. <i>Payment is made for: (like penalties/ disgorgement/ recovery/ settlement amount and legal charges along with order details:</i>	

11.1.4. Mohammad Rafi (Noticee No. 9), Roma Khan (Noticee No. 10), Mohd Salim Khan (Noticee No. 11), Amir Hamza Hakim Khan (Noticee No. 12), Abdul Hakim Khan (Noticee No. 13), Abdul Zameer Hakim Khan (Noticee No. 14), Talat Wahadatali Mohamad (Noticee No. 15), Rehana Khan (Noticee No. 17) shall be restrained from accessing the securities market, and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, and associating with the securities market in any manner, whatsoever, for a period of 3 years;

11.1.5. Mohammad Rafi (Noticee No. 9), Roma Khan (Noticee No. 10), Mohd Salim Khan (Noticee No. 11), Amir Hamza Hakim Khan (Noticee No. 12), Abdul Hakim Khan (Noticee No. 13), Abdul Zameer Hakim Khan (Noticee No. 14), Talat Wahadatali Mohamad (Noticee No. 15), Rehana Khan (Noticee No. 17) shall also be restrained for a period of 3 years from holding any position of Director or key managerial personnel in any listed company or any intermediary registered with SEBI, and shall be restrained from associating herself with any listed public company or a public company which intends to raise money from the public or any intermediary registered with SEBI; and

11.1.6.The Noticee Nos. 1, 2, 4 to 6, 8 to 15, and 17 may liquidate their existing holdings, except the shares of Finalysis, if any, during the said debarment/restraint periods.

11.2.The above directions shall come into force with immediate effect.

11.3.A copy of this order shall be served upon the Noticees immediately. A copy shall be served on the recognised Stock Exchanges and the Depositories for necessary action.

Date: May 05, 2020

Place: Mumbai

**G. MAHALINGAM
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**