BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER No. Order/VV/AK/2022-23/19840

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995

In respect of:

Aditya Omprakash Gaggar

(PAN: AARPG6390G)

In the matter of circulation of unpublished price sensitive information (UPSI) through WhatsApp messages with respect to Tata Chemicals Ltd

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A. BACKGROUND

1. SEBI carried out an investigation in the matter of circulation of Unpublished Price Sensitive Information (**UPSI**) through WhatsApp messages with respect to Tata Chemicals Limited (hereinafter referred to as "**TCL"/Company**") to ascertain any possible violation of the provisions of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**" and SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as "**PIT Regulations, 2015**") during the period of December 25, 2015 to February 12, 2016 (hereinafter referred to as "**Investigation Period"**/ "**IP"**).

2. It was observed that TCL made announcement on BSE and NSE on February 10, 2016 with respect to its financial results for quarter ended December 2015. It has been summarized in below in tabulated form:

<table>
<tr><th>Date</th><th>Exchange & Time</th><th>Announcement/News</th><th>Price Impact/Shares Traded</th></tr>
<tr><td>10/02/2016</td><td>BSE @15:12

NSE @15:21</td><td>Announces Q3 Results (Standalone & Consolidated), Auditors' Report (Standalone) & Limited Review Report (Consolidated) for the qtr ended December 31, 2015: Tata Chemicals announced the followlne results for the qtr ended December 31, 2015:
The Company has posted a net profit of Rs. 158.30 crore in consolidated unaudited financial results for the qtr and nine months ended on December 31, 2015
The Consolidated Results are as follows:
The Audited Consolidated results for the qtr ended December 31.2015
The Group has posted a net profit/(Loss) after tax (Rs. 8.17 crore} for the quarter ended December 31, 2015 as compared to (Rs. 16.56 crore) forthe quarter ended December 31, 2014.</td><td>
On BSE:
<table>
<tr><th>Date</th><th>O</th><th>H</th><th>L</th><th>C</th><th>No. of shares traded</th></tr>
<tr><td>09-02-16</td><td>370</td><td>376</td><td>363.50</td><td>367.15</td><td>48,942</td></tr>
<tr><td>10-02-16</td><td>366.50</td><td>367.20</td><td>346</td><td>349</td><td>1,34,466</td></tr>
<tr><td>11-02-16</td><td>350.00</td><td>353.36</td><td>330.65</td><td>334.75</td><td>1,30,356</td></tr>
</table>
On NSE:
<table>
<tr><th>Date</th><th>O</th><th>H</th><th>L</th><th>C</th><th>No. of shares traded</th></tr>
<tr><td>09-02-16</td><td>368</td><td>375</td><td>363.50</td><td>372.60</td><td>8,11,209</td></tr>
<tr><td>10-02-16</td><td>367.95</td><td>367.95</td><td>345.20</td><td>350.20</td><td>12,51,185</td></tr>
<tr><td>11-02-16</td><td>348.00</td><td>353.90</td><td>330.60</td><td>334.40</td><td>18, 91,626</td></tr>
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3. TCL vide letter dated August 20, 2018 has furnished the chronological events related to the financial results for quarter ended December 2015. The information relating to financial results of Tata Chemicals for quarter ended December 2015 was a Price Sensitive Information (PSI). From the chronology of events submitted by Tata Chemicals, it is observed that the trading window was closed with effect from December 25, 2015 to February 12, 2016 and therefore the UPSI was observed to have come into existence on December 25, 2015. The corporate announcement of audited financial results for the quarter ended December 2015 was made to the stock exchanges on February 10, 2016 (15:12:40 hours on BSE, 15:21 hours on NSE) by TCL. Hence, TCL had made the aforesaid price sensitive information public on February 10, 2016 at 15:12 hours on BSE and 15:21 hours on NSE.

4. The investigation revealed that the Noticee communicated the UPSI related to PAT of Tata Chemicals for quarter ended December 2015 through WhatsApp messages. From the WhatsApp chats of Ms. Shruti Vora(hereinafter referred to as “**Shruti**”/”**SV**”) (retrieved from her device - Apple iPhone 6s, IMEI: 355767073570777), the following chat was observed on February 10, 2016 - "*Tata chem hearing pat below 160crs vs mkt exp of 250 crs*". The timing of the said message as per extract chat from her device was 06:58:32. However, the expert agency hired for retrieval and backup of the data from the instruments/devices seized (Helik Advisory Ltd.), vide email dated March 12, 2018, informed SEBI that their forensic tools generate zero G.M.T. timing by default, so add +5.30 hours as our Indian G.M.T in all the report generated'.

5. Vide an email dated December 19, 2018, text of WhatsApp messages was shared with WhatsApp Inc. and it was requested to them to search these messages in their database and provide details of sender/receiver those messages. However, WhatsApp vide email dated December 31, 2018, expressed its inability to search for given messages in their database citing reasons that WhatsApp users being protected with end-to-end encryption protocol, third parties and WhatsApp cannot read such messages or search for such messages.

6. The company vide emails dated August 19, 2019 and November 19, 2019, informed as under:
    a. List of 59 employees and directors who had access to the financials for the quarter ended December 31, 2015 and also informed that out of 59 personnel, company approached 57 persons who have confirmed that they do not know/ knew and/or are/were ever associated/related/connected etc., in any capacity whatsoever, either directly and/or indirectly, with Aditya Gaggar, Ms. Shruti Vora and Mr. Shailendra Mehta,
    b. As regard remaining two individuals namely Mr. Cyrus P. Mistry and Mr. Nusli Wadia (Former Directors of the company), the company informed that it could not seek the requisite confirmations from them. The company also informed that it made efforts to contact Mr. Cyrus Mistry

and Mr. Nusli Wadia but could not connect with them as both of them have exited the company in December 2016.

c. It also provided the list of 25 personnel from Deloitte Haskins & Sells LLP (Deloitte) who were involved in the Audit of the financials of the company for the quarter ended December 31, 2015. Company approached 25 personnel who have confirmed that they do not know/ knew and/or are/were ever associated/related/connected etc., in any capacity whatsoever, either directly and/or indirectly, with Aditya Gaggar, Ms. Shruti Vora and Mr. Shailendra Mehta.

7. It was observed from the replies from BSE and NSE that no suspected entities have traded in Tata Chemicals in the equity and equity derivatives segment during the period when WhatsApp message was circulated till the announcement of quarterly results i.e. December 2015.

8. The details of communication of WhatsApp message related to Tata Chemicals as observed from WhatsApp Chat retrieved from Shruti Vora's device are tabulated below:

Entity from whom Shruti Vora (SV) received the message		**Date and Time of receipt of message by SV (After adding 5.30 hours**		**Entities to whom SV forwarded the message**		**Date and Time of forwarding of message by SV (After adding 5.30 hours**	
Name	**Tel. Number**	**Date**	**Time**	**Name**	**Tel. Number**	**Date**	**Time**
Aditya Gaggar	9821016310	10/02/2016	12:28:32				
Shailendra Mehta	9820393691	10/02/2016	15:13:35	Parikshit Shah	8800333788	10/02/2016	15:13:49

9. It was observed from the WhatsApp chats retrieved from the Shruti Vora's device that the aforesaid message was received by Shruti Vora from the Noticee in WhatsApp group 'Market Info' on February 10, 2016 at 12:28:32 hrs, i.e., before the announcement made by Tata Chemicals on the stock exchanges.

10. In the following table, financial figures circulated on WhatsApp pertaining to Tata Chemicals are compared with actual figures disclosed subsequently on stock exchange to gauge the deviation between two sets of figures.

Date & time of Whatsapp message	Figures in the Whatsapp message	Date and time of disclosure on Exchange	Actual figures disclosed on the Exchange	%age Deviations observed in Figures
10/02/2016 12:28:32	PAT below 160 crs	10/02/2016 15:12	PAT 158.30 crs	0.9

11. From the above table, it was observed that the financial figures of Tata Chemicals were communicated through WhatsApp prior to their announcement on stock exchanges by the Noticee. The financial figure of Tata Chemicals (viz. PAT) circulated through WhatsApp closely matched with those disclosed subsequently by Tata Chemicals on Exchanges (deviation in financial figure was within 0.9%). Hence, the aforesaid message related to Tata Chemicals would fall under UPSI and such circulation of financial figures through WhatsApp was considered as Communication of UPSI.

12. The Noticee is considered as an insider as he was in possession of UPSI. Therefore, it is alleged that the Noticee being insider had communicated the UPSI relating to TCL to other person(s) through Whatsapp messages. Accordingly, it is alleged that the Noticee communicated the UPSI related to TCL for quarter ended December 2015 through WhatsApp messages, which is prohibited and is in violation of the provisions of Section 12 A (d) & 12 A (e) of the SEBI Act, 1992 read with regulation 3 (1) of PIT Regulations, 2015.

B. APPOINTMENT OF ADJUDICATING OFFICER

13. Shri B J Dilip was appointed as the Adjudicating Officer (hereinafter referred as "**erstwhile AO**") by communiqué dated February 17, 2020 under section 19 read with section 15I(1) of the SEBI Act, 1992 (hereinafter referred to as "**SEBI Act**") and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as "**Adjudication Rules**") to conduct adjudication proceedings in the manner specified under Rule 4 of Adjudication Rules read with section 15I(1) and (2) of SEBI Act, and if satisfied that the Noticee is liable, impose such penalty deemed fit in terms of Rule 5 of Adjudication Rules read with Section 15G of SEBI Act. Pursuant to the transfer of erstwhile AO, vide communiqué dated December 31, 2020 the case has been transferred to undersigned. It has been advised that except for the

change of the Adjudicating Officer the other terms and conditions of the original orders '*shall remain unchanged and shall be in full force and effect*' and that the "*Adjudicating Officer shall proceed in accordance with the terms of reference made in the original orders*."

C. SHOW CAUSE NOTICE, REPLY AND HEARING

14. The Show Cause Notice (hereinafter referred as "**SCN**") bearing no. EAD-6/BJD/AA/17060/2020 dated October 13, 2020 was served upon the Noticee under rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be held and penalty not be imposed against it under section 15G of the SEBI Act for the alleged violation of 12A(d) and 12A(e) of SEBI Act read with Regulation 3(1) of PIT Regulations, 2015. SCN issued through SPAD and duly delivered to the Noticee in terms of Rule 7 of the Adjudication rules. Subsequently, Noticee filed his replies through *vide* letters dated October 20, 2020 and September 16, 2022. Summary of the Submissions made by Noticee are as follows:

    i. *No Connection established between Company and Noticee.*
    ii. *Noticee submitted that SEBI made observations in the IR that none of the persons from the Company or from its statutory auditor who were in possession from UPSI know me. Moreover, SEBI was unable to find the origin of the HOS being circulated on WhatsApp which is alleged to be UPSI. Whatsapp Inc. vide email dated 27.12.2018 informed SEBI that information on message (alleged UPSI) sought by SEBI could not be searched by WhatsApp. SEBI in the IR thus observed "In view of above and observations made in preceding paragraphs, unearthing the trail of messages to reach originator of the WhatsApp message could not be effectuated". Thus, no leak from the Company is established by SEBI.*
    iii. *Noticee submitted that My whatsapp chats contained several HOS ("Heard on Street") messages which did not closely match with the results. Similarly Noticee no. 1 stated that he has sent many HOS messages to Noticee no. 2 which did not closely match with the results.*
    iv. *Noticee submitted that HOS forwarded by them closely matching with the actual numbers does not make it UPSI. The SCN fails to consider numerous instances where estimates did not match.*
    v. *Noticee submitted that she merely forwarded the same to clients/market groups/acquaintances who actively track the securities market without application of mind. Had she has known the fact that the information been UPSI, she would not have widely circulated the same. Further, no trades were done by any family member or individulas, she forwarded the alleged message to. Similarly, Noticee no 1 submitted that, as also expressly stated in the IR that on investigation, it was*

found that no trades were done by his family members or him or Shruti or her family members in the scrip of the company.

vi. *Noticee submitted that there has been no pattern / no arrangement established from my phone available with SEBI which suggests that any insider kept sharing any UPSI with her or that she was soliciting the same from any person.*

vii. *Noticee submitted that SCN, on a plain reading, does not establish any breach of law/rules. Regulations by them and merely makes a bald allegation.*

15. After giving several opportunities, the hearing was finally conducted on September 20, 2022 via video conferencing on WebEx platform. On the scheduled date of hearing, the authorized representative of the Noticee appeared before me and reiterated the submissions made before me and placed reliance on the SAT order dated March 22, 2021. The process of adjudication proceedings undertaken has been mentioned below:

Noticee	**SCN**	**Inspection**	**Hearing Concluded**
Aditya Gaggar	October 13, 2020	July 07, 2022	September 20, 2022

D. <u>Relevant Provisions</u>

16. ***<u>SEBI Act, 1992</u>***

12A. *No person shall directly and indirectly-*

…………………………………………………..

12A(d) *engage in insider trading**;***

12A(e) *deal in securities while in possession of material or non-public information or communicate such material or non-public information to any other person, in a manner which is in contravention of the provisions of this Act or the rules or the regulations made thereunder;*

17. **<u>PIT Regulations, 2015</u>**

2(1)(n) *"unpublished price sensitive information" means any information, relating to a company or its securities, directly or indirectly, that <u>is not generally available which upon becoming generally available</u>, is likely to materially affect the price of the securities and shall, ordinarily including but not restricted to, information relating to the following: –*

(i) *financial results;*

(ii) *dividends;*

(iii) *change in capital structure;*

(iv) *mergers, de-mergers, acquisitions, delistings, disposals and expansion of business and such other transactions;*

(v) *changes in key managerial personnel*

***Note**: It is intended that information relating to a company or securities, that is not generally available would be unpublished price sensitive information if it is likely to materially affect the price upon coming into the public domain. The types of matters that would ordinarily give rise to unpublished price sensitive information have been listed above to give illustrative guidance of unpublished price sensitive information.*

***2 (g)** "insider" means any person who is:*

i. *a connected person; or*

ii. *in possession of or having access to unpublished price sensitive information;*

***NOTE**: Since "generally available information" is defined, it is intended that anyone in possession of or having access to unpublished price sensitive information should be considered an "insider" regardless of how one came in possession of or had access to such information. Various circumstances are provided for such a person to demonstrate that he has not indulged in insider trading. Therefore, this definition is intended to bring within its reach any person who is in receipt of or has access to unpublished price sensitive information. The onus of showing that a certain person was in possession of or had access to unpublished price sensitive information at the time of trading would, therefore, be on the person levelling the charge after which the person who has traded when in possession of or having access to unpublished price sensitive information may demonstrate that he was not in such possession or that he has not traded or he could not access or that his trading when in possession of such information was squarely covered by the exonerating circumstances.*

***2(n)** "unpublished price sensitive information" means any information, relating to a company or its securities, directly or indirectly, that is not generally available* *which upon becoming generally available, is likely to materially affect the price of the securities and shall, ordinarily including but not restricted to, information relating to the following: –*

(i) financial results;

(ii)dividends;

(iii)change in capital structure;

(iv)mergers, de-mergers, acquisitions, delistings, disposals and expansion of business and such other transactions;

(v)changes in key managerial personnel.

NOTE: *It is intended that information relating to a company or securities, that is not generally available would be unpublished price sensitive information if it is likely to materially affect the price upon coming into the public domain. The types of matters that would ordinarily give rise to unpublished price sensitive information have been listed above to give illustrative guidance of unpublished price sensitive information.*

3(1) *No insider shall communicate, provide, or allow access to any unpublished price sensitive information, relating to a company or securities listed or proposed to be listed, to any person including other insiders except where such communication is in furtherance of legitimate purposes, performance of duties or discharge of legal obligations.*

E. CONSIDERATION

18. I have considered the allegations levelled in the SCN, the relevant material brought on record, and replies/ submissions of the Noticee made during the instant proceedings before the undersigned. Before going into the merits of the case, it would be appropriate to consider the order passed by the Hon'ble SAT dated March 22, 2021 (Appeal Nos. 308, 309, 310, 311, 312, 313, 341, 342, 343, 344 and 283 of 2020), in the matter which are similar in terms of facts and

circumstances, as found in this case. In the aforesaid order Hon'ble SAT had *inter alia* had held that –

"….

12. It is an admitted fact that despite great efforts by the respondent SEBI to find out the source of information or to find out leakage, if any, of the information from the side of financial team, legal team or the audit team of the respective companies, no information could be recovered…

13. It is to be noted that admittedly the respondent SEBI has mined hundreds of similar messages from the devices of the appellants. Out of those numerous messages only in the present six cases the messages matched with the exact figure of the financial results…

14. As regards the estimates of the broker which subsequently matched with the published result, the AO reasoned that it is not the appellant's claim that the impugned message had arisen from the market research like that of those brokerage houses. However, the learned AO failed to appreciate that the appellants were pleading that the WhatsApp messages might have been originated from the brokerage houses, or from the estimates found on the platform of Bloomberg which were floated and were in the public domain. The learned AO also failed to take into consideration that there were numerous other messages of similar nature received and forwarded by the appellant which did not at all match with the published financial results. Appellant Shruti Vora in the case of Wipro has specifically pointed out that along with the said message similar massage regarding Axis Bank had also reached her which she had also forwarded. The published results, in that case however, were widely different. The learned AO did not give any weightage to the same.

15. The above definitions of the "unpublished price sensitive information" and "insider" would show that a generally available information would not be an unpublished price sensitive information.

16. The information can be branded as an unpublished price sensitive information only when the person getting the information had a knowledge that it was unpublished price sensitive information. Though knowledge is a state of mind of a person, the same can be proved on preponderance of probabilities on attendant circumstances. In the present case, there are no attendant circumstances at all except the possibilities as enumerated by the learned AO. Proximity of time, similarity between the information were the only two factors that weighed with the learned AO to brand the information as unpublished price sensitive information. In the case of Samir Arora vs. SEBI (2004) SCC Online SAT 90 this Tribunal had rejected the arguments of SEBI that there is no need for linkage between the potential source of the unpublished price sensitive information and the person allegedly in possession of the alleged unpublished price sensitive information.

18………..in the facts of the case, in our view the respondents failed to prove any preponderance of probabilities that the impugned messages were unpublished price sensitive information, that the appellants knew that it was unpublished price sensitive information and with the said knowledge they or any of them had passed the said information to other parties."

By stating above, Hon'ble SAT had held that no violation has been committed under PIT Regulations, 2015 by the respective Noticee(s) in these case(s).

19. Subsequently, an appeal was filed by SEBI with reference to the aforesaid SAT order dated March 22, 2021, before Hon'ble Supreme Court. Thereafter, Hon'ble Supreme Court in the matter of *SEBI vs Shruti Vora & ors.* (Civil Appeal Nos. 2252-2262/2021 dated September 26, 2022), while declining to interfere with the aforesaid order of the Hon'ble SAT, had *inter alia* held that: -

   "*3. After considering the factual aspects of the matter, including the statutory provisions, the Tribunal found that in the facts and circumstances of the case no liability could be fastened on said applicants before the Tribunal.*

   4. Though, these are the statutory appeals, we see no reason to entertain these appeals."

20. In view of the aforesaid facts and circumstances and the factum of the aforementioned judgements of Hon'ble Apex court and Hon'ble SAT, I note that facts in the instant case are replica of the case that was decided by Hon'ble SAT *vide* order dated March 22, 2021 & upheld by Hon'ble Supreme Court vide order dated September 26, 2022, with only difference that the circulation of WhatsApp messages pertain to different scrips.

21. Considering the similar nature of facts and circumstances and the aforesaid judgements of higher courts, I do not find any merit in adjudication of similar set of facts. Hence, as such, the SCN alleging the violation of section 12A(d) and (e) of SEBI Act read with Regulation 3(1) of PIT Regulations, 2015, as being disposed of without any consideration.

F. Order

22. In view of above, I find it appropriate to conclude the instant adjudication proceeding by disposing of the Show Cause Notice bearing no. EAD-

6/BJD/AA/17060/2020 dated October 13, 2020 *qua* Noticee *i.e.* Aditya Omprakash Gaggar, without imposition of any monetary penalty.

23. In terms of rule 6 of the Adjudication Rules copies of this order are sent to the Noticee and also to SEBI.

Date: September 29, 2022	**Vijayant Kumar Verma**
Place: Mumbai	**Adjudicating Officer**