

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER No.: Order/SBM/AK/2022-23/17255-17260]

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:

1. Pallavi Navinchandra Mehta PAN: AAHPM5896P 1002, Avarsekar Heights, Dr. A.B. Road, Worli Naka, Mumbai – 400018	2. Shefali Bhupendra Mehta PAN: ACAPM7034N Alankar Building, 1 st floor, Flat no. 3, Near Elizabeth Nursing Home, Walkeshwar, Mumbai – 400006
3. Navin Mansukhlal Mehta PAN: AAVPM5354Q 1002, Avarsekar Heights, Dr. A.B. Road, Worli, Mumbai – 400018	4. Abhishek Mehta PAN: CLJPM2392B Alankar Building, 1st floor, Flat no. 3, Near Elizabeth Nursing Home, Walkeshwar, Mumbai – 400006
5. Priyanka Thakkar PAN: AAVPM5355R 2602, 26 th floor, Building no. 1, Sumer Trinity, New Prabhadevi Road, Prabhadevi, Mumbai – 400025	6. Bhavesh R. Thakkar PAN: AABPT2787J 2602, 26 th floor, Building no. 1, Sumer Trinity, New Prabhadevi Road, Prabhadevi, Mumbai – 400025

In the matter of
ADF Foods Ltd

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as **‘SEBI’**), based on an alert generated by NSE, had conducted investigation into the trading/dealings in the scrip of ADF Foods Limited (hereinafter referred to as **‘ADF’/ ‘Company’**), during the period May 21, 2016 to July 27, 2016 (hereinafter referred to as **‘Investigation period’**). Pursuant to the investigation, the following major developments / observations pertaining to the Company are relevant to note:
 - i. A meeting dated May 21, 2016 was held amongst Mr. Girish Nadkarni (representative of Motilal Oswal Investment Advisors Pvt. Ltd. (hereinafter referred to as **‘Motilal Oswal’**)), Mr. Bhavesh R. Thakkar (Executive Director of the company) and Mishal A. Thakkar (Senior Manager of the company) to discuss the idea to undertake buyback of shares by the company

or payment of dividend or a combination thereof. The proposal with respect to buyback was first mooted in the aforesaid meeting.

- ii. On May 22, 2016, Motilal Oswal gave a presentation on the buyback of shares, highlighting the pros and cons of buyback of shares, as a merchant banker.
- iii. On May 23, 2016, the Company Secretary of the Company was communicated to initiate preparations for the proposal to undertake buyback of shares. The stock exchanges were intimated that the board of directors of the Company will consider the proposals for announcement of dividend or buyback of shares, or a combination thereof, in its meeting to be held on May 27, 2016. The agenda papers pertaining to the proposals for announcement of dividend or buyback of shares, or a combination thereof, to be discussed at the board meeting to be held on May 27, 2016 were sent to the directors.
- iv. On May 27, 2016, The board of directors of the Company deferred the decision on proposals for announcement of dividend or buyback of shares till next board meeting citing requirement of more time.
- v. On July 14, 2016, in preparation for the meeting of the board of directors of ADF on July 27, 2016, Motilal Oswal was approached in order to reconsider the proposed buyback of shares.
- vi. On July 15, 2016, Motilal Oswal gave financial details of buyback including the pricing of the issue to the Company Secretary
- vii. On July 19, 2016, the agenda papers pertaining to the proposals for announcement of dividend or buyback of shares, or a combination thereof, to be discussed at the board meeting to be held on July 27, 2016 were sent to the directors.
- viii. On July 21, 2016, the stock exchanges were intimated that the board of directors of the Company will consider proposals for announcement of dividend or buyback of shares, or a combination thereof, in its meeting to be held on July 27, 2016.
- ix. On July 27, 2016, ADF informed the stock exchanges that the Board of Directors of the Company at its meeting held on July 27, 2016 had approved a buyback of 14,40,000 equity shares at a price not exceeding INR 125 per equity share for an aggregate amount not exceeding INR 18 crore and in view of the same, the Board did not declare interim dividend on the equity shares of the Company.

The buyback of shares is a price sensitive information (UPSI) within the meaning of Regulation 2 (1) (n) (iii) of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred

to as **‘PIT Regulations’**) as the buyback would result in change in capital structure of the company. In this regard, it is observed that the information relating to buyback of shares of ADF was first discussed on May 21, 2016, and the same finally culminated into a decision of buyback of shares in the scrip of ADF on July 27, 2016 post the Board of Directors meeting of the company on July 27, 2016. It is noted that the said UPSI on the buyback of shares was disseminated to the stock exchanges pursuant to the board meeting of ADF held on July 27, 2016. Therefore, the aforesaid buyback of shares remained unpublished and price sensitive (**“UPSI”**) as per Regulation 2 (1) (n) (iii) of the PIT Regulations, **for** the period of May 21, 2016 to July 27, 2016, which is also reckoned as the **“UPSI period”** in the context of the present proceeding.

2. It was observed that certain persons/entities had dealt/traded in the scrip of ADF during the aforementioned UPSI period. Based on the above, and on the basis of trading/dealings in the scrip of ADF and their *inter se* relations, it was alleged that Ms. Pallavi Navinchandra Mehta (hereinafter referred to as **‘Noticee No. 1’/‘Ms. Pallavi’**), Ms. Shefali Bhupendra Mehta (hereinafter referred to as **‘Noticee No. 2’/‘Ms. Shefali’**), Mr. Navin Mansukhlal Mehta (hereinafter referred to as **‘Noticee No. 3’/‘Mr. Navin’**), Mr. Abhishek Mehta (hereinafter referred to as **‘Noticee No. 4’/‘Mr. Abhishek’**), Ms. Priyanka Thakkar (hereinafter referred to as **‘Noticee No. 5’/‘Ms. Priyanka’**) and Mr. Bhavesh R Thakkar (hereinafter referred to as **‘Noticee No. 6’/‘Mr. Bhavesh’**) have traded/dealt in the scrip of ADF on the basis of UPSI during the period May 21, 2016 (starting date of UPSI period) to July 27, 2016 (end date of UPSI period). Therefore, was is alleged that Noticee No. 1 to 6, (hereinafter collectively referred to as **“Noticees”**) have acted in violation of provisions of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the **“SEBI Act”**) and also the provisions of the PIT Regulations during the abovementioned Investigation period/UPSI period. The alleged specific violations of the Noticees are detailed in the table below:

Table 1: Alleged specific violations and respective penalty provisions.

Name of the Noticee	Alleged violations
Ms. Pallavi Navinchandra Mehta (Noticee No. 1 / ‘Ms. Pallavi’)	Section 12A(d) & (e) of SEBI Act and Regulation 4(1) of PIT Regulations, 2015
Ms. Shefali Bhupendra Mehta (‘Noticee No. 2’ / ‘Ms. Shefali’)	Section 12A(d) & (e) of SEBI Act and Regulation 4(1) of PIT Regulations, 2015
Shri Navin Mansukhlal Mehta (‘Noticee No. 3’ / ‘Mr. Navin’)	Section 12A(d) & (e) of SEBI Act and Regulation 4(1) of PIT Regulations, 2015

Shri Abhishek Mehta ('Noticee No. 4' / 'Mr. Abhishek')	Section 12A(d) & (e) of SEBI Act and Regulation 4(1) of PIT Regulations, 2015
Ms. Priyanka Thakkar ('Noticee No. 5' / 'Ms. Priyanka')	Section 12A(d) of SEBI Act and Regulation 4(1) of PIT Regulations, 2015
Shri Bhavesh R Thakkar ('Noticee No. 6' / 'Mr. Bhavesh')	Section 12A(d) & (e) of SEBI Act, Regulation 3(1) and Regulation 4(1) of SEBI (PIT) Regulations, 2015.

3. Details of the allegations against the Noticees as observed during the Investigation Period are as follows:

- i. *Noticee No. 6 who was the Executive Director of ADF was alleged to be an insider, who possessed UPSI relating to buyback of equity shares of ADF. Noticee No.1 and Noticee No. 2 are connected to Noticee No. 6 as mother-in-law and sister-in-law respectively. Noticee No. 5 is the wife of Noticee No. 6 and Noticee No. 3 is the father-in-law of Noticee No.6. Noticee No. 4 is the son of Noticee No. 2.*
- ii. *Based on the above Noticee No. 1 to Noticee No. 5 are alleged to be connected persons and hence, insiders in terms of Regulation 2 (1) (d) (i), 2 (1) (d) (ii) and 2 (1) (f) and 2 (1) (g) of SEBI (PIT) Regulations, 2015.*
- iii. *Noticee No.1 and Noticee No. 2, alleged to being insiders, have traded in the shares of ADF during the UPSI period, and hence, have been alleged to have engaged in insider trading.*
- iv. *It was alleged that, Noticee No. 6 was providing funds to Noticee No.1 and Noticee No. 2 for trading in the scrip of ADF during the UPSI period and has communicated the UPSI to the connected entities.*
- v. *It was alleged that, the bank account of Noticee No. 5, who is the wife of Noticee No. 6 was used as a conduit for transferring funds used for trading in ADF shares during the UPSI period.*
- vi. *It was alleged that, Noticee No. 3, Noticee No. 4 and Noticee No. 6 had placed orders through the account of the suspected entities maintained with the broker Lalkar Securities Pvt. Ltd., in the scrip of ADF Foods Limited during the UPSI period.*
- vii. *It was alleged that, Noticee No 1 and Noticee No. 2, while trading in the scrip of ADF during the UPSI period made unlawful gains of approx. INR `37.86 lakhs and INR `39.37 lakhs, respectively.*

The above allegations/connections / details of their trading/dealings etc are discussed elaborately in the following paragraphs.

4. Based on the above, it was alleged that the Noticees have violated the abovementioned provisions of the SEBI Act and PIT Regulations, during the Investigation period. In view of the same, adjudication proceedings have been initiated against the Noticees under the provisions of section 15G of the SEBI Act.

APPOINTMENT OF ADJUDICATING OFFICER

5. Dr Anitha Anoop was initially appointed as the Adjudicating Officer (‘AO’) in the matter vide *communiqué* dated March 12, 2019. Pursuant to the transfer of Dr Anitha Anoop to another department, the undersigned was appointed as the AO in the matter vide *communiqué* dated November 03, 2020 under Section 19 of the SEBI Act read with Section 15-I of the SEBI Act and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as ‘**Adjudication Rules**’), to inquire into and adjudge under the provisions of section 15G of the SEBI Act, the aforementioned alleged violation of the provisions of law by the Noticees.

SHOW CAUSE NOTICE, REPLY AND HEARING

6. A common Show Cause Notice ref No. SEBI/EAD-1/AA/ASR/11381,11382,11384,11386,11387,11388/2019 dated May 02, 2019 (hereinafter referred to as ‘**SCN**’) was issued to the Noticees under the provisions of Rule 4 of the Adjudication Rules, requiring the Noticees to show cause as to why an inquiry should not be held against the Noticees and why penalty, if any, should not be imposed on them under the provisions of section 15G of the SEBI Act, for their alleged violation of the provisions of Sections 12A(d) & (e) of the SEBI Act, 1992 and Regulations 3(1) and 4(1) of the PIT Regulations as specified in the table above, while trading/dealing in the scrip of ADF during the aforementioned investigation period. The SCN issued to the Noticees *inter alia* mentioned/alleged the following:
- i. The Company was incorporated in 1992 as American Dry Fruits, and is engaged in manufacturing, a wide range of canned, bottled and processed vegetables, fruits and foods for the export and domestic markets. It was promoted by Shri Hariram Mewawala, Shri Ramesh Thakkar and Shri Kishore Thakkar. The company is listed on both NSE and BSE. The details of the management of ADF during the IP are as under:

Table 2 : Details of Management

Name	Designation
Shri Ashok H. Thakkar	Chairman
Shri Bimal R Thakkar	Managing Director and CEO

Shri Bhavesh R Thakkar	Executive Director and CFO
Shri Nipun C Shah	Director
Shri Yasir J Varawala	Director
Shri Jay M Mehta	Director
Shri Viren A Merchant	Director
Shri Ravinder Kumar Jain	Director
Ms. Anjali K Seth	Director

- ii. The Company had made certain major corporate announcements during the investigation period, details of the same are tabulated herein under:

Table 3: Details of Corporate announcements and their impact

S. No.	Date-Time	Announcement/News	Price Impact/Shares Traded						Remarks
1.	27/05/2016 (20:09)	<u>Outcome of Board Meeting</u> ADF Foods Limited informed the exchange that the Board of Directors of the Company at its meeting held on May 27, 2016, inter alia, has deferred decision on dividend on equity shares and buyback proposal till the next Board meeting.	Date	O	H	L	C	No. of shares traded	The number of shares of ADF traded recorded a decrease by 1.81 times
			27.05.2016	94.80	94.80	89.15	90.55	37,812	
			30.05.2016	89.00	89.05	86.70	87.05	20,880	
2.	27/07/2016 (15:24)	<u>Board approves Buyback of Equity Shares</u> ADF Foods Limited informed BSE that the Board of Directors of the Company at its meeting held on July 27, 2016 has approved a buyback of Equity Shares at a price not exceeding INR 125 per equity share of INR 10/- each for an aggregate amount not exceeding INR 18 crore.	Date	O	H	L	C	No. of shares traded	The number of shares of ADF traded recorded a decrease by 3.6 times
			27.07.2016	98.00	116.00	98.00	114.00	10,53,096	
			28.07.2016	114.00	114.00	106.20	111.45	2,89,849	
3.	04/08/2016 (15:52)	<u>Buy back Offer</u> ADF Foods Limited has submitted to BSE a Copy of Public Announcement in relation to the Buyback Offer to the shareholders/beneficial owners of the Equity Shares.	Date	O	H	L	C	No. of shares traded	No substantial movement in scrip price
			04.08.2016	113.60	114.80	108.70	110.25	29,529	
			05.08.2016	110.15	114.00	109.80	112.00	24,002	

- iii. The Price Volume data of the scrip of ADF on BSE for the period prior, post and during the investigation period is given in table below:

Table 4: Price Volume data of the scrip of ADF on BSE

Period	Duration	Price/Vol.	Opening Price / Vol. on 1 st day of period	High Price / Vol. during the period	Low Price / Vol. during the period	Closing Price / Vol. on last day of period	Avg. no of shares traded daily during the period
Pre-Investigation	22/02/2016 - 20/05/2016	Price	69.50	99.50 (03/05/2016)	64.50 (24/02/2016)	86.80	23,422
		Vol.	5,844	2,73,851 (03/05/2016)	2,555 (22/04/2016)	7,290	
Investigation	21/05/2016 – 27/07/2016	Price	86.25	116.00 (27/07/2016)	82.00 (13/06/2016)	114.00	49,327
		Vol.	11,575	10,53,096 (27/07/2016)	1,691 (02/06/2016)	10,53,096	
Post-Investigation	28/07/2016 - 28/10/2016	Price	114.00	187.00 (28/10/2016)	106.00 (30/08/2016)	173.60	60,020
		Vol.	2,89,849	4,01,555 (24/10/2016)	683 (14/10/2016)	1,58,405	

- iv. Vide its letter dated November 27, 2017, the Company had furnished the following chronology of events, pertaining to the aforesaid announcement of buyback of shares:

Table 5: Chronology of events

Date	Action (Phone/ meeting/ approvals etc.)	Event
May 21, 2016	Meeting	Discussion of idea to undertake buyback or payment of dividend was first tabled.
May 22, 2016	E-mail	Motilal Oswal Investments Advisor Private Limited gave a presentation on the buyback of shares, highlighting the pros and cons of buyback of shares, as a merchant banker.
May 23, 2016	E-mail	The Company Secretary of the Company was communicated to initiate preparations for the proposal to undertake buyback of shares
May 23, 2016	Letter to stock exchanges	The stock exchanges were intimated that the board of directors of the Company will consider proposals for announcement of dividend or buyback of shares, or a combination thereof, in its meeting to be held on May 27, 2016.
	Letter to directors of the company	The agenda papers pertaining to the proposals for announcement of dividend or buyback of shares, or a combination thereof, to be discussed at the board meeting to be held on May 27, 2016 were sent to the directors.
May 27, 2016	Meeting of the board of	The board of directors of the Company deferred the decision on proposals for announcement of dividend or buyback of shares till next board meeting.

	directors of the company	
July 14, 2016	E-mail	In preparation for the meeting of the board of directors of ADF on July 27, 2016, Motilal Oswal was approached in order to reconsider the proposed buyback of shares.
July 15, 2016	E-mail	Motilal Oswal gave financial details of buyback including the pricing of the issue to the Company Secretary
July 19, 2016	Letter to directors of the company	The agenda papers pertaining to the proposals for announcement of dividend or buyback of shares, or a combination thereof, to be discussed at the board meeting to be held on July 27, 2016 were sent to the directors.
July 21, 2016	Letter to stock exchanges	The stock exchanges were intimated that the board of directors of the Company will consider proposals for announcement of dividend or buyback of shares, or a combination thereof, in its meeting to be held on July 27, 2016
July 27, 2016	Meeting of the board of directors of the company	The board of directors of the Company approved the buyback of shares.

- v. Further, while responding to a query raised by SEBI, the Company, vide its letter dated March 17, 2018, has informed that: “...the idea to undertake the buyback of equity shares was first discussed on May 21, 2016 amongst Girish Nadkarni (representative of Motilal Oswal), Bhavesh R. Thakkar (Executive Director of the Company) and Mishal A. Thakkar (Senior Manager of the Company). Thereafter, it was decided to refer the proposal of buyback or dividend or both to the Board of Directors for their approval. Further, the option of dividend declaration was in line with the company’s previous practice of dividend payment every year over 12 consecutive years. Accordingly, the relevant papers with the agenda to consider buyback or dividend or both were circulated to the Board members on May 23, 2016 for the purpose of consideration in the Board Meeting scheduled on May 27, 2016. Simultaneously, the intimation of the same was given to both the stock exchanges where the company’s shares are listed i.e. BSE and NSE vide letter dated May 23, 2016.”
- vi. It was observed that vide its letter dated September 28, 2018, Motilal Oswal has also confirmed that there were no event(s)/development(s) related to the buyback of equity shares of ADF prior to May 21, 2016 and during the period of May 27, 2016 to July 14, 2016.
- vii. It was observed from the reply of the Company that in the instant matter, as per the agenda papers of the board meeting held on May 27, 2016, the proposed range of buyback (INR 10-15 crore) was only known to the insiders. Therefore, the proposed range of buyback in the current matter is considered as UPSI in terms of Regulation 2 (1) (n) (iii) of PIT Regulations.
- viii. The definition of ‘unpublished price sensitive information’ as given under Regulation 2 (1) (n) of PIT Regulations is as follows:

“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)...

(iii) Change in capital structure

(iv)..."

- ix. It was also observed that ADF informed the stock exchanges about the Board resolution approving the buyback of equity shares at a price not exceeding INR 125 per equity share of INR 10 each for an aggregate amount not exceeding INR 18 crore on July 27, 2016.
- x. It was further observed that the buyback offer was first discussed on May 21, 2016, amongst Mr. Girish Nadkarni (representative of Motilal Oswal), Noticee 6 / Mr. Bhavesh R. Thakkar (Executive Director of the company) and Mr. Mishal A. Thakkar (Senior Manager of the company). On May 23, 2016, ADF informed BSE and NSE that a meeting of the Board of directors of the Company is scheduled to be held on May 27, 2016 to consider either a final dividend for the financial year ending March 2016 or buyback of equity shares of the company, or a combination thereof. The buyback proposal was finally approved on July 27, 2016. The Board resolution approving the buyback of equity shares was disseminated by BSE on July 27, 2016, 3:24 PM. Subsequently, it was published by NSE on the same day on 3:30 PM.
- xi. It was noted that as per the agenda papers of the board meetings held on May 27, 2016 and July 27, 2016, the proposed size of the buyback was only known to the insiders and not generally available. Hence, it was alleged that there was an information asymmetry that existed with regards to the buyback proposal. It is further observed that there were minor differences in the agenda papers for the board meeting that was held on May 27, 2016 and July 27, 2016, with respect to the buyback proposal. It was also noted that while the agenda papers for board meeting held on May 27, 2016 provides the range of buyback as INR 10-15 crore, the agenda papers for board meeting on July 27, 2016 provides the range of buyback as INR 15 crore. Therefore, the period of UPSI is, *prima facie*, from the day when the idea to undertake the buyback was initially discussed to the day when the buyback was approved by

the board and disseminated on the BSE website, viz., May 21, 2016 to July 27, 2016, 3:24 PM.

xii. In terms of Regulation 2 (1) (g) of SEBI (PIT) Regulations, 2015,

“Insider” means any person who is:

a connected person; or

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 as “insider” regardless of how one came in possession of or had access to such information...”

xiii. It was observed that ADF Foods Limited vide its letter dated November 27, 2017, submitted to SEBI that Noticee No. 6 was one of the persons who had access to and/or was in possession of the UPSI. It was further observed from the submissions made by Motilal Oswal vide its letter dated March 26, 2018 that Noticee No. 6 as the Executive Director of ADF was having access to and/or in possession of the UPSI.

xiv. Therefore, it was alleged that the Executive Director of ADF Foods Limited viz. Noticee No.6 was an insider with respect to the UPSI. Further, it is also alleged that Noticee No.6 was related to other Noticees No. 1 and Noticee No. 2.

xv. It was observed that Noticee 1, has stated that Noticee No. 6 is her son-in-law. Therefore, it was alleged that Noticee No. 1 is deemed to be a connected person and hence, an insider herself in terms of Regulation 2 (1) (d) (ii), 2 (1) (f) and 2 (1) (g) of the PIT Regulations, which is reproduced below for reference:

2. (1) (d) (ii) Without prejudice to the generality of the foregoing, the persons falling with the following categories shall be deemed to be connected persons unless the contrary is established,-

(a). an immediate relative of connected persons specified in clause (i);

...

2. (1) (f). “Immediate relative” means a spouse of a person, and includes parent, sibling, and child of such person or of the spouse, any of whom is either dependent financially on such person, or consults such person in taking decision relating to trading in securities;”

xvi. It was noted from the submission made by Noticee No. 2 that she is the paternal cousin of Noticee No.5. Further, it was observed from the submissions of ADF that Noticee No. 5 is not only the wife of Noticee No. 6 but she was also one of the promoters of ADF during the relevant period. Hence, Noticee No. 2 is, *prima facie*, related to Noticee No. 6 as his sister-

in-law. Therefore, in view of the relationship of Noticee No. 2 with Noticee No. 6 (an insider who was also in possession of UPSI), Noticee No. 2 was alleged to be a connected person, as per the provision of Regulation 2 (1) (d) (i) of PIT Regulations, which is reproduced below for reference:

2. (1) (d) “connected person” means, -

Any person who is or has during the last six months prior to the concerned act been associated with a company, directly or indirectly, in any capacity including by reason of frequent communication with its officers or by being in any contractual, fiduciary or employment relationship or by being a director, officer or an employee of the company or holds any position including a professional or business relationship between himself and the company whether temporary or permanent that allows such person, directly or indirectly, access to unpublished price sensitive information or is reasonably expected to allow such access.”

xvii. It is also observed from the submissions of Noticee No. 2 that she is the daughter of the brother-in-law of Noticee No. 1. Therefore, in view of Noticee No. 1 herself being a “connected person”, Noticee No. 2 was also alleged to be a “connected person” as per ‘NOTE’ given at Regulation 2 (1) (f) of SEBI (PIT), 2015, which is reproduced below for reference: “NOTE: It is intended that the immediate relatives of a “connected person” too become connected persons for the purposes of these regulations.”

xviii. It is further observed that all the connected persons are insiders as per the provisions of the Regulation 2 (1) (g) of PIT Regulations.

xix. The details of trading done by Noticee No. 1 in the scrip of ADF from the period of three months prior to investigation period till three months after the investigation period is given below:

Table 6: Trading of Noticee No. 1 at BSE

Date	Buy Qty	Wt. Avg. Buy Price (in Rs.)	Sell Qty	Wt. Avg Sell Price (in Rs.)
Prior to UPSI period(February 22, 2016 to May 20, 2016)				
February 22, 2016	1,156	69.65	-	-
February 23, 2016	2,097	66.23	-	-
February 24, 2016	22,033	66.87	-	-
February 25, 2016	1,324	66.16	-	-
February 26, 2016	1,832	66.30	-	-
February 29, 2016	781	67.02	-	-
March 01, 2016	1,192	69.21	-	-
March 04, 2016	3,408	75.26	-	-
March 09, 2016	40	80.3	4,000	80.37
March 14, 2016	1,776	79.43	-	-
March 15, 2016	1,918	79.09	-	-
March 16, 2016	1,559	78.99	-	-
March 17, 2016	194	79	-	-

March 18, 2016	1,440	79.11	-	-
March 21, 2016	224	79.10	-	-
March 22, 2016	3,900	79.02	-	-
March 23, 2016	902	78.50	-	-
March 28, 2016	729	79.10	-	-
March 31, 2016	269	83.25	-	-
April 01, 2016	500	84.2	-	-
April 04, 2016	421	84	-	-
April 05, 2016	560	82.8	-	-
April 06, 2016	3,000	78.67	-	-
April 07, 2016	950	78	-	-
April 09, 2016	-	-	-	-
April 25, 2016	41	83	-	-
April 29, 2016	-	-	926	89.71
May 03, 2016	-	-	1,000	94.68
May 04, 2016	-	-	786	88.70
May 18, 2016	-	-	-	-
May 19, 2016	102	87.56	-	-
Total	52,348	71.91	6712	84.76
During UPSI Period(May 21, 2016 to July 27, 2016)				
June 03, 2016	917	83.63	-	-
June 06, 2016	656	83	-	-
June 07, 2016	0	-	-	-
June 08, 2016	1,529	84.45	-	-
June 09, 2016	302	83.95	-	-
June 10, 2016	6	83.5	-	-
June 13, 2016	425	83.35	-	-
June 14, 2016	1,165	85.33	-	-
June 17, 2016	420	86	-	-
June 24, 2016	2,510	85.12	-	-
July 12, 2016	935	89.75	-	-
July 13, 2016	1,752	89.71	-	-
July 14, 2016	4,866	89.74	-	-
July 15, 2016	2,276	89.48	-	-
July 18, 2016	2,990	89.42	-	-
July 19, 2016	4,624	89.85	-	-
Total	25,373	88.08	-	-
Post UPSI Period(July 28, 2016 to October 28, 2016)				
No trades observed related to ADF				

Table 7: Trading of Noticee No. 1 at NSE

Date	Buy Qty	Wt. Avg. Buy Price(in Rs.)	Sell Qty	Wt. Avg Sell Price(in Rs.)
Prior to UPSI period(February 22, 2016 to May 20, 2016)				
February 22, 2016	3,000	69.20		
February 23, 2016	9,592	66.46		
February 24, 2016	8,173	66.03		
February 25, 2016	10,129	66.62		
February 26, 2016	5,803	66.43		
February 29, 2016	3,391	66.85		
March 01, 2016	3,154	69.24		
March 04, 2016	4,182	74.88		
March 09, 2016	-	-	1,000	80
March 14, 2016	1,000	79.5		
March 15, 2016	600	79.13		
March 16, 2016	1,682	78.85		
March 18, 2016	576	79.24		

March 21, 2016	1,501	78.96	-	-
March 22, 2016	1,100	78.88	-	-
March 23, 2016	349	78.60	-	-
March 28, 2016	931	79.50	-	-
March 29, 2016	467	81.65	-	-
March 31, 2016	2,441	83.92	-	-
April 01, 2016	550	84.13	-	-
April 04, 2016	50	84	-	-
April 05, 2016	21,899	81.59	-	-
April 06, 2016	2,000	79	-	-
April 07, 2016	1,550	77.99	-	-
April 25, 2016	1,959	82.51	-	-
April 28, 2016	-	-	5,000	90.2
April 29, 2016	-	-	1,000	89.11
May 03, 2016	-	-	9,000	94.30
May 04, 2016	-	-	-	-
May 18, 2016	300	86	-	-
May 19, 2016	2,981	87.73	-	-
Total	89360	74.11	16000	91.80
During UPSI Period(May 21, 2016 to July 27, 2016)				
June 03, 2016	1,456	83.62	-	-
June 06, 2016	400	83	-	-
June 07, 2016	1,000	83	-	-
June 08, 2016	2,876	84.23	-	-
June 09, 2016	4,681	83.99	-	-
June 10, 2016	1,006	83.50	-	-
June 13, 2016	1,344	83.14	-	-
June 14, 2016	10,149	85.49	-	-
June 17, 2016	1,000	86	-	-
June 24, 2016	11,527	84.86	-	-
July 12, 2016	7,137	90.05	-	-
July 13, 2016	12,789	89.80	-	-
July 14, 2016	9,613	89.66	-	-
July 15, 2016	14,383	89.43	-	-
July 18, 2016	29,080	89.50	-	-
July 19, 2016	21,043	89.78	-	-
Total	1,29,484	88.28	-	-
Post UPSI Period(July 28, 2016 to October 28, 2016)				
No trades observed related to ADF				

xx. The details of the off-market trades done in the demat account of Noticee No. 1 in the scrip of ADF Foods Limited are as follows:

Table 8: Details of the off-market trades of Noticee No. 1 in the scrip of ADF.

Date	Receipt Qty	Transfer Qty	Counterparty
Prior to UPSI period(February 22, 2016 to May 20, 2016)			
No transactions observed related to ADF			
During UPSI Period(May 21, 2016 to July 27, 2016)			
May 23, 2016	-	3,383	Shefali Bhupendra Mehta
June 10, 2016	-	8,834	Shefali Bhupendra Mehta
June 16, 2016	-	19,078	Shefali Bhupendra Mehta
June 24, 2016	-	1,420	Shefali Bhupendra Mehta
July 07, 2016	-	14,037	Shefali Bhupendra Mehta

July 14, 2016	-	2,805	Shefali Bhupendra Mehta
	-	5,267	Pranav Financial Services Pvt. Ltd.
July 15, 2016	-	14,541	Pranav Financial Services Pvt. Ltd.
July 18, 2016	-	14,479	Pranav Financial Services Pvt. Ltd.
July 19, 2016	-	16,659	Pranav Financial Services Pvt. Ltd.
July 20, 2016	-	32,070	Pranav Financial Services Pvt. Ltd.
July 21, 2016	-	25,667	Pranav Financial Services Pvt. Ltd.
Total	-	1,58,240	
Post UPSI Period(July 28, 2016 to September 29, 2016)			
No transactions observed related to ADF			

xxi. The details of trading done by Noticee No. 2 in the scrip of ADF from the period of three months prior to investigation period till three months after the investigation period is given below:

Table 9: Trading of Noticee No. 2 at BSE

Date	Buy Qty	Wt. Avg. Buy Price (in Rs.)	Sell Qty	Wt. Avg Sell Price (Rs.)
Prior to UPSI period(February 22, 2016 to May 20, 2016)				
March 08, 2016	-	-	6,684	78.21
March 18, 2016	210	79		
April 13, 2016	-	-	2,288	85.73
April 18, 2016	-	-	36	84.05
April 20, 2016	-	-	1,152	83.83
April 21, 2016	-	-	110	84.4
April 27, 2016	-	-	1,150	86.39
April 28, 2016	-	-	1,944	92.26
May 04, 2016	-	-	1,549	88
May 05, 2016	500	85.15	-	-
May 13, 2016	67	86.6	-	-
May 16, 2016	500	86.6	-	-
May 18, 2016	1,000	86.55	1,229	86.07
May 20, 2016	3,423	87.53	-	-
Total	5,700	86.74	16,468	83.55
During UPSI Period(May 21, 2016 to July 27, 2016)				
May 23, 2016	3,302	87.68	-	-
May 24, 2016	4,807	87.91	-	-
May 25, 2016	3,665	89.31	-	-
May 26, 2016	1,390	91.34	-	-
May 27, 2016	3,570	92.91	1,230	92.28
June 21, 2016	-	-	1,285	94.50
July 20, 2016	490	90	-	-
July 21, 2016	8,836	91.85	-	-
July 25, 2016	1,137	96.56	-	-

July 26, 2016	8,772	96.55	-	-
July 27, 2016	17,320	107.34	-	-
Total	53,289	97.01	2,515	93.41
Post UPSI Period(July 28, 2016 to October 28, 2016)				
July 28, 2016	-	-	12,631	110.12
August 12, 2016	440	118.5	-	-
August 29, 2016	-	-	7,342	133.90
August 30, 2016	-	-	4,392	132.77
August 31, 2016	-	-	-	-
September 01, 2016	-	-	5,000	132.00
September 02, 2016	-	-	1,000	131.80
September 07, 2016	-	-	1,000	131.00
September 08, 2016	-	-	-	-
September 09, 2016	-	-	23,371	125.02
September 12, 2016	-	-	-	-
September 16, 2016	-	-	15	130.00
September 19, 2016	-	-	14,000	134.78
September 28, 2016	-	-	1,000	135.00
October 25, 2016	-	-	3,398	152.66
October 26, 2016	-	-	25,969	163.25
October 27, 2016	-	-	29,276	180.79
October 28, 2016	-	-	14,710	179.86
Total	440	118.5	1,43,104	150.39

Table 10: Trading of Noticee No. 2 at NSE

Date	Buy Qty	Wt. Avg. Buy Price (in Rs.)	Sell Qty	Wt. Avg Sell Price (in Rs.)
Prior to UPSI period(February 22, 2016 to May 20, 2016)				
March 08, 2016	-	-	5,072	76.98
March 09, 2016	-	-	1,000	79.30
March 28, 2016	1,000	79.2	-	-
April 12, 2016	-	-	1,673	85.61
April 13, 2016	-	-	1,968	85.73
April 18, 2016	-	-	5,599	83.93
April 20, 2016	-	-	1,870	84.09
April 27, 2016	-	-	1,850	87.37
April 28, 2016	-	-	2,500	92.27
May 04, 2016	-	-	451	88
May 05, 2016	250	85.15	-	-
May 13, 2016	89	86.85	-	-
May 16, 2016	500	86.60	-	-
May 18, 2016	3,700	86.14	-	-
May 20, 2016	7,577	87.43	-	-
Total	13116	86.35	21983	83.73
During UPSI Period(May 21, 2016 to July 27, 2016)				

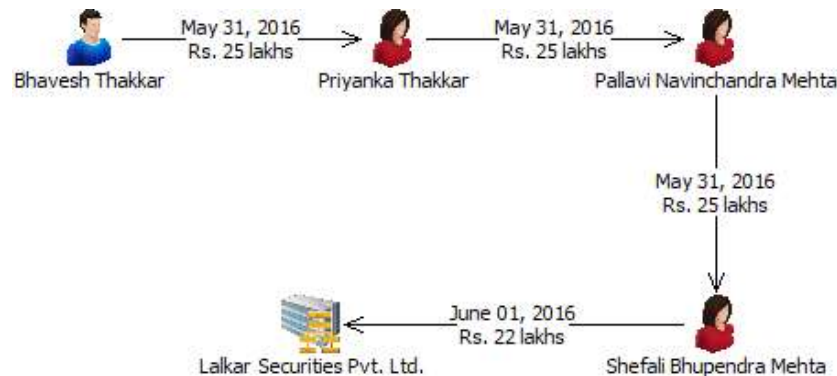
May 23, 2016	14,016	87.71	-	-
May 24, 2016	15,193	87.92	-	-
May 25, 2016	7,243	89.17	-	-
May 26, 2016	5,889	91.22	-	-
May 27, 2016	11,430	92.89	-	-
June 21, 2016	-	-	-	-
July 20, 2016	3,212	90.40	-	-
July 21, 2016	18,839	91.83	-	-
July 25, 2016	-	-	-	-
July 26, 2016	45,577	96.40	-	-
July 27, 2016	1,32,680	107.87	-	-
Total	2,54,079	100.50	-	-
Post UPSI Period(July 28, 2016 to October 28, 2016)				
July 28, 2016	-	-	37,369	109.82
August 12, 2016	4,750	118.17	-	-
August 29, 2016	-	-	7,600	133.50
August 30, 2016	-	-	4,700	132.78
August 31, 2016	-	-	3,000	128.15
September 01, 2016	-	-	6,472	131.96
September 02, 2016	-	-	1,335	131.66
September 07, 2016	-	-	1,000	131
September 08, 2016	-	-	1,000	130
September 09, 2016	-	-	11,029	125.09
September 12, 2016	-	-	29	126
September 16, 2016	-	-	7,985	131.50
September 19, 2016	-	-	15,000	134.87
September 28, 2016	-	-	2,407	135.58
October 26, 2016	-	-	3,536	173.09
October 27, 2016	-	-	39,137	180.31
October 28, 2016	-	-	14,252	179.41
Total	4750	118.17	1,55,851	143.89

xxii. It is alleged that Noticee No. 2 and Noticee No. 1 are insiders by virtue of being connected persons in terms of provisions of Regulation 2(1) (d), 2(1)(f) and 2(1)(g) of PIT Regulations. Generally, there will be no written communication among the close family members for communicating any price sensitive information. In the instant matter, the Noticees who have traded in the shares of ADF during the UPSI period are the family members of Noticee No. 6 who himself was the Executive Director of ADF and was alleged to be in possession of the UPSI at that time. It is therefore alleged on the basis of the aforesaid facts that the UPSI was communicated by Noticee No. 6 to Noticee No. 2 and Noticee No. 1 and they traded in the scrip of ADF on the basis of the UPSI communicated

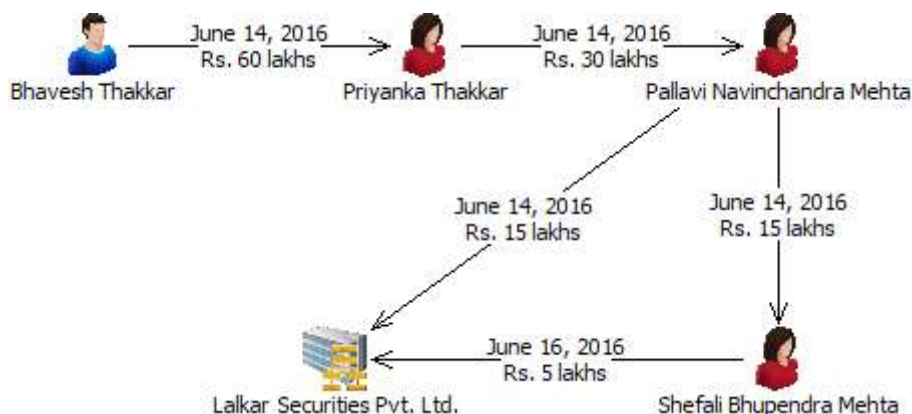
by Noticee No. 6 and therefore, Noticee No. 2, Noticee No. 1 and Noticee No. 6 have, allegedly engaged in insider trading. Therefore, Noticee No. 2 and Noticee No. 1 are alleged to have violated provisions of Section 12A (d) & (e) of the SEBI Act and Regulation 4(1) of the PIT Regulations and Noticee No. 6 is alleged to have violated provisions of Section 12A (d) & (e) of the SEBI Act and Regulation 3(1) and 4(1) of the PIT Regulations.

xxiii. On the basis of the analysis of the bank statements of the Noticees, it is alleged that the funds for the purpose of purchase of the shares of ADF by Ms. Pallavi/ Noticee No. 1 and Ms. Shefali/ Noticee No. 2, *prima facie*, appear to be originating from the account of Mr. Bhavesh/ Noticee No. 6. Some of such instances of the alleged transfer of funds from the account of Noticee No. 1 to the account of Noticee No. 1 and Noticee No. 2 for the purpose of purchasing the shares of ADF are given below:

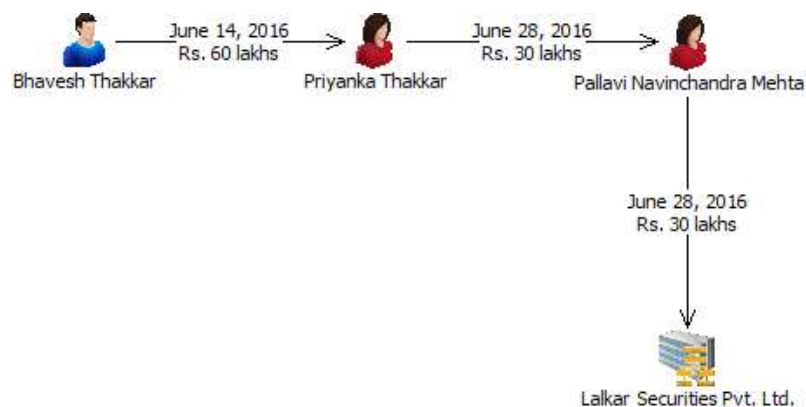
Fund transfer of among the Noticees on May 31, 2016 and June 01, 2016 are shown pictorially below.



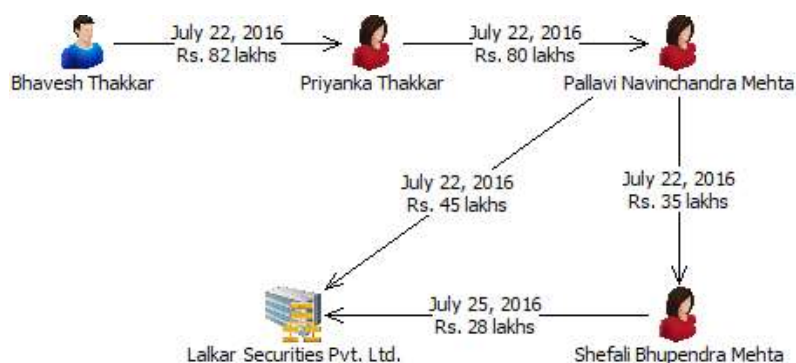
Fund transfer among the entities on June 14, 2016 and June 16, 2016:



Fund transfer among the entities on June 14, 2016 and June 28, 2016:



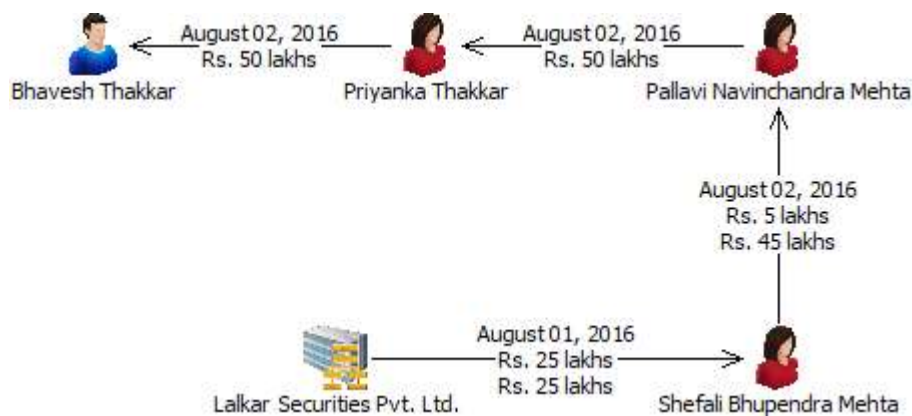
Fund transfer among the entities on July 22, 2016 and July 25, 2016:



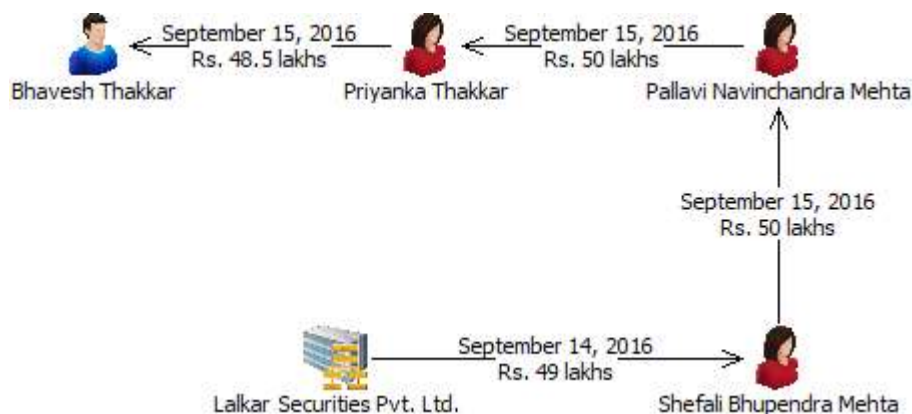
xxiv. Thus, it was alleged that Noticee No. 2 and Noticee No. 1 have traded in the shares of ADF while in possession of UPSI, as the funds for purchasing the shares of ADF by Noticee No. 2 and Noticee No. 1 (through their stock broker viz. Lalkar Securities Pvt Ltd) were, *prima facie*, coming from Noticee No. 6 himself who was an insider in possession of the UPSI.

xxv. It was further alleged that subsequently funds were transferred back from the account of Noticee No. 2 to the account of Noticee No. 6, some instances of which are shown pictorially below:

Fund transfer among entities on August 01, 2016 and August 02, 2016.



Fund transfer among entities on September 14, 2016 and September 15, 2016.



xxvi. On the basis of the transactions mentioned above, it was also alleged that Noticee No. 5, wife of Noticee No. 6, was, *prima facie*, actively involved as a layer for the fund transfers between the account of her husband and the accounts of Noticee No. 2 and Noticee No. 1. It is relevant to mention that Noticee No. 5 was herself a promoter of ADF during the quarter ending June 2016 and September 2016. Therefore, it was alleged that Noticee No. 5, by virtue of her relationship with Noticee No. 6, had access to the UPSI and her bank account was also allegedly used as a conduit for transferring funds to the accounts of Noticee No. 2 and Noticee No. 1 for trading in the scrip of ADF during the UPSI period. Therefore, in view of the aforementioned observations it was alleged that Noticee No. 5 was also involved in insider trading as per the Note mentioned with the provisions of Regulation 2 (1) (l) of PIT Regulations, which is reproduced below for reference:

“NOTE: Under the parliamentary mandate, since the Section 12A(e) and Section 15G of the Act employs the term ‘dealing in securities’, it is intended to widely define the term “trading” to include dealing. Such a construction is intended to curb the activities based on unpublished price sensitive information which are strictly not buying, selling or subscribing, such as pledging etc. when in possession of unpublished price sensitive information.”

xxvii. It was observed that Lalkar Securities Pvt. Ltd. was the broker through which Noticee No. 1 and Noticee No. 2 had traded in the scrip of ADF, allegedly, while in the possession of UPSI. Further, Lalkar Securities Pvt. Ltd vide its letter dated January 5, 2018, provided the copy of authorization letter, duly signed by Noticee No. 1, authorizing Noticee No. 3 either/or Noticee No. 6 to buy and sell shares on her behalf from her account. Lalkar Securities Pvt. Ltd. also provided the copy of authorization letter, duly signed by Noticee No. 2, authorizing Noticee No. 3 and Noticee 4 to buy and sell shares on her behalf from her account. It was observed that Noticee No. 1 and Noticee No. 2 have also admitted in their submissions to SEBI that they had authorised Noticee No. 3, Noticee No. 4 and Noticee No. 6 to trade in the shares on their behalf and the orders on their behalf was placed by Noticee No. 3 himself. It is further observed that Noticee No. 2 has submitted to SEBI that Noticee No. 4 is her son. Lalkar Securities Pvt. Ltd has submitted that the orders for trading in the account of Noticee No.1 and Noticee No. 2, while in possession of UPSI, were being placed by Noticee No. 3, Noticee No. 4 and Noticee No. 6 from the telephone numbers 9323[REDACTED], 9820[REDACTED], 9820[REDACTED] (*mobile numbers masked to maintain privacy*). Therefore, it is alleged that the orders in the accounts of Noticee No. 1 and Noticee No. 2 were being placed by Noticee No. 3, Noticee No. 4 and Noticee No. 6 for trading in the scrip of ADF while in possession of UPSI during the UPSI period. Thus, Noticee No. 3, Noticee No. 4 and Noticee No. 6 were also, allegedly, involved in the insider trading in the scrip of ADF.

xxviii. It is observed that as per the public announcement made by ADF on July 27, 2016, the board of directors of ADF in its meeting held on July 27, 2016 had approved a buyback of equity shares at a price not exceeding INR 125 per equity share of INR 10/- each. The closing price of the scrip on the day of the UPSI becoming public was INR 114.00/- and INR 112.70/- on BSE and NSE, respectively. As the buyback of the equity shares was approved at a price higher than the closing market price on the day of UPSI becoming public, the news relating to buyback of equity shares of ADF appears to be a positive news and the unlawful gains, *prima facie*, made by the Noticees have been calculated accordingly as detailed hereunder:

Unlawful gains made (in case of positive news) = No. of shares bought while in possession of UPSI X Closing price on the day of UPSI becoming public – No. of shares bought while in possession of UPSI X weighted average purchase price.

The lower of closing prices on BSE and NSE have been considered as closing price for computation of unlawful gains.

xxix. As regards the 2,515 shares sold by Noticee No. 2 during the UPSI period, she was holding 51,121 shares of ADF on May 20, 2016 (one day prior to the start of the UPSI period), as per the holding details provided by the depositories. Therefore, the 2,515 shares sold by Noticee No. 2 during the UPSI period, were from those purchased and held by her prior to the UPSI period. Off-market transfers are not considered in the calculations.

Table no. 11: Calculation of unlawful gains

Particulars	Pallavi Navinchandra Mehta	Shefali Bhupendra Mehta
No. of shares bought while in possession of UPSI	1, 54,857 <u>112.70</u>	3, 07,368 <u>112.70</u>
X Closing price on the day of UPSI becoming public	17, 452, 383.9	34, 640, 373.6
Subtotal (i)		
(-) Less		
No. of shares bought while in possession of UPSI	1, 54,857 <u>88.25</u>	3, 07,368 <u>99.89</u>
X Weighted average purchase price	13, 666, 130.3	30, 702, 989.5
Subtotal (ii)		
Unlawful gains made (approx.) ((i)-(ii))	37, 86,253.6	39, 37,384.1

Based on the methodology explained, it was alleged that Noticee No. 1 and Noticee No. 2 made unlawful gains of INR 37.86 lakhs and INR 39.37 lakhs, respectively.

xxx. In view of the observations mentioned in previous paragraphs, following was alleged

a. Noticee No. 6 was alleged to be an insider w.r.t. the UPSI pertaining to the proposed buy-back offer of ADF. Noticee No. 1, Noticee No. 2, Noticee No. 3, Noticee No. 4 and Noticee No. 5 are alleged to be connected persons and therefore they are, *prima facie*, insiders, as per the provisions of Regulations to 2 (1) (d), 2 (1) (f) and 2 (1) (g) of PIT Regulations.

b. Noticee No. 1 and Noticee No. 2 had, allegedly, traded in the shares of ADF on the basis of UPSI communicated to them by Noticee No. 6. The orders in the accounts of Noticee No. 1 and Noticee No. 2 were, allegedly, being placed by Noticee No. 3, Noticee No. 4 and Noticee No. 6 for trading in the scrip of ADF while in possession of UPSI

during the UPSI period. There were fund transfers among Noticee No. 6, Noticee No. 1, Noticee No. 2 and Noticee No. 5, allegedly, done to enable Noticee No. 1 and Noticee No. 2 to trade in the shares of ADF during UPSI period. Therefore, Noticee No. 1, Noticee No. 2, Noticee No. 3, Noticee No. 4, Noticee No. 5 and Noticee No. 6 were alleged to have engaged in insider trading in the scrip of ADF, while in possession of UPSI during the investigation period. Therefore, it was alleged that Noticee No. 1, Noticee No. 2, Noticee No. 3, Noticee No. 4 and Noticee No. 6 have, *prima facie*, violated the provisions of Section 12A(d) & (e) of the SEBI Act and Regulation 4(1) of PIT Regulations. It was also alleged that Noticee No. 5 has, *prima facie*, violated the provisions of Section 12A(d) of the SEBI Act and Regulation 4(1) of PIT Regulations. Further, Noticee No. 6 was alleged to have violated provisions of Section 12A (d) & (e) of SEBI Act and Regulation 3(1) and 4(1) of PIT Regulations.

c. In this regard, it is relevant to mention regulation 4(2) of SEBI (PIT) Regulations, 2015, which is reproduced below for reference:

“4.(2) In the case of connected persons, the onus of establishing, that they were not in possession of unpublished price sensitive information, shall be on such connected persons and in other cases, the onus would be on the Board.”

xxxi. The relevant provisions of PIT Regulations and SEBI Act are as under:

SEBI Act:

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

12A. No person shall directly or indirectly—

(d) engage in insider trading;

(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;

PIT Regulations:

Communication or procurement 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.

NOTE: This provision is intended to cast an obligation on all insiders who are essentially persons in possession of unpublished price sensitive information to handle such information with care and to deal with the information with them when transacting their business

strictly on a need-to-know basis. It is also intended to lead to organisations developing practices based on need-to-know principles for treatment of information in their possession.

Trading when in possession of unpublished price sensitive information.

4. (1) *No insider shall trade in securities that are listed or proposed to be listed on a stock exchange when in possession of unpublished price sensitive information:*

xxxii. The aforesaid alleged violations, if established, make the Noticees liable for monetary penalty under Section 15G of the SEBI Act, which reads as follows:

Penalty for insider trading.

Section 15G. *If any insider who,—*

(i) either on his own behalf or on behalf of any other person, deals in securities of a body corporate listed on any stock exchange on the basis of any unpublished price-sensitive information;

(ii) communicates any unpublished price - sensitive information to any person, with or without his request for such information except as required in the ordinary course of business or under any law; or

(iii) counsels, or procures for any other person to deal in any securities of any body corporate on the basis of unpublished price - sensitive information,

.....

shall be liable to a penalty which shall not be less than ten lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher.

xxxiii. In view of the above, the Noticees were required to Show Cause as to why an inquiry should not be held against them in terms of Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 read with Section 15 I of the SEBI Act and why penalty, if any, should not be imposed on them under the provisions of Section 15 G of the SEBI Act.

7. The SCN dated May 02, 2019 was served upon the Noticees. The Noticees, vide their letter dated August 23, 2021 have filed a common written reply to the SCN. The Noticees *inter alia* submitted the following:

i. The said SCN has alleged that UPSI is considered to be the range of buyback. However, the material movement in the price of the securities of the Company came only on the days of

wherein buyback proposal was discussed and not its range. There was no specific positive market reaction on disclosure of the alleged UPSI (range of buyback) whereas the market constantly reacted to the news of buy-back. Hence, the whole premise of the SCN that the range of buyback was UPSI, and that the notices have committed the act of insider trading while in possession of UPSI, is erroneous and unfounded. *In this regard, reliance was placed inter alia on the following decisions:*

- a. Rajiv B. Gandhi V. SEBI, Appeal No. 50 of 2007- decided on May 09, 2008 by the Hon'ble SAT.
 - b. Adjudication Order in Emami Ltd, Adjudication order No. EAD/BJD/VS/21-27/2018 dated May 18, 2018.
- ii. The letters addressed by ADF Ltd dated March 17, 2018 and letter addressed by Motilal Oswal dated September 28, 2018, clearly establishes the fact that buyback itself was not certain and hence to consider the range of buyback to be the UPSI is untenable. A buyback and dividend are two distinct methods resorted to by a company to distribute surplus funds to the shareholders. It is evident from the minutes of the meeting of the board of ADF foods ltd on May 27, 2016 that, board was debating whether to announce a buyback or to announce a dividend, taking into account cash flows establishes the fact that buyback itself was not certain.
 - iii. The range of buyback was merely a proposal tabled before the board of directors, which comprised a majority of independent directors. The initial range was INR 10-15 Crores, which underwent a change and was fixed at INR 15 Crore in the agenda papers circulated on July 21, 2016. However, the board actually approved a buyback of Rs 18 Crores at the meeting held on July 27, 2016. Hence not only the announcement of buyback was uncertain, the range of buyback itself was uncertain. Since, both the buyback and dividend would have to be from the free reserve, hence the latter would have an impact on the size of the former. Therefore, the size of the buyback could never have been certain for the SCN to treat the proposed range to be UPSI.
 - iv. In terms of Section 68 of Companies Act, 2013 and SEBI (Buy-Back of Securities) Regulations, 2018, a company can buy-back upto 10% of its paid-up capital and the free reserves, without shareholders' approval and Board's approval is sufficient for such an action. Further, a company is not permitted to buyback of its securities beyond 25% of the paid-up capital and free reserves of such company.

- v. By applying the aforesaid regulatory principles, the total paid up capital and free reserves of ADF for the F.Y. 2015-16 was INR 18,577 Lakhs, and the Company could have offered INR 18 Crore for buy-back without shareholders' approval. Hence, quantum of proposed buy-back was not price sensitive as it could be easily calculated from the generally available information in public domain. The amount of buy-back decided by the Company was equal to the amount that the Company could have put to use to execute a buyback through a Board Resolution, under the extant regulatory framework. The actual range of buyback (INR 18 Crore) was higher as compared to the range of INR 10-15 Crore, which is considered as UPSI in the SCN. Therefore, the contention raised in the SCN that the quantum of buyback was price sensitive cannot be sustained.
- vi. Announcement of Company's intention to consider the buy-back was made on May 23, 2016 and the range of buy-back could be calculated on the basis of applicable legal provisions, hence, the period of May 21, 2016 to July 27, 2016 has wrongly been taken as UPSI period, as the UPSI ceased to exist after the aforesaid announcement made on May 27, 2016. xi. There was gap of 48 days between the two Board Meetings, as can be seen from the following table:

Table no. 12: Details of UPSI

Particulars	Start Date of UPSI	Date of Announcement
P1: The proposal for buyback of shares was initially considered in lieu of issue of final dividend for FY'16. The consideration was postponed till the next board meeting of the Company.	May 21, 2016	May 27, 2016 (08:09 p.m.)
P2: The proposal for buyback of shares was reconsidered in lieu of issue of interim dividend for FY'17 and was approved by the board of directors in their meeting held on July 27, 2016.	July 14, 2016	July 27, 2016 (03.24 p.m.)

- vii. The first period of UPSI (P1) came into existence on May 21, 2016 when the idea of buyback of shares was originally floated and the said period ended on May 27, 2016 as disclosure was made regarding the postponement of consideration of the proposed buyback.
- viii. It was stated in the letter sent by the Company to SEBI containing the chronology of events that there was no discussion/communications regarding the proposed buy-back, either

within the Company or with Motilal Oswal. The same is also stated in the letter dated September 28, 2018 of Motilal Oswal. During the period of 48 days between the two Board Meetings, the trading window of the Company was kept open.

- ix. The second period of alleged UPSI (P2) came into existence on July 14, 2016 as a communication was sent to Motilal Oswal for reconsideration of the proposal regarding buyback of shares. The P2 came to an end on July 27, 2016 at 03:24 PM, when a disclosure of approval of the proposal for buy-back of shares was made to stock exchanges.
- x. The SCN has concluded that, as per SEBI (PIT) Regulations, 2015, since Noticee No. 6 is the Son – in Law of the Noticee No. 1, Hence, Noticee No. 1 is deemed to be connected person and insider herself. The SCN has made no attempt to demonstrate any incident when the said UPSI was actually communicated by Notice No. 6 to Noticee No. 1 or any instance where Noticee No. 1 was in possession of UPSI. Noticee No. 1 is an independent person with knowledge and skills of investing in financial markets and has been long term investor who trades on her own. Hence, in absence of any material which may indicate otherwise it cannot be presumed that Notice No.1 was in possession of UPSI and has committed Insider Trading. In this regard, reliance was placed on the following case:
 - a. Navneet Publication India Ltd. Adjudication Order No. NP/SJ/AO/16/2016 – SEBI order dated December 20, 2016.
- xi. Notice No. 2 is not a connected person and not an insider, as SEBI has failed to establish the connection sufficiently. The SCN does not specify as to, by which criteria the Notice No. 2 becomes connected with the Company, in terms of the criterion laid down in the PIT Regulations. The Notice No. 2 is not having any professional, employment or fiduciary relationship with the Company nor is she employed by any of the Director/Promoter of the Company. such relationships as Notice No. 2 are not covered under the definition of immediate relative, hence Notice No. 2 is not an insider/connected person.
- xii. The Noticees have submitted the details of previous trading in the scrip of ADF as follows:

Table no. 13: Details of Trades Notice No.1 & 2

Year	Appeallant No. 1		Appeallant No. 2	
	Buy	Sell	Buy	Sell
F.Y. 2015-16	1,19,546*	5,000	5,27,536	4,07,769
F.Y. 2016-17	1,91,720	76,565	3,27,934	4,20,723
F.Y. 2017-18	0	38,500	0	26,978

*Trades between January to March, 2016

xiii. The trading pattern of Noticee No. 1 is not unusual and is consistent with her past conduct. Similarly, Noticee No. 2 also had a consistent trading pattern compared to its trades in previous years. In F.Y 2015-16, she had purchased 5.27 lakh shares and in the next year only 3.27 Lakh (approx.), which is 60 % less than the previous year. Noticee No. 1 and notice No. 2 are regular investors in the scrip of ADF Foods Ltd as also is evident from the Table below:

Table no. 14: Details of Trades Notice No.1 & 2

Year	Noticee No. 1		Noticee No. 2	
	Buy	Sell	Buy	Sell
January 2016	0	0	0	0
February 2016	84,012	0	81,756	0
March, 2016	35,534	5,000	1,210	12,756
April 2016	33,480	6,926	0	22,466
May 2016	3,383	10, 786	88, 111	4,459
June 2016	43, 369	0	0	1,285
July 2016	1,11,488	0	2,36,863	50,000

- xiv. As can be seen from the above table, Noticee No. 1 during February to April 2016 purchased 1,53, 026 shares whereas during May to July 2016 purchased 1, 58, 249 shares. Noticee No. 1 has only purchased the shares of ADF and has not sold any shares during the Investigation period. Noticee No. 1 sold the shares before the Investigation period. i.e., March 2016 sold 5000 shares and in April 2016 sold 6926 shares and in May 2016 prior to the buyback sold 10, 786 shares. She would have used the UPSI in her favour to make gains when the price of the scrip would have gone up upon disclosure.
- xv. Noticee No. 2 has bought shares in the month of March 2016 and May 2016 and sold certain shares in March to June 2016, however the said purchase was not on the basis of UPSI as no profits were made upon disclosure of UPSI on July 27, 2016.
- xvi. Based on the above it is submitted that Both Noticee 1 and 2 are independent persons with knowledge and skills of investing in financial markets and have been long term and regular investors. The SCN fails to demonstrate the any material to suggest any actual possession of the UPSI by the Noticees or their reliance to purchase shares based on UPSI.
- xvii. With respect to the fund transfer between Noticees, it is submitted that the amount transferred and the amount deposited with the broker has huge disparity.
- xviii. There was a continuous funds transfer between Noticee No. 1, Notice No. 3 and 5, being parents and daughter. A memorandum of Understanding (“MoU” was signed on July 28,

2016 between Noticee No. 1, Noticee No. 3 and Noticee No. 5, which was Notarised on the same day. As per the MoU the Noticee No. 5 agreed to purchase a flat co-owned by Noticee No.1 and 3. The Sale amount was INR 5.09 Crore wherein 4.09 Crore was to be paid upfront and the rest INR 1 Crore was to be paid on possession of the said flat. The said amount of INR 4.09 Crore was transferred by the Noticee No. 5 to the joint account of Noticee No. 1 and 3. Pursuant to the said transfers and certain other formalities, the ownership of the flat was changed as of today, the said flat is now co-owned by Noticee No. 1, 3 and 5. In light of this, it is submitted that the said funds transfers were made in furtherance of sale-purchase of a flat and not for aiding any illegal trades. In the said SCN has wrongly mentioned the amount transferred, SEBI has cherry picked certain transactions to allege illegal fund transfers. The dates on which the various fund transfers were made between the said notices do not match with the date on which Noticee No.1 has traded. Both these acts were independent of each other.

- xix. Notice Nos. 3 and 4 were merely authorized signatories for the Notice Nos. 1 and 2 and all decisions with respect to the trades were taken by the Notice Nos. 1 and 2 only. As the Notice Nos. 3 and 4 have merely delivered the trading orders and since the trades have been decided to be executed by the Notice Nos. 1 and 2, no action should be taken against Notice Nos.3 and 4 irrespective of any findings made in relation to the other Noticees.
 - xx. It is submitted that, the adjudicating officer for the purpose of calculation of unlawful gains has also taken into account the shares which were purchased before the alleged UPSI period, which is arbitrary as these shares cannot be said to have been purchased while in possession of UPSI.
8. In the interest of natural justice and in terms of the Adjudication Rules, Noticees were provided with an opportunity of personal hearing in the matter on October 27, 2021, through the online webex platform. The Noticees vide email dated October 26, 2021 informed that, an appeal bearing number A.No. 606/2021 was filed before Hon'ble SAT challenging the order dated March 30, 2021 passed by WTM, SEBI in the matter of ADF foods Ltd and the matter is now listed for admission and final hearing on December 21, 2021, hence, it was requested to adjourn the hearing scheduled on October 27, 2021. Since, there was no stay on the present adjudication proceedings, it was decided to proceed further with the present Adjudication proceeding and another opportunity of hearing was granted to the Noticees, which was scheduled on May 12, 2022. Vide email dated April 27, 2022 the notices informed that Appeal no. 606/2021 was listed

for Final hearing on June 20, 2022 and requested for postponement of present Adjudication proceedings. Vide email dated April 27, 2022, the Noticees were informed that, since, there is no stay granted with respect to the instant Adjudication proceedings in Appeal no. 606/2021, the present proceedings shall be continued.

9. The personal hearing in the matter was held on May 12, 2022, through the online webex platform, which was attended by Mr. Abishek Venkatraman and Mr. Burzin Somandy as the Authorized Representatives ('ARs') on behalf of the Noticees. During the course of hearing, the ARs reiterated the submissions made by the Noticees in their reply dated August 23, 2021 and requested for time to make additional submission. Noticees vide email dated May 25, 2022 reiterated the earlier submissions and also made additional submissions in the matter which has been taken on record. The Noticees *inter alia* submitted the following:
- i. The SCN makes a fundamental and foundational error in treating the proposed range of the buyback as UPSI. The idea to undertake buyback was first discussed on May 21, 2016, at this meeting there was no discussion about the range or the size of the buyback. The presentation given by Motilal Oswal also made no reference to the proposed range of the buyback. The Company was merely evaluating the options.
 - ii. On July 14, 2016, Motilal Oswal was approached again to reconsider the proposed buyback of shares, as buyback was not a certain even till July 14, 2016.
 - iii. Information of a speculative, uncertain, contingent nature cannot be regarded as UPSI. *In this regard, reliance was placed inter alia on the following decisions:*
 - a. *Samir C Arora V SEBI (Appeal No. 83/2004, Order dated October 15, 2004)*
 - b. *Taylor v First Union Corp. of South Carolina (US Court of Appeals)*
 - c. *Panfil V. ACC Corp., 768 F. Supp. 54 (1991) (US Court of Appeals)*
 - iv. The Company did not close the trading window, the window was open from May 30, 2016 to July 1, 2016, as the information was not regarded as UPSI. If the information was material, the SEBI ought to have charged the Company with breach of code of conduct under the PIT regulations and failure to disclose under the LODR regulations.
 - v. The proposition that merely because relative of an insider has traded is sufficient for SEBI to allege that the relative was privy to information has been rejected by the Honble Supreme Court in *Balram Garg V SEBI (Appeal No.7054, order dated April 19, 2022)*. The same was

applied by Adjudicating officer SEBI, in Godfrey Phillips India Ltd order dated April 29, 2022.

- vi. SCN has erred in stating that, Noticee No. 2 has authorised Noticee No. 6 to place orders on her behalf. Notice No. 2 has Authorised Noticee No. 3 and Notice No. 4. The Authorisation issued by Noticee No.1 in favour of Noticee No. 6 was issued in 2010. Lalkar Securities failed to provide specific details regarding persons placing the orders. The same is evident from the SEBI order dated October 31, 2019, against Lalkar securities.
- vii. Noticee No.1 and Noticee No. 2 were parties to a loan agreement, where Noticee No. 1 would lend money to Noticee No. 2 at 10 % interest, p.a. The interest payment is reflected in ITR filed by Noticee No. 1.
- viii. SEBI has cherry picked certain transactions of a total of INR 1.65 Crores between Notice No. 6 and Noticee No. 1, in fact an amount of INR 2.45 Crores was transferred for purchase of a flat.
- ix. Notice No. 5 and her parents entered into a sale agreement dated July 28, 2016 for purchase of a flat for INR 5.09 Crores, in terms of the sale agreement, 4.09 crores was paid in advance, and the remainder was to be transferred on possession. However, the chartered accountant issued an opinion dated July 30, 2016 that sale agreement would not be tax efficient and suggested to execute a gift deed to save tax liability in excess of INR 27.64 Lakhs and stamp duty in excess of INR 25 Lakhs. The parties executed the gift deed on February 06, 2019 and was registered on August 6, 2019.
- x. While it was originally decided to transfer the complete ownership of the flat to Noticee No. 5, pursuant to the opinion it was agreed that Noticee No. 5 will pay 50 % to purchase the rights of her sister. Since she had already transferred 4.09 Crore, an excess of INR 1.42 crore would be gifted to the childrens of Notice No. 5 and Noticee No. 6. Hence the money was transferred to Noticee No.5.
- xi. Noticee No. 5 was wrongly charged for insider trading, that she was dealing in securities. There is no delaing in securities by Noticee No. 5 or any communication of UPSI. *In this regard, reliance was placed inter alia on the following decisions: Tolaram Relumal V State of Bombay, (1955) 1 SCR 158*

CONSIDERATION OF ISSUES AND FINDINGS

10. I have carefully perused the charges levelled against the Noticees in the SCN and the material / documents made available during the course of the proceeding, including the common replies furnished by the Noticees. I have also perused the additional submissions made by the Noticees in the said matter. In order to evaluate the case on its merits, I will now proceed to deal with the following issues arising out of the present proceedings, one by one, as under:

- i. **Whether the Noticees are ‘Insiders’ in terms of the PIT Regulations?**
- ii. **Whether information pertaining to the buyback of shares of ADF/Range of buyback was an UPSI during the period May 21, 2016 to July 27, 2016?**
- iii. **Whether or not the Noticees have engaged in the act of insider trading while in possession of/access to UPSI ?**
- iv. **Whether the trades executed by Noticee No. 1 and 2 in the scrip of ADF were funded by Noticee No. 6 ?**
- v. **Does the violation by the Noticees, attract monetary penalty under sections 15G of the SEBI Act?**
- vi. **If so, what would be the monetary penalty that can be imposed on the Noticees after taking into consideration the factors mentioned in section 15 J of the SEBI Act?**

Whether the Noticees are ‘Insider’ in terms of the PIT Regulations?

11. It is noted that regulation 2 (1) (g) (i) of PIT Regulations, defines insider as any person who is a connected person or who is in possession of or having access to UPSI. It is further noted from SCN that the Notice No. 6 is an Executive Director and also promoter of ADF and hence, being a Director of ADF, he falls undisputedly in the definition of connected person in terms of regulation 2(1) (d) (i) of PIT Regulations. The Notice No. 6 was one of the persons, who attended all the relevant meetings pertaining to the buyback of securities. The Company vide its letter dated March 17, 2018 has informed that the idea of buyback of equity share was first mooted on May 21, 2016 and amongst others the Notice No. 6 was also present in the said meeting wherein it was decided to refer the proposal of buyback or dividend or both, to the Board of Directors of the Company. Further, as per the information submitted by the Company vide its letter dated November 27, 2017 regarding the names of persons who were having access to and were in possession of the USPI, the name of the Notice No. 6 is mentioned in the said list of names furnished by the Company. Similarly, the name of the Notice No. 6 has also been

mentioned in the list of names furnished by the Merchant Banker i.e., Motilal Oswal vide its letter dated March 26, 2018 about the persons who were having access to and/or in possession of the UPSI. I further note that the fact that, Notice No. 6 was associated as an Executive Director with the Company and was in possession of the UPSI related to the buyback of securities proposed to be offered by ADF is not denied. From the above, it becomes evident that the Notice No. 6 being the Executive Director of ADF is a connected person in terms of regulation 2(1)(d) of PIT Regulations and thereby an insider under regulation 2(1)(g)(i) as well as (ii) of the PIT Regulations. Similarly, the fact that, Notice No. 5, being Promoter of the Company and also was the wife of the Notice No. 6 is not disputed and it satisfies the pre-requisites of regulation 2(1) (d) (ii) (a), r/w 2 (1) (f) to be held as an insider within the regulation of 2 (1) (g) (i) of the PIT Regulations.

12. The Hon'ble Supreme Court in SEBI vs. Kanhaiyalal Patel has rightly held that an inferential conclusion from proved and admitted facts would be permissible and legally justified so long as the same is reasonable. In support of the above view, I also rely on the observations made by the Hon'ble SAT in the case of Rajiv B. Gandhi, vs. SEBI (Appeal Number 50 of 2007): *"...Insider is a person who is or was connected with the company and who is reasonably expected to have access by virtue of such connection to unpublished price sensitive information in respect of securities of the company. A person who has received such information or has had access to such information is also an insider."*

13. In order to better understand the factual matrix of the case, the details of the relationships amongst the Noticees are placed in the table below:

Table no. 15: Details of relationship

Sr. No.	Name of the Noticee	Relationship with other Noticees
1.	Ms. Pallavi Navinchandra Mehta	Wife of Notice No. 3 Mother of Notice No. 5 Mother in Law of Noticee No. 6
2.	Ms. Shefali Bhupendra Mehta	Paternal Cousin of the Notice No.5 Sister-in-law of Notice No. 6 Mother of Notice No. 4 Niece of Notice No 3
3	Shri Navin Mansukhlal Mehta	Husband of Notice No. 1 Father of Notice No. 5 Father-in-law of Notice No. 6 Uncle of Notice No. 2

4.	Shri Abhishek Mehta	Son of Notice No. 2
5.	Ms. Priyanka Thakkar	Daughter of Notice Nos. 1 and 3 Wife of Notice No. 6 Paternal cousin of Notice No. 2
6.	Shri Bhavesh R Thakkar	Husband of Notice No. 5 Brother-in-law of Notice No. 2 Son-in-law of Notice No. 1 and 3

14. The SCN alleges that Notice No. 6 being an Executive Director and promoter of the Company, was absolutely in possession of and or had access to the UPSI related to the proposed buyback, and the rest of the other Noticees, being very closely connected to the Notice No. 6, were also to be deemed to be in possession of the said UPSI, through the Notice No. 6. In this factual context, as the Notice Nos. 1 and 2 are seen to have traded in the scrip of ADF during the UPSI period and the orders for the trades have been placed by the Notice Nos. 3, 4 and 6 as their authorised representatives, they have been alleged to have engaged/indulged in insider trading, while in possession of the UPSI, received by them through the Notice No. 6. Thus, it was alleged that the Notice No. 6 being privy to the UPSI of buyback offer of ADF has acted as the tipper and has passed on the UPSI to his wife, mother-in-law, sister -in-law, father-in-law and son of his sister- in- law. The SCN alleges that the Notice No.1, being the mother-in- law of the Notice No. 6 and the Notice No. 3 being father-in-law of the Notice No. 6 are deemed to be connected person and hence they were insiders of the Company. It is noted that the said allegation has not been contested by the Noticees. The SCN provides that the Notice Nos. 1 and 3 are parents-in-law of the Notice No. 6 or parents of the Notice No. 5, both of whom (i.e. Notice Nos. 5 and 6) have not disputed to their status of being insiders of the Company. Further, SCN mentions that the Notice No. 3 as well as the Notice No. 6 were the authorised persons for the purpose of placing the trades on behalf of Notice No. 1. It is also observed that, in addition to the fund transfers amongst the Noticees, there is no denial to the fact that Notice Nos. 3 and 6 were authorized to trade on behalf of the Notice No. 1 and Notice Nos. 3 and 4 were authorized for the trades of the Notice No. 2. The Notice No. 1 has acknowledged that the orders in the scrip of ADF were placed by her husband. The SCN alleges that the Noticees are connected persons, possessing and/or having access to the UPSI and therefore, were insider under the PIT Regulations.

15. The SCN further alleges that the Notice Nos. 1 and 2 have traded in the shares of ADF and have made an unlawful profit of INR 77.23 Lakh (approx.) while in possession of the UPSI relating to the impending buy-back offer of the Company. The trading pattern of the tippees i.e., Notice Nos. 1 and 2 reflect that their trades in the scrip were influenced by UPSI as Notice Nos. 1 and 2 have only traded in the shares of ADF and did not trade in any other shares during the relevant period. It has thus also been alleged that the Notice Nos. 1 and 2 were not only connected persons but also were 'insiders' to ADF in terms of the PIT Regulations.
16. It is observed that, the Noticees in their common reply have not contended, (except for the Notice No. 2) that they are not connected with each other. Insofar as the trades by the Notice No. 2 is concerned, I note from the information submitted by the Noticees that all the investment decisions were taken by her in consultation with the Notice No. 3. As per the SCN, Notice No. 2 is being linked to the Notice No. 5 as both of them are first cousins and the Notice No. 5 is the wife of the Notice No. 6. I note that the Notice Nos. 2 and Noticee 3 (uncle of the Notice No. 2) remained connected and enjoyed close relationship. The Notice No. 2 has not only authorised the Notice No. 3 to place trades on her behalf but also admittedly was consulting him for her investment decisions. In this regard, reliance is placed on the annexures to the SCN which inter alia include communication exchanged between SEBI and the Notice No. 2. The Notice No. 2 in her letter dated April 10, 2018 responding to SEBI's letter dated April 03, 2018, has *inter alia* stated that: "...I myself take all my financial investment decisions after discussing with my uncle, Mr. Navin Mehta (including trading in ADF). He also makes investment on my behalf. The orders of ADF were placed by my uncle from time to time through my broker Lalkar Securities". The relationship of Noticee Nos. 2 and 3 was not restricted to merely providing advice or consultation with respect to the investment, the Notice No. 3 was making all the investment on behalf of the Notice No. 2, including placing of the orders for purchasing shares of ADF for and on behalf of the Notice No. 2. The aforesaid statements of the Notice No. 2, clearly establish that the Notice No. 2 was in constant touch and interaction with the Notice No. 3 and she was also acting on the advice of the Notice No. 3, for all her financial decisions including the investments made by her in the scrip of ADF.
17. The Notice No. 2 is admittedly the paternal cousin of the Notice No. 5 as the Notice No. 2 is the daughter of the brother of the Notice No. 3 while the Notice No. 3 is the father of the

spouse of an Executive Director /promoter of the Company i.e Notice No. 6. Arising out of the said relationship, the SCN after alleging the Notice No. 1 as insider, also alleges that the Notice No. 2 to be a connected person. It further alleges that the person having connection directly or indirectly with any person connected with the Company also becomes insider. It is not disputed that the Notice No.2 has authorised the Notice No. 3 to trade on her behalf and it is alleged that the funds emanating from the accounts of the Notice No. 6 have been used for such trading. Additionally, as noted above, the Notice No. 2 enjoys a very strong relation with other Noticees and the word 'immediate relative' as defined under regulation 2 (1) (f) of the PIT Regulations makes it clear that the definition first defines only spouse of a person as immediate relative, and further, by the use of the word 'includes', incorporates certain other relations also to fall within the ambit of the term immediate relative. It is noted in this regard that, the use of term "includes" signifies that the definition is not a close ended definition and is indeed an inclusive definition, meaning thereby the scope of the said definition is not restricted only to the relations named in the said definition. Applying the above principle in the instant matter, it is observed that, it is not disputed that the Notice No. 2 used to consult the Notice No. 3 for her investment decisions and further has authorised the Notice No. 3 to place trades on her behalf, which further strengthens the belief that she was in constant touch with the Notice No. 3. From the aforesaid observations, a clear legal position emerges that by usage of the term 'includes', the ambit of the immediate relatives travels beyond those specified in the said definition. Therefore, I find that the list of immediate relatives as illustrated in the said definition is not an exhaustive one and in the given facts of the case, even a relative which is not specifically included in the said definition can also be considered to be held as connected person being an immediate relative, depending upon the facts of the matter. In view of the above factual matrix and *inter se* relation of the Noticees, it is noted that, the Noticees undoubtedly qualify as Insiders in terms of the PIT Regulations.

Whether information pertaining to the buyback of shares of ADF/Range of buyback was an UPSI during the period May 21, 2016 to July 27, 2016?

18. It is noted that, the Company on May 23, 2016, apprised the stock exchanges regarding the meeting of its Board of Directors scheduled on May 27, 2016 to consider either a final dividend for the financial year ending March 2016 or buyback of equity shares of the company, or a combination thereof to be declared. It is observed that the idea to undertake the buy-back of

equity shares was discussed internally amongst Mr. Girish Nadkarni (representative of Motilal Oswal Investment Advisors Pvt. Ltd.), Notice No. 6 / Mr. Bhavesh R. Thakkar (Executive Director and promoter of the company) and Mr. Mishal A. Thakkar (Senior Manager of the company) for the first time on May 21, 2016. Subsequently the Company while making major corporate announcements during the relevant period has announced on May 27, 2016 that the Board of Directors of the Company at its meeting held on May 27, 2016, inter alia, has decided to defer the decision on dividend on equity shares and buyback proposal till the next Board meeting. As per the minutes of the Board meeting dated May 27, 2016, the Board of ADF with respect to the proposal to buyback the equity shares and recommendation of dividend inter alia decided the following:

“4. Proposal of buyback of equity shares:

The chairman apprised the Board members that it was proposed to consider the buyback of equity shares with an objective of rewarding the shareholders by offering premium on the share repurchase price. The Board members had a brief discussion regarding the said proposal. The majority of the independent directors expressed that as the buyback proposal along with the supporting documents were circulated to them only two days prior to the meeting, they would need more time to examine the same in detail; Accordingly, the agenda item on buyback of equity shares was deferred till the next Board meeting tentatively scheduled on 27th July, 2016

5. Recommendation of dividend

As the proposal on buyback was deferred, the Board members also decided to defer the proposal on recommendation of dividend till the next Board meeting as the estimated cash outflow for both these proposals was required to be assessed.”

It is also observed that finally, on July 27, 2016, at 03:24 pm, the Company made a public announcement through stock exchanges that its Board of Directors have approved a buyback of equity shares at a price not exceeding INR 125 per equity share for an aggregate amount not exceeding INR 18 Crore.

19. It has been contended by the Noticees that, the whole premise of the SCN that the range of buyback was UPSI, and that the Notices have committed the act of insider trading while in possession of UPSI, is erroneous and unfounded, as in the present case, an announcement of buy-back can be treated as UPSI but a subsequent announcement of a range of buy-back cannot be called a UPSI. In this regard, the Noticees have submitted that it was the ‘disclosure about

the proposed buy-back' and not about the 'range of the buy-back' per se, which was resulting into change in capital structure of the Company, as it was the information pertaining to the Company's buyback proposal itself, which would have led to a change in capital structure of the Company, and hence was the UPSI. The Noticees submitted that, in terms of the definition of UPSI provided under PIT Regulations [under regulation 2(1) (n) (iii) of PIT Regulations], events like change in capital structure is considered as UPSI, therefore, the expected announcement of buy-back which would result in change in capital structure was the UPSI. Also, the Noticees contended that there was no specific positive market reaction on disclosure of the alleged UPSI (range of buyback) whereas the market constantly reacted to the news of buy-back. The Noticees also contended that the information regarding the range of buy back which was disclosed by the Company on July 27, 2016 is not an UPSI. The definition clause in the PIT Regulations provides illustrations which qualify as UPSI, irrespective of the fact as to whether the said UPSI finally impacts the price of the scrip or not.

20. The definition of 'unpublished price sensitive information' as given under Regulation 2 (1) (n) of PIT Regulations is as follows:

"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)...

(iii) Change in capital structure

(iv)..."

Such contention of the Noticees appears ostensibly true, however, on further anatomization, the above submissions are devoid of any merit. It is noted that, any information about buy-back or the range of the proposed buy-back would affect the capital structure of the Company. The SCN does not provides that after the implementation of the proposed buy-back in terms of the proposed range of such buy-back, the capital of the Company did not undergo any change. The definition of UPSI, specifically includes "change in capital structure" as an UPSI meaning thereby, any act on the part of a company that causes or is likely to cause a change in the capital structure of the company shall become an UPSI. The above definition of UPSI provides for change in capital structure as an UPSI without any further qualification. The extant definition of

UPSI actually provides that, any information pertaining to a proposed buy-back offer including the information about the range of the proposed buy-back offer, has to be called an UPSI as they would result in change in capital structure. The law does not provide for two different interpretations emanating out of the same UPSI as has been submitted by the Noticees, since both the information (buy-back and range of buy-back) are entwined and are resulting in a change in the capital structure of the Company. Hence it will be erroneous to interpret that only one part of the information (buy-back) qualifies as UPSI and other part (range of buy-back) does not qualify as an UPSI. Hence, all the elements that cause a change in capital structure qualify as UPSI and any such element that has a potential to cause change in the capital structure is to be considered as an UPSI. It is further noted that, since the UPSI of “range of buy-back” was merely an extension of the UPSI of buy-back and are inseparably entwined together, to splice into the definition of UPSI by segregating ‘the range of the proposed buy-back’ from the ‘buy-back’ to construe that the “range of buy-back” falls outside the purview of UPSI shall not be a proper interpretation. Further, from the analysis of the behaviour of the scrip of ADF post May 27, 2016 Board meeting and also post July 27, 2016 meeting, it is noted that the scrip of ADF behaved on a positive note with data showing both increase in price and volume. Thus, clearly the announcement of the proposed buyback of shares made by the company on May 27, 2016 (after the Board of Directors meeting) was UPSI within the meaning of the PIT Regulations.

21. The SCN provides that the idea for buy-back was first floated on May 21, 2016 which was the agenda for discussion in the Board meeting held on May 27, 2016, but the Board deferred its decision till the next Board meeting and finally on July 27, 2016, the Board accorded its approval to the said deferred proposal for buyback of equity shares at a price not exceeding INR 125 per equity share. It is a settled principle of law that the charges of insider trading should be read *en toto* and any attempt to read and interpret the same otherwise would defeat the very objective of issuance of the SCN. In the present case, the SCN unambiguously alleges the information about the ‘range of buy-back’ to be an UPSI and further, the UPSI period has also been defined as the period starting from May 21, 2016 till July 27, 2016. The SCN suggests that the ‘range of buy back’ is inseparable from ‘buyback’ which was under active consideration by the Company since May 21, 2016 and before the Board of the Company from May 27, 2016. Further, the law is also settled that only that interpretation of law which intend to prevent the mischief and foster the object of legislation should be adopted. Applying the said principle to the “PIT Regulations”, I

observe that the SCN is fairly clear with respect to charges levelled therein. In my opinion, the contention of the Noticee, i.e., the argument of the Noticees to separate these two (i) the primary idea of the proposal for buy-back and (ii) final outcome deciding the range of buy-back, is absurd and does not hold any merit. In view of the above, I observe that the information about the range of buyback was as much as an UPSI as the proposal of buy-back, which till its disclosure on stock exchange pursuant to Board approval, remained in the territory of an UPSI.

22. I note that as per the written reply of the Noticees the proposal of the buy-back has been admitted to be an UPSI having exclusive bearing with change in capital structure as prescribed under the definition of UPSI. Therefore, the contention of the Noticees to limit the UPSI only to the 'proposed buy-back' and not to the subsequent information about 'proposed range of buyback', if taken on its face value, will lead to nothing but absurdity. As the range of buy-back of shares by the Company essentially represented the estimated quantum of the impact on the capital structure of the Company likely to be brought about by the proposed range of buy-back, the same has to be read in conjunction with the decision of proposed buyback itself as both the proposals together constituted the UPSI in this case. Since the range of buy-back itself emanated from the earlier announcement of buy-back, the argument of the Noticees that the former (announcement of buy-back) was the UPSI and not the latter (range of buy-back) is misplaced on fact and without any basis.
23. It has been contended by the Noticees that, the said disclosure about the range of buyback should not be held as UPSI for the reason that the said disclosure had hardly any impact on the price of the scrip. The Noticees have submitted that while the price of the scrip saw an upward movement upon disclosure of the information about the proposal of buyback being put up to the Board for deliberation, there was no positive movement in the price of the scrip upon disclosure of the range of the buyback on July 27, 2016. The definition in the PIT Regulations has consciously used the expression 'likely' to materially affect the price of the securities which further leaves no room for any ambiguity about the stated regulatory provision that the information in question having a potential to impact the price of the scrip in either direction is sufficient to qualify to be held as UPSI. In this regard, illustrations of various events/information cited under the definition of UPSI in the PIT Regulations, would squarely constitute price sensitive information, irrespective of whether such events/information did cause any 'actual

impact' or absence thereof on the price of the scrip upon disclosure of such event/information to the public. A definite and sure impact on the price or absence thereof, shall have no bearing on such information being called a UPSI. The definition of UPSI does not provide for any qualifiers regarding certainty of a price rise (or a price fall) by such UPSI. It is, therefore, not necessary that an unpublished price sensitive information on being published, would invariably and predictably cause only a positive price impact. It can have a negative impact as well. I note that the UPSI as per the SCN is undoubtedly deemed to be an UPSI in terms of regulation 2(1) (n) of the PIT Regulations, 2015. The UPSI has the potential of materially impacting the price of the securities of a company which qualifies an information to be called "price sensitive" and this potential of an event/information to materially impact the price is the cornerstone of the definition of UPSI under the PIT Regulations. Consequently, if there was a potential of an information to have an impact on the price of the securities of a company, that potential itself is capable of depicting the information as a 'price sensitive information'.

24. In the present proceedings, the proposed buyback of equity shares including the proposed range of buyback, affecting the change of capital structure of the Company upon its publication, was likely to impact the price of the scrip of ADF and therefore, falls within the definition of UPSI. Further, in order to cement my above observation, I would like to refer to the findings of the Hon'ble SAT in the matter of *V.K. Kaul Vs SEBI (Appeal no. 55 of 2012, date of decision: October 08, 2012)*, observing as: *"We are, therefore, of the view that the term price sensitive information used in regulation 2(ba) is wide enough to include information relating directly or indirectly to 'a company'."*
25. From the aforesaid, there is no denying the fact that the announcement of proposed buyback did impact the price of the scrip and only for the reason that upon disclosure of the subsequent information about the range of the said proposed buy-back, the scrip did not witness sufficient upward movement, the argument that the said event/information about range of buyback cannot be held as UPSI would not be a sustainable ground to exclude the said information from the purview of being called as an UPSI. Thus, the contention of the Noticees that the information about the range of buy-back could not be a UPSI as its disclosure did not impact the price of the scrip, is devoid of merit and not maintainable under the provisions of PIT Regulations.

26. The Noticees have further contended that, the range of the proposed buyback does not qualify to be UPSI since the said fact was not exclusively known to the Noticees but was a generally available information. The Noticees submitted that, the range of the buy-back is calculated as per the statutory provisions laid down under the Companies Act, 2013 and SEBI (Buy-back of Securities) Regulations, 2018 (hereinafter referred to as **“the Buyback Regulations”**) which allow buy-back of maximum 10% of the equity share capital and free reserves with Board’s approval (without approval of shareholders). As the information was already in the public domain that, the total paid up capital and free reserves of ADF was INR 185.77 Crore (approx.), the range of buyback with Board’s approval could have been up to INR 18 Crore only, without obtaining the approval of shareholders.
27. In this regard, I refer to Section 68 of Companies Act, 2013 read with regulation 5 of the Buyback Regulations) which allows a company to buy-back its shares, if the Articles of Association of the Company authorise such buyback; and (i) such proposal of buyback has been approved by the Board of that company, by way of resolution, in case the buyback is limited to 10% of the total paid up equity capital and free reserves of that company or (ii) a special resolution has been passed at a general meeting in case the proposed buyback exceeds 10% upto 25% of the total paid up equity capital and free reserves of company; 25% being the maximum permissible limit of buyback.
28. From the said regulations, it is noted that a company may go for buyback well beyond 10% of the total paid up equity capital and free reserves of company, if it is able to achieve a special resolution in favour of such a proposal for buyback. For the purpose of ‘special resolution’, as stipulated under Section 114 of Companies Act 2013, the intention to propose the resolution as a special resolution has to be intimated in the notice therein calling for a general meeting and special resolution shall be called on to be passed when more than 75% of the total votes cast, are in favour of the proposal. In the present case, since the proposed range of buy-back (10% or more and the price to be offered) remained uncertain and internal information till such time the Company came out with an announcement on July 27, 2016, as the Company has discussed the proposal for buyback in its Board Meetings held on May 27, 2016 and July 27, 2016, there was no indication coming out of such Board Meetings or public announcements as to whether the Company has ever considered to go for a special resolution, for which, as discussed above, an

advance notice was required to be issued to the shareholders, it undoubtedly qualifies as an UPSI till the date it was made generally available by the Company.

29. The contention of the Noticees that the alleged UPSI is deducible from the details of financials available in public domain has no strength. As, the threshold of 10% was only the upper limit in case the buy-back is made through Board Resolution and the quantum of 10% was not the compulsive aspect. The inherent discretion of the Board to go for the quantum of buy-back anywhere in the range of 0 to 10% was the aspect which was not generally available and which clothed the information as a price sensitive information. The statutory thresholds as discussed above, i.e., 10% and 25% are the two upper limits of offering buyback in two circumstances, which were merely indicative of the fact that the Company may proceed for the buyback of its equity shares for a maximum quantum up to 25 % and may remain less than 10% of the total paid up equity capital and free reserves of the Company. It is noted that, only by announcement dated July 27, 2016, the information which was unpublished, i.e., the range of the buy-back, was made available generally by dissemination through the stock exchanges and not beforehand.
30. In view of the factual matrix and regulatory framework, it would be absurd to claim that the quantum of proposed buy-back was a matter of generally available information based on the relevant statutory provisions and its account available in the public domain, hence, it did qualify as UPSI. From the own submissions of the Noticees, the Company was contemplating to either declare dividend, or offer buyback of equity shares or offer a combination thereof. Thus, the Company had kept all the options open before it, and was very well aware of the option that through a special resolution, it can further buy-back upto 25 % of its total paid up equity capital and free reserves as available in its balance sheet during the relevant financial year. In view of the above, I observe that the said buyback of 10% as decided Board was neither a fixed formula nor was the only statutory and regulatory option available to the Company but was only an indicative limit proposed at the time of announcing the decision for the proposed buy-back offer to the public.
31. The Noticees have also contended that it is erroneous on the part of SEBI to take the proposed buy-back range of INR 10 -15 Crore as UPSI, as the said proposal was not accepted as such, and finally the buyback was approved by the Board was for INR 18 Crore. It is noted that, as per the

agenda of the board meeting dated May 27, 2016, the proposed range of buyback was known only to the insiders and was not generally available. The information about the range of proposed buyback was known only to the persons closely connected with Company and who were part of the decision making process in the Company. It is further noted that, since the final buyback offer that was approved by the Board of the Company was well above the earlier proposed range of buyback alleged to be UPSI (INR 10-15 Crore), the said final range of buy-back approved by the Board cannot take the place of or supersede the previous proposed range so as to remove the same from the purview of UPSI at the time when it came into existence. On the contrary, the upward shift of the said range of buy-back pursuant to the Board resolution, strengthens the allegations made in the SCN with respect to the earlier proposed range (of INR10-15 Crore) being an UPSI in possession of the Noticees at the time when the Notice Nos. 1 and 2 executed trades in the scrip of the Company. Based on the above, I observe that the proposed buyback, including the range of buyback, undoubtedly qualifies to be an UPSI.

32. Having established the fact that the buyback and range of buyback is UPSI in the context of the current proceeding, the period of the UPSI has to be established. The Noticees have contended that the UPSI came into existence when agenda for the Board meeting scheduled to be held on May 27, 2016 was circulated and came to an end with the conclusion of the said Board meeting. It was the contentions of the Noticees that the UPSI again came into existence only on July 14, 2016 and finally came to an end with the disclosure of decision of the Company made on July 27, 2016. Based on this interpretation, the Noticees have submitted that the aforementioned trades have been executed in normal course of business, and no UPSI existed during the 48-day period between the two Board Meetings held on May 27, 2016 and July 27, 2016. The argument that a price sensitive information having been created, ceases to exist only for the reason that the Board had deferred its decision about it till the next meeting, is patently erroneous. The Noticees submitted that, upon disclosure of the announcement on May 23, 2016 regarding deferral of the decision till the next Board meeting, the UPSI ceased to exist. In my considered view, the range of proposed buy-back was also an essential part of UPSI which remained an UPSI and was disclosed only on July 27, 2016. It is not the case of the Noticees that the issue of buyback was duly deliberated in the said Board meeting of the Company held on May 27, 2016 and for same reasons disclosed by the Company to the public, the said proposal for buyback offer was dropped/rejected. Contrary to the above, the Company had merely announced that a

decision on the issue was deferred to next Board Meeting, meaning thereby the issue was kept open for a future decision, the details of which were not in public domain till the same was finally approved by the Board and was announced on July 27, 2016. Also, apart from the issue of buyback, which was very much open and under consideration, the issue pertaining to dividend or combination of both was also under active consideration.

33. In view of the above factual matrix, the argument cannot be accepted that, the UPSI came into existence on May 23, 2016 (when agenda was circulated) and ceased to exist on May 27, 2016 just because the decision on the proposal was deferred to next Board meeting, and the same PSI again revived as an UPSI before the next Board meeting. I note that, the decision on the proposed buyback was merely deferred to next Board meeting and no conclusive decision was taken by the Board on the issue till its next meeting held on July 27, 2016, the argument of the Noticees that the UPSI ceases to exist as soon as the Board meeting was over on May 27, 2016, is without merit and hence rejected.
34. In this regard, it is established that the proposed range of buy-back is an UPSI along with the first proposal to make buyback offer *per se* mooted by the Company and internally decided on May 21, 2016. In view of the above, the UPSI pertaining to the buy-back offer not only came into existence on May 21, 2016 but also continued till July 27, 2016 when the Company made a public disclosure about the Board's approval of the proposed buy-back of the Company (with a proposed range of offer size and offer price). Thus, in the context of the proceeding, the period of UPSI was from May 21, 2016 to July 27, 2016.

Whether or not the Noticees being Insiders has traded/dealt in the scrip of ADF while in possession of/access to UPSI ?

35. The SCN alleges that the trades executed by Noticee No. 1 & 2 are in violation of provisions of PIT Regulations as these trades have been executed while in possession of UPSI pertaining to buyback offer of equity shares of ADF. The SCN has also alleged that the other Noticees i.e Notice Nos. 3 to 6 have dealt in the scrip of ADF while in possession of UPSI.
36. The SCN provides that the details of the trades executed by and on behalf of the Notice Nos. 1 and 2 in the scrip of ADF during the period, are as under:

Table no. 16: Trading by Notice No.1 in ADF during the Investigation Period

Date of Trading	BSE		NSE	
	Buy Qty.	Sell Qty.	Buy Qty.	Sell Qty.
03-06-2016	917	0	1,456	0
06-06-2016	656	0	400	0
07-06-2016	0	0	1,000	0
08-06-2016	1,529	0	2,876	0
09-06-2016	302	0	4,681	0
10-06-2016	06	0	1,006	0
13-06-2016	425	0	1,344	0
14-06-2016	1,165	0	10,149	0
17-06-2016	420	0	1,000	0
24-06-2016	2,510	0	11,527	0
12-07-2016	935	0	7,137	0
13-07-2016	1,752	0	12,789	0
14-07-2016	4,866	0	9,613	0
15-07-2016	2,276	0	14,383	0
18-07-2016	2,990	0	29,080	0
19-07-2016	4,624	0	21,043	0
Total	25,373	0	1,29,484	0
Total Buying	154857			

Table no. 17: Trading of Notice No.2 in ADF during the Investigation Period

Date of Trading	BSE		NSE	
	Buy Qty.	Sell Qty.	Buy Qty.	Sell Qty.
23-05-2016	3,302	0	14,016	0
24-05-2016	4,807	0	15,193	0
25-05-2016	3,665	0	7,243	0
26-05-2016	1,390	0	5,889	0
27-05-2016	3,570	1,230	11,430	0
21-06-2016	0	1,285	0	0
20-07-2016	490	0	3,212	0
21-07-2016	8,836	0	18,839	0

25-07-2016	1,137	0	0	0
26-07-2016	8,772	0	45,577	0
27-07-2016	17,320	0	1,32,680	0
Total	53,289	2,515	2,54,079	0

37. The Noticees have contended that, they were regular traders in securities market and have been trading in the scrip of ADF regularly. As per the trading details, the Notice No. 1 purchased 154857 shares of ADF in 16 trading days between June 03, 2016 to July 19, 2016 and has not sold a single share during the period. The Notice No. 2 also purchased 307368 shares of ADF during May 23, 2016 to July 27, 2016 and has sold only 2515 shares during the UPSI period. The Noticees have submitted that they have been regular traders in the securities of ADF and in support of the claim, the Noticee No. 1 & 2 have furnished the details of their trades in the scrip of ADF in earlier months (before the UPSI period) in order to justify that the trades executed by them in the scrip of ADF (during the UPSI period) is not influenced by the UPSI. The details of trades of Noticee No. 1 & 2 in the scrip of ADF, both prior to and during the UPSI period as furnished by them are as given below:

Table no. 18 - Trading of Notice Nos. 1 and 2 in the scrip of ADF

Month	Notice No.1		Notice No.2	
	Buy	Sell	Buy	Sell
January, 2016	0	0	0	0
February, 2016	84,012	0	81,756	0
March, 2016	35,534	5,000	1,210	12,756
April, 2016	33,480	6,926	0	22,466
May, 2016	3,383	10,786	88,111	4459
June, 2016	43,369	0	0	1,285
July, 2016	1,11,488	0	2,36,863	50,000
Total	3,11,266	22,712	4,07,940	90,996

38. As regards the claim of being a regular trader in securities market, I note from the details of their trades furnished by the Notice Nos. 1 and 2, that during the entire period for which the trade details have been furnished by them, trades of the two Noticees have been confined to the scrip of ADF only. Infact, in their respective replies to the queries posed to them during the investigation, both Notice Nos. 1 and 2 vide their letters dated April 09, 2018 and April 10, 2018 have admitted that they have not traded in any other scrip during the period of February 01,

2016 to December 31, 2016, except for trading in the scrip of ADF. Though the Noticees' claim of being regular traders of securities market, it is noted that, the Noticee No. 1 & 2 have not furnished any details as why they have not preferred to trade in any scrips other than ADF during the relevant period.

39. It has been submitted by the Noticees that the trades have not been executed based on the possession of UPSI as they have not sold those of ADF shares immediately after the disclosure of the UPSI. The Notice No. 2 has submitted that she has even purchased some shares on July 27, 2016, which is the day when the UPSI was disclosed. I have carefully perused the aforesaid submissions and do not find them to be depicting the correct picture. It is seen from the SCN that the UPSI was disclosed to the stock exchange on July 27, 2016 at 03:24 pm. It is noted that, the trading is allowed on the platform of stock exchange till 03:30 pm only. As seen from the above table, the Notice No. 2 had purchased 1,50,000 shares on July 27, 2016 but there is nothing on record, to suggest as to whether the said 1,50,000 shares were purchased in the span of those 6 minutes that was left after the disclosure of the UPSI at 03:24 pm. I also don't find the argument advanced by the Noticees that the shares purchased during the UPSI period were held in possession and were not sold after the disclosure of UPSI to be a convincing one, for the reason that the same (i.e. that the shares purchased during UPSI period needs to be necessarily sold) is not a pre-condition of law to allege insider trading under the PIT Regulations.
40. It has further been contended by the Noticees that the materials are not sufficient to establish the charge of communication of UPSI. The Noticees in this regard have placed reliance on the order in the matter of *Navneet Publication India Ltd.* dated December 20, 2016 passed by Adjudicating Officer, contending that, it is essential to prove that the insider had access to UPSI. I find that the aforesaid contention of the Noticees do not merit any consideration, as the Noticees are part of a family and were undisputedly enjoying close family relationship during the relevant period. It has not been disputed that the Notice No. 6 was not only an Executive Director and promoter of the Company (ADF) but also remained present and attended all the relevant meetings wherein the issue related to proposed buyback and/or dividend or combination thereof was discussed. He has also not advanced any submission that he was not having good relation with other Noticees or was not in touch with them. Keeping in view the above stated undisputed facts, the Notice No. 6 unquestionably becomes a connected person

under regulation 2 (1) (d) (i) and thereby insider in terms of regulation 2 (1) (g) (i) as well as 2 (1) (g) (ii) by possessing the UPSI. Similarly, the Notice No.5 is the promoter of the Company and the wife of the Notice No. 6 and the Notice Nos. 1 and 3 being parents of the Notice No. 5 or the parent of the spouse of the Notice No. 6, who in the absence of anything to the contrary, clearly satisfy the pre-requisites of being held as insider in terms of regulation 2 (1) (d) (ii) (a) r/w 2 (1) (f) of the PIT Regulations. Besides, the purchases of Notice Nos. 1 and 2 in the scrip of ADF during the relevant UPSI period took place from the account of Notice No 6 i.e the Executive Director/promoter of ADF. The details of the flow of funds in this regard are discussed elaborately in the subsequent paras of this Order. The above therefore shows that were well knit and were acting in concert in respect of the impugned trades/dealings in ADF during the UPSI period.

41. As regards the contention of the Noticees that the SCN does not make any specific reference of communication of UPSI and therefore the allegation in the SCN would not survive based on the evidences annexed in support thereof, it is clarified that the present proceedings are civil in nature wherein the violations alleged are required to be established following the principle of preponderance of probabilities. I note that in the present proceedings, the Noticees are part of a family hence, finding direct and concrete evidences of one-to-one communication of UPSI in such circumstances are rare. With respect to the aforesaid submission of the Noticees that insider trading allegations can be levelled against them only based on strong proof, it is important to note that as the very name suggests, in the 'insider trading' cases particularly which involves communication of UPSI by an insider to other entities, it is extremely difficult for an investigator to lay his hands on any direct evidence of communication of UPSI which often takes place in utmost privacy and secrecy. However, the absence of direct evidence should not be considered as a handicap in proceedings against the suspected entities, more so in such cases where the attending circumstances and corroborating evidences are strongly indicating on the preponderance of probability of execution of trades under the influence of possession of UPSI. In any case, as mentioned above, the trades of Notice Nos. 1 and 2 were directly funded from the account of Notice No. 6, which is discussed in the following paras. Thus, there is direct evidence to this extent. In any case, such matters are also required to be tested on the basis of circumstantial evidences including the overall conduct of the parties and the abnormality of their trading practices which defy normal business prudence etc . What is needed in such cases, is to

appreciate the factual matrix, the preponderance of probabilities of happening of such an event and the surrounding circumstances/ factors pertaining to the charges/allegations that are levelled to arrive at a conclusion regarding abnormalities in trading / trading in the scrip when in possession of UPSI.

42. Applying the above settled test upon the facts of the matter, it is noted that the Notice No. 6 being the ED of ADF and also its promoter is a connected person and admittedly an insider and was privy to the PSI related to buyback of securities. The other Noticees are related and closely connected to him and the investigation has noticed transfer of funds amongst them during the relevant period. It is noted that the funds towards the trading of Notice Nos 1 & 2 originated from the account of Notice No. 6. The trading pattern of the Notice No. 1 and 2 speak for themselves that the trades have been executed while in the possession of UPSI. The fact that Notice No. 6 was also a person authorised by the Notice No. 1 for placing trades on her behalf and the Notice No. 3 was a common person authorised to place trades on behalf of both the Notice Nos. 1 and 2; the absence of rebuttal to the fact that the mobile numbers used to place orders on behalf of Notice Nos. 1 and 2 were not belonging to the said Noticees in whose names trades were executed, are sufficient in themselves to come to a finding that the trades executed by and on behalf of the Notice Nos. 1 and 2 were influenced and motivated by the possessions of UPSI, which could have been accessed to or possessed from no other source than the communication made by the Notice No. 6. The said finding further gets strength from the fact that the Noticees, though have claimed to be regular traders in the securities market, however, have admitted during the investigation that their trades were confined to the scrip of ADF only during relevant period. The foregoing discussions, leads to an irresistible conclusion that the Notice No. 6 had passed on the information to the other Noticees based on the which trades were executed by them as alleged in the SCN.

43. It was also contended by the Noticees that, Notice Nos. 3 and Notice No. 4 (son of Notice No. 2) were mere authorized signatories for executing trades in the accounts of the Notice Nos. 1 and 2 and the trades were placed as per the decisions of the respective account holders i.e., Notice Nos. 1 and 2 and therefore, they can't be held guilty of the violation of insider trading. The Noticees have sought to create a wall of defence by claiming that they have acted as authorised person and placed orders as per the instruction of the account holders. Admittedly,

the Notice Nos. 3 and 4 have placed orders for and on behalf of the Notice Nos. 1 and 2 respectively. It is also not in dispute that Notice No. 3 used to advise the Notice No. 2 for investing in securities. Considering the above undisputed facts, in my assessment, the contention that the two Noticees i.e Notice Nos. 3 and 4 should not be held liable for placing orders in the accounts of the Notice Nos. 1 and 2 are erroneous and rejected. I also cannot ignore the fact the Noticees are family members and not third parties. Under these circumstances, it becomes highly unbelievable to accept that the above said two Noticees have placed orders like ordinary third party authorised persons and no discussion took place with the Notice No.1 and 2 on the basis of the UPSI which they had received from Notice No. 6 before it was decided to trade in the scrip of ADF during the UPSI period. Thus, in view of the admitted factual position with respect to the Notice Nos. 3 and 4, I reject the contention of the Notice Nos 3 and 4 that they acted as mere postman for the trades executed in the accounts of the Notice Nos. 1 and 2.

44. In this regard, the Note to the Regulation 4 of the PIT Regulations stipulates that when a person who is in possession of the UPSI executes trades in the scrip of such company, it shall be presumed that such trades have been motivated by the knowledge of such information. Further, the insider or the alleged delinquent has very limited scope to rebut such a presumption and all such provisions that can be possibly be used to rebut the said presumption have also been listed out in the Proviso to the Regulation 4. In the present case, it is reiterated that the Noticees are part of a closed family and the channel of communication are so apparent that the Notice No. 6 who is an Executive Director / promoter of the Company and privy to the UPSI, is also one of the authorised representatives for placing the orders in the trading account of the Notice No. 1. I note that such explicit display of trading activities, apart from the close family connections of the Noticees, strongly tilt the preponderance of probabilities in support of the SCN.

45. Having held that the Noticees had access to the UPSI pertaining to buyback, the reliance placed by the Noticees on various judicial decisions to argue that no adverse inference could be drawn against them only on the basis of proximity of relationship and a person cannot be held guilty only on the strength of proximity of relationship with the tippee, are distinguishable on facts and are not applicable in the instant case. It is also observed that reliance placed on the order of Hon'ble Supreme Court in the matter of Balram Garg Vs. SEBI (in the case of PC Jewellers), to contend, that in a case involving similar allegations of relatives of an insider, the Hon'ble

Supreme court has rejected the proposition that merely because a relative of the insider has traded, is sufficient for SEBI to allege that the relative was privy to UPSI, shall not come to the rescue of the Noticees as it has already been established how the Noticees were insiders owing to their inter-se relationships as well as due to the fact the Notice No. 6 was actually having access to the UPSI. Further, the present case is clearly distinguishable from the matter of Balram Garg Vs SEBI as there is an established flow of Fund which has taken place from the account of Noticee No. 6 to Noticee No 1 & 2 via Noticee No.5, which were used to trade in the shares of ADF during the UPSI period. It is the Notice No.6 who is the originator of all the funds, which was routed via Noticee No.5, that were utilised by other Noticees i.e Noticee No.1 & 2 for the purpose of trading in the shares of ADF during the relevant period. The issue of such fund transfers are discussed elaborately in the following paragraphs. The materials on record are more than sufficient to convince any prudent person to draw a reasonable inference that the UPSI has been imparted by the Notice No. 6 to other Noticees who, being influenced by the said UPSI, have engaged in trading/dealing in the scrip of ADF during the relevant period and therefore, the evidences on record are sufficient enough to bring home the charge of insider trading against the Noticees as insiders dealing/trading in the scrip of ADF.

Whether the trades executed by Noticee No. 1 and 2 in the scrip of ADF were funded by Noticee No. 6 ?

46. The SCN alleges the transfers of funds from the accounts of Notice No. 6 has finally reached the accounts of Notice Nos. 1 and 2 and the funds so transferred from the accounts of Notice No.6 were utilised for the purpose of trading in the scrip of ADF. It is observed that there were certain transfer of funds on May 31, 2016, June 14, 2016 as well as on June 22, 2016 from the account(s) of the Notice No. 6 to the Notice No. 1 and such funds were routed via the account(s) of the Notice No. 5. It is also observed that, some of the funds from Notice No. 6 has not remained in the account the Notice No. 1 only, but also have travelled to the account of Notice No. 2 and such funds have been alleged to have been used by the Notice No. 2 for the purpose of trading in the scrip of the ADF. The funds were utilised by the Noticees no 1 and 2 for their pay-in obligations pursuant to trades in ADF.
47. The SCN, states that an amount of INR 1.67 Crore was transferred from the account of the Notice No. 6 to the account of the Notice No. 5. The Notice No. 5, upon receipt of the said

amount has transferred an amount of INR 1.65 Crore to her mother i.e. the Notice No. 1 and then Notice No. 1, immediately upon receipt of the said amount has transferred an amount equivalent to INR 75 Lakh to Notice No. 2 and has transferred the balance amount of INR 90 Lakh to the account of her stock broker, who finally has used the said amount towards the trading in securities of ADF. Also, the Notice No. 2 upon receipt of amount of INR 75 Lakh from the Notice No. 1, has transferred a sum of INR 55 Lakh to the account of the same stock broker, who in turn, utilised the amount for purchase of ADF shares. The SCN also provides that, further movement of funds after the disclosure of the UPSI has happened and reversal of funds took place, as the Notice No. 2 has transferred INR 1.00 Crore to the Notice No. 1 and the Notice No. 1 in turn has transferred INR 1.00 Crore, back to the Notice No. 5, who in turn has transferred INR 98.5 Lakh to the Notice No. 6. It is noted that none of the Noticees has disputed the said transfer of funds as provided in the SCN and have also contended the nature of such fund movements as alleged in the SCN.

48. The Notice No. 1, has denied the allegation that the said funds transfers were made for the purpose of trading in securities of ADF and has contended that, the amount was transferred as personal loans to Notice No.2 for which interest was also calculated at the rate of 10% per annum. Noticee No. 1 has submitted that the said transfer of funds has taken place in the normal course of business, she has filed a copy of the ITR to show that the interest income has been reflected in her ITR. It is noted that, in the absence of further supporting documents to substantiate that such interest earning has been duly disclosed in ITR, the claim remains uncorroborated from the limited information available. Hence, the claim of paying INR 7 Lakh (approx.) as interest in the F.Y. 2016-17 by Notice No. 2 remains unverified due to lack of further corroborative documents, like schedule of loan and when the loan was finally settled, etc.
49. The SCN specifically provides that, upon receipt of the transferred amounts, the same were immediately transferred to the account of the stock broker for which no justifiable explanation has been received. No documents or explanation have been furnished by the Notice No. 1 to show that similar transfers of funds have also been made to any other relatives on a frequent basis, to lay credence on her claim that such huge funds have been transferred by her in the normal course of her business transactions/relationships. The claim of extending personal loans also appears to be weak as none of the aforesaid two Noticees has submitted any explanation

with regard to the specific timing chosen to transfer those specific amounts of funds amongst them so as to justify the nature of such funds transfers. On the contrary, in my view, the claim of lending of money at such a high rate of interest by Notice No.1 to Notice No.2 would go on to further strengthen the allegation that Notice Nos.1 and 2 had indulged in insider trading by using borrowed capital, more so when no explanations whatsoever have been put forward by the Notice No. 2 with respect to the said loan purportedly obtained by her from Notice No.1 which was ultimately used by her for trading in securities of ADF. The claim of using borrowed money for trading in the scrip of ADF by Notice No. 2 would further justify the charge of insider trading since such a probability would be possible only in a situation where a person being in possession of some price sensitive information would be certain about a predictable amount of return on her investment which could be more than the interest payable by her on the said borrowed sum.

50. It has been contended that the loans were extended towards general business purposes, however, with no documents to demonstrate that the Notice No. 2 had sufficient funds to trade in the scrip of ADF or to suggest that she has trading exposure otherwise also in normal course, I am of the view, that the usage of funds by the Notice Nos.1 and 2 instantly after receipt in their accounts, towards purchase of securities through a broker are sufficient to substantiate that the funds transferred to them by Notice No.6 via Notice No.5, were intended for the purpose of trading in the scrip of ADF only. As contended, there is no illegality in advancing loan between two relatives. However, it is observed that even after accepting for once that the Notice No. 1 has received interest on the amount so advanced to the Notice No. 2, the same would not be a sole ground to exonerate the Noticee No.1 & 2 from the allegations of insider trading levelled against them in the present proceedings.

51. The Noticees have contended that there is a disparity in presentation of the funds so transferred amongst the Noticees and the funds transferred to the stock broker by Notice No.1 and 2. It is observed that on May 31, 2016, INR 25 Lakh was transferred by the Notice No. 6 to the Notice No. 5. The Notice No. 5 transferred the same amount on the even date to the Notice No. 1 and the Notice No.1 further transferred the said amount onward to the Notice No. 2. On the very next day, Notice No.2 transfers INR 22 Lakh to her stock broker, all other fund transfers alleged in the SCN travel in similar fashion in a complete chain, whereby funds originating from the

account of Notice No. 6, travel to the accounts of Notice Nos. 1 and 2 and ultimately being paid to the stock broker. In view of the above, the contentions raised by the Noticees alleging disparity in the funds transfers highlighted in the SCN is erroneous and lack any substance. It is further observed that, there may be some disparity in the fund transfers mentioned in the SCN, however, the funds so received were always more than the funds paid to the stock broker by the Notice Nos. 1 and 2. Therefore, the swift movement of funds and absence of any substantiated explanation to suggest otherwise, renders the contentions of the Noticees as inconsequential so far as the allegations of funds transfers are concerned, hence are rejected.

52. The Noticees have contended the allegations levelled against them on the basis of the numerous fund transfers exchanged between the Notice Nos. 1, 2, 5 and 6. It has been noticed that the funds which originated from Notice No. 6 have always reached the accounts of Notice Nos. 1 and 2 via Notice No. 5. It has further been noticed that the Notice Nos. 1 and 2, immediately after receipt of funds in their accounts, have transferred funds to the account of the stock broker to meet their payment liabilities against the trades executed by them in the ADF shares. Further, after the said UPSI got published, it was also noticed that there has been certain reverse transfer of funds, first from the stock broker to the Notice No. 2 and from the Notice No. 2 to the Notice No. 1, which further travelled onwards to the account of the Notice No. 5 and finally from the account of the Notice No.5 to the account of the Notice No. 6.
53. In this regard the Noticees have given an explanation of the funds transferred from the account of the Notice No. 6 and have also placed certain documents on record to justify the nature of these funds transfers. The same are enumerated in the table below:

Table no. 19: List of events

Sr. No.	Date	Event/Document
1.	28.07.2016	Notice Nos. 3 and 1 executes an Agreement for Sale as vendors in respect of a flat with Notice No. 5 (daughter of Notice Nos.1 and 3) recording a total consideration as INR 5.09 Crore. Out of INR 5.09 Crore, an amount of INR 4.09 Crore is claimed to have been already transferred by the Notice No. 5. The balance amount of INR 1.00 Crore is undertaken to be paid at the time of possession of the said flat by the Notice No. 5. The transfer of flat was agreed to be completed on or before December 31 st , 2016.

2.	30.07.2016	An opinion of a Chartered Accountant is taken, who advises that: (i) Instead of transferring the flat to the Notice No. 5 as a “sale”, the flat may be ‘gifted’ to the Notice No. 5. (ii) The sale transaction shall incur Income tax liability on the Notice No. 3 as he is the sole owner of the flat. (iii) The amount of sale consideration of INR 5.09 Crore may be given by the Notice No. 5 (daughter) as a gift and the same will also save the stamp duty likely to be incurred on effecting transfer through registered sale deed.
3.	19.10.2018	Stamp paper for executing Gift Deed of the Flat is purchased
4.	01.01.2019	Letter of Society to the Notice No. 3 granting therein No Objection for transfer of the flat to the joint names of Notice Nos. 1, 3, and 5.
5.	06.02.2019	Gift Deed is executed with following details: (i) Notice No. 3 claims to be the owner of the said flat and 5 shares of the society in which the flat is situated; (ii) The Notice No. 3, by way of the Gift Deed, out of natural love and affection, donates, 1/3 rd share of the aforesaid shares, each to the Notice Nos. 1 (wife) and 5 (daughter).
6.	06.08.2019	Registration of the Gift Deed.

54. Further, the Noticees contended that the SCN has cherry picked certain transfer of funds, which in isolation, create confusion. In order to present a complete and fair picture of all the transactions, Noticees have provided the details of the following other transactions of funds entered into by them:

Table no.20: Fund transfer details between Noticee No.1 and 5*

Sr. No.	Month	Received by Notice No.1	Received by Notice No. 5
1.	January, 2016	0.00	0.00
2.	12.02.2016	40,00,000.00	-
3.	18.02.2016	10,00,000.00	-
4.	22.02.2016	10,00,000.00	-
5.	02.03.2016	15,00,000.00	-
6.	31.03.2016	5,00,000.00	-
7.	13.05.2016	-	10,00,000.00
8.	19.05.2016	-	20,00,000.00

9.	23.05.2016	20,00,000.00	-
10.	25.05.2016	20,00,000.00	-
11.	31.05.2016	25,00,000.00	-
12.	14.06.2016	30,00,000.00	-
13.	28.06.2016	30,00,000.00	-
14.	18.07.2016	25,00,000.00	-
15.	20.07.2016	15,00,000.00	-
16.	22.07.2016	80,00,000.00	-
17.	28.07.2016	70,00,000.00	-
18.	28.07.2016	50,00,000.00	-
19.	28.07.2016	44,00,000.00	-
20.	02.08.2016	-	50,00,000.00
21.	25.08.2016	50,00,000.00	-
22.	15.09.2016	-	50,00,000.00
23.	October, 2016	0.00	0.00
24.	November, 2016	0.00	0.00
25.	December, 2016	0.00	0.00
	Total**	5,39,00,000	1,30,00,000

**Kindly note that the said amount was transferred to and from the joint account of Noticee No.1 and 3, being spouse*

*** The amount transferred between the two entities during the Investigation Period is highlighted in grey above and the total amount is INR 2.45 crore*

55. I note that, based on details provided in the table above and the inter-se transactions of funds listed out above, the Noticees have contended that, the allegations of fund transfers and have *inter alia* submitted that the funds transfers noticed amongst the Noticee Nos. 1, 3 and 5 were actually effected in respect of purchase of a flat. In this respect, it has been submitted that the Noticee No. 3 owns a flat which was agreed to be bought by the Noticee No. 5 for which an Agreement for sale was entered into between the Noticee Nos. 3 and 5 on July 28, 2016. However, subsequently, acting on the advice of a Chartered Accountant (CA), the terms of Agreement for sale were not taken to their logical conclusion and were not acted upon by the parties to the said Agreement for Sale, although subsequently the said flat has been parted with, on the lines of advice of the CA. The Noticees have also submitted documents viz., copy of Agreement for sale, Opinion of CA, Gift Deed, Share Certificate of the flat etc., to provide justification to their contention that the said transfer of funds amongst the Noticees actually

related to buy and sell of a flat. Upon examination of these documents, it is observed that the transfer of flat prima facie appears to be a gift given to the Noticee No. 5 by her father i.e., Noticee No. 3. Notwithstanding the fact that a large number of documents have been produced by the Noticees to substantiate the funds transfers amongst them as relating to the sale & transfer of the flat, the said documents are not sufficient to establish the *bonafide* of those funds transfers or to help in any manner to exonerate the Noticees from the charges levelled in the SCN, as detailed in the following paragraphs.

56. As per the submission of the Noticees, the transfer of the flat by way of sale for a consideration of INR 5.09 Crore was agreed upon, out of which an amount of INR 4.09 Crore was paid upfront by Noticee No.5 and the balance amount was to be paid on having the possession of the said flat. The Noticees have also filed a copy of a notarized Agreement for Sale dated July 28, 2016. The said agreement narrates that the Noticee Nos. 1 and 3 have agreed to sell the said flat to the Noticee No. 5 for a consideration of INR 5.09 Crore. However, it is observed that the Noticee No. 3, was the sole owner of the flat. Also, on July 29, 2016, the Noticee No. 3 approaches a CA and seeks his opinion pertaining to income tax liability arising out of the proposed sale /transfer of flat. The said CA, on July 30, 2016, opined that instead of outright sale, the flat may be gifted to the Noticee No. 5 and parting of the property through gift mode shall not only save the income tax liability arising from the capital gains, but would also save the stamp duty liability payable while transferring the flat by way of sale.
57. It is observed that, the Noticees, instead of first taking a professional advice, went ahead and executed the agreement and immediately after execution of such agreement, they approached a CA to seek his advice on the issues of tax implication arising out of the said sale agreement. Further, even after the said advice, the Noticees did not take any step towards transfer of the said flat, either by way of sale as agreed or otherwise by way of execution of a Gift Deed as advised by the CA. It is after a considerable time that the Noticees have again got together to give effect to the purported pending transaction/transfer, and it is only in the month of October, 2018, the requisite stamp paper for executing the Gift deed was purchased. NoC taken from the Society January 01, 2019 and the Gift Deed was executed on February 06, 2019, however, the said Gift Deed was registered after another long period of 6 months i.e. on August 06, 2019. Perusal of the covenants of the said Gift Deed however reveals that Noticee No. 3, owner of

the said Flat, has gifted 1/3rd share of the said flat, each to the Noticee Nos. 1 and 5 and retained the rest 1/3rd shares with himself. One may argue that if it's a Gift and delay in its execution and registration have no bearing to the present proceedings, however, upon examination of the aforesaid transactions pertaining to the flat claimed to have been executed by the Noticees in order to justify the transfers of funds amongst the Noticees during the relevant period, it is observed that the explanations so offered and justifications so advanced in this respect are mutually contradictory. Based on the above, I am of the considered view that, the whole gamut of explanations forwarded in this regard, appears to be an afterthought and is liable to be rejected.

58. I note that in the earlier proposed agreement for sale, the Noticee Nos. 1 and 3 are shown as the 'co-owners' of the flat. However, in the Gift Deed, which is a registered document, only the Noticee No. 3 is stated to be the owner of the said flat and further, out of natural love and affection, Noticee No. 1 and Noticee No. 5, both get 1/3rd share each in the said flat. Thus, it is clearly observed that at the time of the execution of the agreement for sale, the Noticee No. 1 was not having any ownership interest in the title of the said flat and yet the Noticees, for reasons best known to them, had claimed in the said agreement for sale that the Noticee No. 1 is a co-owner of the flat. The Noticees have not explained the reasons for mentioning Noticee Nos. 1 and 3 as co-owners of the said Flat.

59. As noted above, the Noticee No. 5 has first transferred large amounts of money aggregating to INR 5.39 Crore through different transactions during the period of January, 2016 till July 28, 2016. The said transactions were in the range of INR 5.00 Lakh to INR 80.00 Lakh. Further, the intervening gap in such transactions is sometimes as less as 2 days. Furthermore, in the month of July, 2016, the largest chunk of amounts, i.e., INR 2.84 Crore was transferred over a period of only 4 days out of which, INR 1.64 Crore was transferred in three separate transactions executed on July, 28, 2016. On the same day, the above-mentioned Agreement to Sale was purportedly executed, incorporating therein the details of all the payments/transfers of funds made by Noticee No.6 from May 23, 2016 till the date of execution of the said agreement. It is noted from the claim of the Noticees that the payments were made towards the purchase of the flat starting from February 12, 2016 onwards and eventually on July 28, 2016, the purported agreement for sale was executed. I note that not only the parties to the said transactions were close family members, but also the manner in which the above noted payments have been made,

raises serious doubts about the veracity of the claims made by the Noticees. The Noticees have not identified or pointed out at any specific single or multiple transfers of funds to suggest that these are the ones, which were effected pertaining to the sale agreement of the flat, but instead, have tried to project the net adjusted value of transactions as the sale consideration amount for the flat. It has been claimed that the Noticee No. 5 has paid INR 5.39 Crore to the Noticee No. 1 (in the joint account held between the Noticee Nos. 1 and 3), and on the other hand, the Noticee No. 1 has re-paid INR 1.30 Crore to the Noticee No. 5 thereby leaving a residuary amount of INR 4.09 Crore, which has been claimed to be the net amount paid towards the consideration of INR 5.09 Crore of the sale of the flat. The unreliability of such a claim gets further compounded when the proposed sale of Flat is ultimately abandoned as the transacting parties realise that such a deal which is being executed amongst the family members shall attract tax liability and expenses towards stamp duty which can be avoided by executing a gift deed instead of a sale deed.

60. As noted above, the Noticees have advanced a justification stating that the transfers of funds that had taken place between them were related to sale and purchase of a flat for which an agreement for sale was entered into, however, subsequently, acting on the advice of a CA to avoid tax liability arising out of the sale of the flat, it was thought fit to transfer the flat by way of gift. As per the agreement for sale, the entire flat was to be purchased by the Notice No. 5 for a total consideration of INR 5.09 Crore. It was further explained that, flat was to be divided between the two children of Notice Nos. 1 and 3, for the purpose of distribution of their estate and after receiving the opinion from CA, it was decided that the Notice No. 5 shall pay 50% of the price of the flat to purchase the 50% right of her sister over the flat. As the price of the flat was valued INR 5.09 Crore and expenses towards stamp duty was coming to INR 25 Lakh, therefore the Notice No. 5 was supposed to pay INR 2.67 Crore to the Notice Nos. 1 and 3 for owning 50% interest/title in the said flat and since by that time the Notice No. 5 had already paid INR 4.09 Crore, the excess amount of INR 1.42 Crore (4.09 Crore -2.67 Crore) was transferred back by the Notice Nos. 1 and 3 to the Notice No. 5 in the form of gifts made favouring the children of Notice Nos. 5 and 6. It is observed that, although the Noticees have submitted an explanation to justify the transfer of funds, the said justification is silent on the following aspects leaving many queries unanswered and unexplained:

- i. Since, the Notice No. 5 was buying only 50% interest in the flat, why the excess amount of INR 1.42 Crore was not returned to her.
 - ii. When the Notice No. 5 had paid 50 % of the agreed sale consideration, why then only 1/3rd portion/ interest in the said flat was gifted to her.
 - iii. Since the 1/3rd portion of the Flat was gifted to the Notice No. 5, then what was the objective of taking INR 2.67 Crore from Notice No. 5 and how the said amount has been disclosed by the Notice No. 3 in his accounts and Income Tax Returns.
 - iv. As per submissions, the Notice No. 5 was required to pay 50 % of the determined sale consideration to buy the undivided ½ shares belonging to her sister in the said flat, however, the payments, instead of being made in favour of her sister, has been made out of her account favouring the Notice Nos. 1 and 3.
 - v. Noticees have valued the flat at INR 5.09 Crore, however, the said valuations have not been supported by any independent valuation report or any applicable ready reckoner rates prescribed by local authority. It appears that the value of INR 5.09 Crore has been adopted randomly without any basis, only to fit the inter-se fund transfers into the said agreement for sale of the flat so as to offer an explanation for those fund transfers. As per the submissions, expenses towards stamp duty and registration was coming to INR 25.00 Lakh. Admittedly, to avoid tax liability, they have decided to follow the gift deed mode, however, while settling their account, the Noticees have taken the value of the property/flat as INR 5.34 Crore (including the stamp duty) and not as INR 5.09 Crore. No explanation has been given to justify as to what prompted the Noticees to incorporate the amount of stamp duty in the total value for the purpose of dividing their estate, which as per their own claim they wanted to save.
 - vi. No documents have been furnished by the Notice Nos. 1 and 3 to substantiate that the funds so received from the Notice No. 5 and the ownership of the Flat claimed to have been gifted to the Notice No. 5 have actually been declared before the Income Tax authorities as a gift.
61. It is a matter of settled law that the Notice No. 3 was free to transfer his flat by dividing the ownership equally between his 2 children if he wished to do so. However, as per the submissions of the Noticees, the Notice No. 5, who had agreed to buy out the 100% ownership of the said flat, finally paid 50% of the value of the flat under the impression of getting the 100 % interest in the flat, but received only 1/3rd undivided share in the said flat. It has been claimed that Notice No.5 paid 50% of the value of the flat (INR 2.67 Crore) towards purchase of rights of her sister

over the said flat, however the said amount has not been paid to her sister for buying out her (sister's) rights over the flat, and instead the amount has been paid to the parents, i.e., the Notice Nos. 1 and 3, who in turn have not submitted any proof to suggest that the said amount was subsequently transferred to their other daughter. As noted above, the Notice No. 5 had transferred INR 4.09 Crore leaving an excess of INR 1.42 Crore in the hands of the Notice Nos. 1 and 3. However, the Notice Nos.1 and 3 instead of crediting the said excess amount back to the account of the Notice No. 5 have now claimed to have gifted the said amount to the children of the Notice Nos. 5 and 6. Such actions on the part of Notice nos.1 and 3 in dealing with the money supposedly owed to Notice No.5, raises a *bonafide* suspicion if the said sums of money ever belonged to Notice No. 5 at all.

62. The Noticees initially tried to justify the funds transactions in the name of an absolute sale of the flat, which was not pushed through on the advice of the CA; secondly, no steps were taken by them in pursuance of the said transaction for 2-3 years and it is only in the year 2019, steps were taken to gift a portion of the flat (1/3rd) to the Notice No. 5, instead of making an outright sale to her for which she had supposedly paid 50% of the value of the Flat determined in the year 2016 itself. Thirdly, to minimise the cost of stamp duty and tax liability, mode of gift was preferred over mode of sale, however, the said cost of stamp duty got included while settling the accounts between the Noticees and lastly, there is no document on records to substantiate any payment having been made to settle the rights of the sister of Notice No.5. Also, the agreement for sale was not a registered agreement and was merely a notarized document which raises questions about the authenticity of the claim of the Noticees having executed a sale agreement pertaining to the said flat. Similarly, the opinion of a Chartered Accountant immediately after executing the agreement for sale as a reason for not going ahead with the sale transaction, is apparently an evasive attempt by the Noticees to concoct an after- thought explanation to justify the funds transfers as well as their action of not registering the sale deed. It may be recalled that the CA had advised that the flat may be gifted to the Notice No. 5 and the consideration so received by the Notice No. 3 may also be attributed as gift. However, the Noticees have been able to produce a gift deed with respect to only 1/3rd share of the said flat and despite the same being a gift, the Noticees have tried to justify the funds transactions by connecting them to the value of the flat. In view of the above stated factual matrix, I am of the considered view that all the explanations offered by the Noticees involving the sale of flat grossly suffer from factual

deficiencies, inconsistencies, contradictions making it amply clear that these explanations are merely an afterthought exercise having no substance to rely upon.

63. There is no dispute that the imputed fund transfers pertained to the year 2016 and for that period, the Noticees have furnished only a notarised agreement for sale, which admittedly never reached its destiny of actual sale, by the Noticees till February 06, 2019 when the Noticees executed the Gift Deed of the said flat. It is pertinent to note from the records that by April, 2018, the investigation by SEBI in the present matter was in progress and vide letters dated April 03, 2018 issued by SEBI, various details were sought from the Noticees, in response to which, the Noticees had furnished certain information pertaining to their case. Further, vide an interim order dated February 22, 2019, the alleged unlawful gains of INR 1.02 Crore (approx.) have been impounded by SEBI. Therefore, the chain of events, as demonstrated above clearly suggest that the claim of the Noticees of having an agreement for sale between the father and mother; the purported advice received from a CA; the execution of gift deed after a gap of 3 years from the date of agreement for sale and finally the act of registration of such gift deed after another 6 months, all point towards nothing but events that have been deliberately manufactured and concocted by the Noticees only to avoid any likely enforcement actions. The factors recorded above are sufficient to reasonably conclude that, due to the on-going investigations/proceedings initiated by SEBI, the Noticees have created these documents ex-post facto and have eventually transferred 1/3rd portion of the flat as gift to daughter only to impart a colour of genuineness to their aforesaid fictitious claims, which are found to be far from the truth. I note that, these factors sway the preponderance of probabilities far away from the claim of the Noticees with respect to such fund transfers.

64. It is pertinent to note that in the instant matter, the charges levelled against the Noticees are towards indulging in communication of UPSI and dealing in securities of the Company while in possession of UPSI. In this regard it is to be noted that the transfer of funds amongst the Noticees to trade in the securities of the Company per se is not an element sine qua non to establish the charge of engaging in insider trading. Regulation 3 provides that no insider shall communicate, provide or allow access to any UPSI related to a company to any person, whereas regulation 4 of the PIT Regulations, mandates that no insider shall trade in securities when in possession of UPSI. Thus, establishment of funds transaction amongst Noticees is neither

essential to charge nor is it required as a precondition to establish the violations of PIT Regulations. Transfers of funds amongst the delinquents is only a corroborative factor for strengthening the prima facie suspicion while the charge of insider trading is otherwise amenable to be established even in absence of the transfer of funds. Therefore, even assuming for a moment that the submissions of the Noticees related to the fund transfer are *bonafide* and can be taken on their face value, the same would not be sufficient in isolation, to cause exoneration of the Noticees from the charges of insider trading made in the SCN. The charges are thus required to be seen, examined and considered within the realm of ingredients of insider trading as prescribed under the relevant provisions of law.

Does the violation by the Noticees, attract monetary penalty under sections 15G of the SEBI Act?

65. Thus, the chain of events in this case clearly shows that the Notice No. 6, who is insider to the Company being its Executive Director and promoter, transfers funds to his wife (Notice No. 5) who in turn transfer it to the bank accounts of her mother (Notice No. 1) and she further having utilised a part of such funds in purchasing shares of ADF, transfers part of such funds to Notice No. 2, who also utilises such funds towards purchase of the shares of ADF. I may hasten to add here that by authorising Notice No. 6, who is the Executive Director of the Company to execute the trades in the trading account of the Notice No. 1, the question of providing any evidence of actual communication of UPSI by Notice No.6 neither survives nor is required as the insider himself has been authorised to place trades in the scrip of the Company on behalf of other Noticee during the UPSI period. Further, there is enough evidence to show that funding had taken place in respect of the trades in ADF from the account of Notice No. 6.
66. Therefore, it is conclusively established that, all the Noticees are part of a close-knit family and admittedly, in such a family structure, there will be remote chances for the investigating officer to lay his hands on any concrete direct evidence of private communication of UPSI, more so when the underlying information is forbidden to be shared. The role of the Notice No. 6 was not only limited to being an insider, but based on the overt proximate facts governing the inter-se relationship with other Noticees, funding etc as discussed earlier. In view of the same, there appears to be no doubt that the Notice No. 6 has communicated the UPSI to the other Noticees. The contention of the Noticees that the communication needs to be established clearly falls short

for acceptance in the light of the explicit facts of usage of funds by the Notice Nos. 1 and 2 in trading in the shares of ADF during the relevant period, the source of which has been traced back to the Notice No. 6. Though the Noticees have tried to put forth various explanations for the fund transfers revolving around transfer of a flat, real estate transactions etc, all explanations have been found to be baseless and devoid of merit. The Notice No. 6 being a connected person and an insider of the Company having access to the relevant UPSI has shared/ communicated the same with his other family members and relatives, who are found to have engaged in trading in the scrip of the Company during the relevant period. The pattern and volume of trading in the scrip of ADF by Notice No.1 and 2, where, their trading has been found to be confined only to the scrip of the ADF during the period, coupled with the facts that Notice Nos.1 and 2 were enjoying very close relationship with each other and used to consult other Noticees for trading in securities, are sufficient in themselves to conclude that their trades in the scrip during the UPSI period were influenced and motivated by the possession of and access to the said UPSI through the Notice No.6. Admittedly, there were frequent funds transfers amongst the Noticees and major portion of the funds so transferred during the relevant period has been used to meet the payment obligation arising out of trades executed in the ADF shares during the period. Lastly, the fact that Notice Nos. 3, 4 and 6 were authorised to place trade orders on behalf of the Notice Nos. 1 and 2 and their trading pattern in the scrip of the Company during the relevant period leaves no doubts about the UPSI being in possession of the Noticees during the relevant period. Thus, I am in agreement with the allegation/charges levelled in the SCN that the Noticees have indulged in insider trading in the scrip of ADF while in possession of UPSI.

67. I find it relevant to mention here that there is no dispute to the fact that the trades were executed in the trading accounts of the Notice Nos. 1 and 2 only, however, for the detailed reasons recorded while adjudging the culpability of the Noticees, I find that without the active involvement and action on part of the rest of the Noticees, the accrual of such profits in the hands of Notice No.1 and 2 was not at all possible. I may reiterate here that the Notice No. 6 being the Executive Director of the Company and also its promoter apart from being privy to the UPSI, was also authorized to trade on behalf of the Notice No. 1. Further, it is on record that the funds towards the trading/dealing in ADF by other Noticees originated from the account of Notice No. 6. Further, the Notice No. 5, who was also the promoter of the Company acted as a conduit to transfer funds from the Notice No. 6 to the account of Notice No. 1, part

of which were also transferred to the Notice No. 2, and both of them executed the trades based on the UPSI. Further, as discussed earlier, the Notice No. 3 was an insider being immediate relative of the Notice No. 6 and was also the deciding force as well as one of the authorized persons for placing the trade orders executed on behalf of the Notice No. 2. Lastly, it is seen that the Notice No. 4, son of the Notice No. 2, is also an important link being a person authorized to trade on behalf of the Notice No. 2 in her trading account and as the Noticees have failed to establish with the help of any cogent evidence that no trades were executed by the Notice No. 4, the complicity of the Notice No. 4 in placing the orders in the scrip of ADF in the account of Notice No 2 (his mother) which were motivated by the UPSI cannot be extinguished.

68. Insofar as the degree of proof is concerned, there is no contradicting the fact that cases like the present one will seldom have any direct or concrete evidence and the case needs to be built upon the probabilities that emerge from the circumstances governing the facts of the case, more so when all the Noticees belong to one family. In the matter of *V. K. Kaul Vs. SEBI*, Hon'ble SAT has *inter alia* observed as: "...*The measure of proof in civil or criminal cases is not an absolute standard and within each standard, there are degrees and probabilities...*".
69. To conclude, when the insiders of a company craft a device by roping in their family members and other relatives to indulge in insider trading, it becomes a difficult task to cure the mischief, as being very closely associated, the exercise to cull out direct communication of unpublished price sensitive information becomes a daunting task. I also observe that the insiders who are privy to the price sensitive information which has potential to impact the price of the security upon disclosure of such information, have a statutory obligation to maintain the sanctity of such information. Any kind of action taken based on the access of information in exclusion of the general investing public clearly makes a dent in the level playing field. It has been time and again observed by various courts that the SEBI Act, 1992 entrusts a duty on SEBI to protect the interest of investors.
70. Thus, I conclude that the Noticees have contravened the following specific provisions and are liable for monetary penalty under the respective penalty provision:

Table no. 21: Provisions Violated and Applicable Penalty Provision

Name of the Noticee	Violations	Penalty provisions
Ms. Pallavi Navinchandra Mehta (Noticee No. 1' / 'Pallavi')	Section 12A(d) & (e) of SEBI Act and Regulation 4(1) of PIT Regulations, 2015	Section 15G of the SEBI Act, 1992
Ms. Shefali Bhupendra Mehta (Noticee No. 2' / 'Shefali')		
Shri Navin Mansukhlal Mehta (Noticee No. 3' / 'Navin')		
Shri Abhishek Mehta (Noticee No. 4' / 'Abhishek')		
Ms. Priyanka Thakkar (Noticee No. 5' / 'Priyanka')	Section 12A(d) of SEBI Act and Regulation 4(1) of PIT Regulations, 2015	
Shri Bhavesh R Thakkar (Noticee No. 6' / 'Bhavesh')	Section 12A (d) & (e) of SEBI Act, Regulation 3(1) and Regulation 4(1) of SEBI (PIT) Regulations, 2015.	

71. The provision of section 15G of the SEBI Act are mentioned below:

SEBI Act

Penalty for insider trading.

If any insider who,—

- (i) either on his own behalf or on behalf of any other person, deals in securities of a body corporate listed on any stock exchange on the basis of any unpublished price-sensitive information; or*
- (ii) communicates any unpublished price-sensitive information to any person, with or without his request for such information except as required in the ordinary course of business or under any law; or*
- (iii) counsels, or procures for any other person to deal in any securities of any body corporate on the basis of unpublished price-sensitive information, shall be liable to a penalty [which shall not be less than ten lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher].*

If so, what would be the monetary penalty that can be imposed on the Noticees after taking into consideration the factors mentioned in section 15 J of the SEBI Act?

72. Having held that the trades executed by the Notice Nos. 1 and 2 were indeed in the nature of insider trading, the last issue that remains to be adjudged in the present case is the quantum of profits that accrued to the Noticees by virtue of the aforesaid unlawful activity of carrying out trading in the scrip of the Company based on the UPSI. It is noted that the SCN takes a uniform approach in order to calculate such unlawful gains and for the purpose of such calculation, the

SCN relies on the closing price of the scrip, on the day when the UPSI became public. It is also noted that the Notice No. 2 had sold 2,515 shares during the UPSI period, however, as the Notice No. 2 was already holding 51,121 shares of ADF before the UPSI period, the SCN considers such 2,515 shares to be part of the existing holding of the Notice No. 2. The formula used for the calculation of the notional gains made by the Notice Nos. 1 and 2, as per the SCN is:

Unlawful gains made (in case of positive news) = No. of shares bought while in possession of UPSI X Closing price on the day of UPSI becoming public – No. of shares bought while in possession of UPSI X weighted average purchase price.

73. I find no reasons to deviate from the aforesaid formula which appears to be reasonable in the given facts of the case. Applying the aforesaid formula to the facts of the case, the following calculation of the gain that accrued to the Notice Nos. 1 and 2 through their insider trading in the scrip of ADF are as under:

Table no. 22: Calculation of unlawful gains

Particulars	(Notice No.-1) (INR)	(Notice No. -2) (INR)
No. of shares bought while in possession of UPSI	1, 54,857	3, 07,368
X Closing price on the day of UPSI becoming public	<u>112.70</u>	<u>112.70</u>
Subtotal (i)	17, 452, 383.9	34, 640, 373.6
(-) Less		
No. of shares bought while in possession of UPSI	1, 54,857	3, 07,368
X Weighted average purchase price	<u>88.25</u>	<u>99.89</u>
Subtotal (ii)	13, 666, 130.3	30, 702, 989.5
Unlawful gains made (approx.) ((i)-(ii)) (INR)	37, 86,253.6	39, 37,384.1

74. In this regard, the provisions of Section 15J of the SEBI Act and rule 5 of the Adjudication Rules require that while adjudging the quantum of penalty, the adjudicating officer shall have due regard to the following factors namely:

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

- (b) the amount of loss caused to an investor or group of investors as a result of the default;*
(c) the repetitive nature of the default.

75. With regard to the above factors to be considered while determining the quantum of penalty, it may be noted that as per the calculations in the SCN and also in the investigation report, Noticee No. 1 /Ms. Pallavi and Noticee No. 2/Ms. Shefali made unlawful gains of INR 37.86 lakhs and INR 39.37 lakhs, respectively by indulging in insider trading in the scrip of ADF, while in possession of UPSI, in collusion with other Noticees. However, based on the present factual matrix, the individual gains made by the Noticees is not quantifiable. I am of the view that the abovementioned act of indulging in insider trading by the Noticees are serious in nature. I have taken note of role played by each of the Noticees and the extent of involvement of each of the Noticees that resulted in Noticee No.1 and Noticee No. 2 making the abovementioned profits. I also note that vide order dated March 30, 2021 of WTM-SEBI, SEBI has directed disgorgement of INR 77,23,637 (along with the interest accrued) from the Noticees. Further, while determining the quantum of penalty to be imposed on the Noticees, I have also considered the fact that SEBI has already restrained the Noticee Nos. 1, 2 and 6 for a period of 6 months from accessing the securities market and further prohibited the Noticees from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, and also restrained them from buying, selling or otherwise dealing in securities of ADF, directly or indirectly, in any manner what so ever for a period of 1 year. Further, Noticee Nos. 3, 4 and 5 were also restrained from accessing the securities market and are further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of 3 months.

ORDER

76. Having considered all the facts and circumstances of the case, the material available on record and the factors mentioned in the preceding paragraphs, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with rule 5 of the Adjudication Rules, hereby impose the penalty under Section 15G of the SEBI Act, 1992 as given in the following table:

Table no. 23: Details of Penalty imposed.

Name of the Noticee	Violations	Penalty
Ms. Pallavi Navinchandra Mehta (Noticee No. 1' / 'Pallavi')	Section 12A(d) & (e) of SEBI Act and Regulation 4(1) of PIT Regulations, 2015	Rs. 40,00,000 (Rs Forty Lakhs) to be paid Jointly and Severally by all the Noticees
Ms. Shefali Bhupendra Mehta (Noticee No. 2' / 'Shefali')		
Shri Navin Mansukhlal Mehta (Noticee No. 3' / 'Navin')		
Shri Abhishek Mehta (Noticee No. 4' / 'Abhishek')		
Ms. Priyanka Thakkar (Noticee No. 5' / 'Priyanka')	Section 12A(d) of SEBI Act and Regulation 4(1) of PIT Regulations, 2015	
Shri Bhavesh R Thakkar (Noticee No. 6' / 'Bhavesh')	Section 12A (d) & (e) of SEBI Act, Regulation 3(1) and Regulation 4(1) of SEBI (PIT) Regulations, 2015.	

I am of the view that the said penalty is commensurate with the default committed by the Noticees.

77. The Noticees shall remit / pay the said amount of penalty within 45 (forty five) days of the receipt of this order either by way of Demand Draft (DD) in favour of “SEBI -Penalties Remittable to Government of India”, payable at Mumbai and the said DD should be forwarded to the Division Chief, Enforcement Department -I (EFD), Division of Regulatory Action - I [EFD1-DRA-1] SEBI Bhavan, Plot No.C4-A, ‘ G’ Block, Bandra Kurla Complex (BKC), Bandra (East), Mumbai –400 051 and also send an email to tad@sebi.gov.in with the following details:

1	Case Name	
2	Name of the Payee	
3	Date of Payment	
4	Amount Paid	
5	Transaction No.	
6	Bank Details in which payment is made	
7	Payment is made for (like penalties/disgorgement / recovery/ settlement amount and legal charges along with order details)	

78. Payment can also be made online by following the below path at SEBI website www.sebi.gov.in ENFORCEMENT → Orders → Orders of AO → Click on PAY NOW or at <https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html>.

79. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act, 1992 for

realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.

80. In terms of rule 6 of the Adjudication Rules, a copy of this order is sent to the Noticees viz. **Ms. Pallavi Navinchandra Mehta, Ms. Shefali Bhupendra Mehta, Mr. Navin Mansukhlal Mehta, Mr. Abhishek Mehta, Ms. Priyanka Thakkar and Mr. Bhavesh R. Thakkar** and also to Securities and Exchange Board of India.

Date: June 23, 2022

Place: Mumbai

SURESH B MENON

ADJUDICATING OFFICER