BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. ORDER/BM/DS/2022-23/16284-16286]

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

Urmila Kanoria **PAN – AGDPK1216B** 8C, IL Palazzo Little Gibbs Road, Malabar Hill, Mumbai, Maharashtra – 400 006 Email: navneetj2020@gmail.com	**Saket Kanoria** **PAN – AGBPK2134N** 8C, IL Palazzo Little Gibbs Road, Malabar Hill, Mumbai, Maharashtra – 400 006 Email:saket@tcpl.in
Narmada Fintrade Private Limited **PAN – AABCN7035N** 307, 3rd Floor, “Abhijeet” Building, Mithakali Six Roads, Ellisbridge, Ahmedabad, Gujarat – 380 006 Email: kanoriahospital@yahoo.com	

In the matter of
Godfrey Philips India Limited

BACKGROUND:

1. Securities and Exchange Board of India (hereinafter being referred to as “**SEBI**”) initiated adjudication proceedings under section 15G of SEBI Act, 1992 against Ms Urmila Kanoria (hereinafter referred to as “**Noticee 1**”), Mr. Saket Kanoria (hereinafter referred to as “**Noticee 2**”) and Narmada Fintrade Private Limited

(hereinafter referred to as "**Noticee 3**" / "**NFPL**") (Noticees 1, 2 and 3 collectively referred to as "**Noticees**") in regard to their trading in the scrip of Godfrey Philips India Limited (hereinafter referred to as '**GPIL/ Company**') for the alleged violation of provisions of Regulation 3(1) and Regulation 4(1) of the SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as "**SEBI PIT Regulations**"). Investigation was carried out for the period beginning June 28, 2019 to August 23, 2019 (hereinafter referred to as "**investigation period**").

APPOINTMENT OF ADJUDICATING OFFICER

2. Vide Order dated October 06, 2021, the undersigned was appointed as the Adjudicating Officer (**"AO"**) under Section 19 read with Section 15-I of the SEBI Act, read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties Rules, 1995 (hereinafter referred to as "**Adjudication Rules**") to enquire into and adjudge under the provisions of Section 15G of the SEBI Act, 1992, the aforesaid alleged violations committed by the Noticees.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. A common Show Cause Notice with reference no. SEBI/EAD/EAD-3/BM/DS/31853/2021 dated November 09, 2021 (hereinafter referred to as "**SCN**") was issued by the undersigned to the Noticees via Speed Post Acknowledgement Due (SPAD) and digitally signed e-mail under the provisions of Rule 4(1) of the Adjudication Rules read with section 15-I of the SEBI Act, calling upon the Noticees to show cause as to why an inquiry should not be held and penalty be not imposed against them under Section 15G of SEBI Act, 1992, for the aforesaid alleged violations.

4. The SCN issued to the Noticees alleged as follows:

a. The shares of the company are listed on Bombay Stock Exchange (BSE), National Stock Exchange (NSE) and Metropolitan Stock Exchange of India (MSEI).

b. Management of the Company during the FY 2019-20:(Source- Annual Report for FY 2019 - 20)

Name of the Director	DIN	Category
Mr R A Shah	00009851	Chairman, Non independent and non-executive director
Mr K K Modi	Not available in Annual Report	Ex Managing Director**
Dr Bina Modi	00048606	Managing Director
Mr Samir Modi	0029554	Executive Director
Mr Sharad Aggarwal	07438861	Whole Time Director
Mr Ruchir Kumar Modi	07174133	Non independent and non- executive director
Dr Lalit Bhasin	00001607	Independent Director
Mr Anup N Kothari	00294737	Independent Director
Mr Atul Kumar Gupta	01734070	Independent Director
Mrs Nirmala Bagri	01081867	Independent Director

** as per Annual report for FY 2019-20, Sh K K Modi passed away on November 02, 2019 and he ceased to be MD of GPIL on that day. Ms Bina Modi was appointed as MD of GPIL w.e.f. November 14, 2019.

c. <u>Corporate Announcements</u>

<table>
<tr><th>Date</th><th>Announcement</th><th>Price movement in the scrip of Godfrey Phillips India Limited</th><th>Impact on price</th></tr>
<tr>
<td>28-Jun-2019 17:44 on NSE and 17:37 on BSE</td>
<td>Godfrey Phillips India Limited has informed the Exchange regarding the Trading Window closure pursuant to SEBI (Prohibition of Insider Trading) Regulations, 2015</td>
<td>27/06/2019
<table>
<tr><th></th><th>O</th><th>H</th><th>L</th><th>C</th><th>Vol.</th></tr>
<tr><td>NSE</td><td>870</td><td>881.1</td><td>829.5</td><td>841.15</td><td>372153</td></tr>
<tr><td>BSE</td><td>872.75</td><td>883.05</td><td>830</td><td>841.85</td><td>28457</td></tr>
</table>
28/06/2019
<table>
<tr><th></th><th>O</th><th>H</th><th>L</th><th>C</th><th>Vol.</th></tr>
<tr><td>NSE</td><td>844.5</td><td>849.8</td><td>825.25</td><td>830.85</td><td>81872</td></tr>
<tr><td>BSE</td><td>847</td><td>848.4</td><td>826.15</td><td>832.3</td><td>4163</td></tr>
</table>
01/07/2019
<table>
<tr><th></th><th>O</th><th>H</th><th>L</th><th>C</th><th>Vol.</th></tr>
<tr><td>NSE</td><td>831</td><td>835.1</td><td>816</td><td>821.8</td><td>46228</td></tr>
<tr><td>BSE</td><td>829.15</td><td>835.5</td><td>817</td><td>821.7</td><td>3623</td></tr>
</table>
</td>
<td>On the date of announcement, the price of the scrip closed at Rs. 830.85 on NSE and 832.3 on NSE from the previous day close of Rs. 841.15 at NSE and Rs. 841.85 at BSE.
The price of the scrip declined post the announcement.</td>
</tr>
<tr>
<td>03-Aug-2019 15:37 on NSE and 15:31 on BSE</td>
<td>Godfrey Phillips India Limited has informed the Exchange regarding a press release dated August 03, 2019, titled "Submission of Advertisement Notice for Board Meeting</td>
<td>02/08/2019
<table>
<tr><th></th><th>O</th><th>H</th><th>L</th><th>C</th><th>Vol.</th></tr>
<tr><td>NSE</td><td>693.3</td><td>696.4</td><td>676.9</td><td>692.9</td><td>24999</td></tr>
<tr><td>BSE</td><td>690</td><td>697.2</td><td>676.15</td><td>693.1</td><td>1798</td></tr>
</table>
03/08/2019 – Trading holiday

05-Aug-2019
</td>
<td>The announcement date was a trading holiday. One day prior to the date of announcement, the price of the scrip closed at Rs. 692.9 on NSE and Rs. 693.1 at BSE and one day post the date of announcement, the price of the scrip closed at Rs. 693.25 on NSE and Rs. 694.25 at BSE</td>
</tr>
</table>

<table>
<tr><th>Date</th><th>Announcement</th><th>Price movement in the scrip of Godfrey Phillips India Limited</th><th>Impact on price</th></tr>
<tr><td></td><td>scheduled to be convened on 10th August, 2019".</td><td><table>
<tr><th></th><th>O</th><th>H</th><th>L</th><th>C</th><th>Vol.</th></tr>
<tr><td>NSE</td><td>686.7</td><td>705</td><td>673.3</td><td>693.25</td><td>36384</td></tr>
<tr><td>BSE</td><td>682.05</td><td>704.6</td><td>675.3</td><td>694.25</td><td>26367</td></tr>
</table></td><td></td></tr>
<tr><td>10-Aug-2019 12:58:29 on NSE and 12:53:02 on BSE</td><td>Godfrey Phillips India Limited has submitted to the Exchange, the financial results for the period ended June 30, 2019.</td><td>09/08/2019<table>
<tr><th></th><th>O</th><th>H</th><th>L</th><th>C</th><th>Vol.</th></tr>
<tr><td>NSE</td><td>707</td><td>742</td><td>701</td><td>708.95</td><td>97546</td></tr>
<tr><td>BSE</td><td>716.25</td><td>742.8</td><td>702.65</td><td>709.15</td><td>33030</td></tr>
</table>10th August was a trading holiday

13-Aug-2019 (10th, 11th and 12th being trading holidays)<table>
<tr><th></th><th>O</th><th>H</th><th>L</th><th>C</th><th>Vol.</th></tr>
<tr><td>NSE</td><td>790</td><td>850.7</td><td>762.25</td><td>850.7</td><td>436827</td></tr>
<tr><td>BSE</td><td>771</td><td>850.95</td><td>761</td><td>850.95</td><td>40742</td></tr>
</table></td><td>The announcement date was a trading holiday. One day prior to the date of announcement, the price of the scrip closed at Rs. 708.95 on NSE and Rs. 709.15 at BSE and one day post the date of announcement, the price of the scrip closed at Rs. 850.7 on NSE and Rs. 850.95 at BSE. On August 13, price of the scrip rose substantially and the scrip hit the upper circuit of 19.99%.</td></tr>
</table>

d. From the above table, it was observed that after the announcement of financial results, the scrip hit the upper circuit of 19.99% on the next trading day.

e. <u>Identification of Unpublished Price-Sensitive Information (UPSI)</u>
On August 10, 2019, GPIL informed NSE about financial results of the Company for the period ending June 30, 2019.The quarterly Net profit for the period ending June 30, 2019 was ₹114.88 crores as compared to profit of ₹ 35.39 crores as on March 31, 2019, an increase of 224.61% in profits.

Particulars	March 31, 2019	June 30, 2019	% Rise
Total Revenue (in crores)	□672.76	□848.28	26.08%
Net Profit (in crores)	□35.39	□114.88	224.61%

f. Further, during the post announcement period, the price of the scrip moved from a close price of Rs. 708.95 on August 09, 2019 to a close price of Rs. 1055.00 on August 19, 2019 i.e. registering a rise of 42.88% in 4 trading days.

g. The Company made profit of Rs. 114.88 crores during the quarter ending June 30, 2019 as compared to a profit of Rs. 35.39 crores during the quarter ending March 31, 2019 i.e. a significant increase by 224.61% in the profits of the company. It was also observed from the annual report of GPIL for the FY 2018-19 that it had made an overall profit of Rs. 240.97 crores for FY ending 2018-19.

h. Definition of "unpublished price sensitive information" as per Regulation 2(1)(n) of SEBI PIT Regulations reads as under:

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

(i) financial results;

(ii) dividends;

(iii) change in capital structure;

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

(v) changes in key managerial personnel.

i. In view of the definition of UPSI, the financial results, i.e. the results for quarter ended June 30, 2019 declared on August 10, 2019 was UPSI till the time it was disclosed by the company to the Stock Exchanges. It was also observed that disclosure of the said UPSI impacted the price of the scrip significantly.

j. <u>Period of UPSI</u> – The company, vide letter dated March 05, 2021, provided the details regarding chronology of events related to finalisation of the accounts for the quarter ending June 30, 2019. As per the letter, first face to face discussion between the company secretary and his subordinate regarding closure of trading window took place on June 28, 2019. The unaudited financial results of the company for the quarter ending June 30, 2019 were disclosed by GPIL to NSE and BSE during the trading hours on August 10, 2019 at 12:53:02 on BSE and at 12:58:29 PM on NSE via corporate announcement. In view of the foregoing, the UPSI regarding unaudited financial results of the company for quarter ending June 30, 2019 came into existence on June 28, 2019. Thus, the period from June 28, 2019 to August 10, 2019 was taken as the UPSI Period.

k. The Company, vide letter dated March 05, 2021 also mentioned that Key Management Information System (MIS) report containing overall financial performance of the company on IGAAP basis referred to as 'CEO report' was prepared and circulated by CFO Sunil Agrawal on July 11, 2019 and it was shared with nineteen persons, including Late Mr. K K Modi (then President, Managing Director and Director in charge of Finance). On perusal of the CEO Report, it was observed that it contained clear figures relating to profit of the company in comparison to the respective quarter of the last financial year and also to the last year. Thus, Late Mr. K K Modi, was allegedly privy to the UPSI which was made public only on August 10, 2019.

l. It was also alleged that Late Mr. K K Modi, being the Managing Director and Director in charge of finance of GPIL was a connected person in terms of regulation 2(1)(d)(i) of SEBI PIT Regulations. Accordingly, Late Mr. K K Modi was alleged to be an insider in terms of regulation 2(1)(g)(i) and 2(1)(g)(ii) of SEBI PIT Regulations.

m. Regulation 2(1)(d) and Regulation 2(1)(g) of the SEBI PIT Regulations read as under:

Regulation 2(1)(d): "connected person" means,-

(i) any person who is or has during the 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.

(ii) Without prejudice to the generality of the foregoing, the persons falling within 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); or

(b) a holding company or associate company or subsidiary company; or

(c) an intermediary as specified in section 12 of the Act or an employee or director thereof; or

(d) an investment company, trustee company, asset management company or an employee or director thereof; or

(e) an official of a stock exchange or of clearing house or corporation; or

(f) a member of board of trustees of a mutual fund or a member of the board of directors of the asset management company of a mutual fund or is an employee thereof; or

(g) a member of the board of directors or an employee, of a public financial institution as defined in section 2 (72) of the Companies Act,2013;

n. Basis of connection – During the post announcement period, the price of the scrip moved from a close price of Rs. 708.95 on August 09, 2019 to a close price of Rs. 1055.00 on August 19, 2019 i.e. registered a rise of 42.88% in 4 trading days. Since the announcement was price sensitive coupled with rise in price of the scrip, detailed analysis was carried out to identify clients whose trading pattern pointed towards trading on the basis of unpublished price sensitive information.

o. Investigation carried out detailed analysis to identify the entities who have traded in the scrip of GPIL based on the UPSI regarding the financial results of the Company for the quarter ended June 30, 2019.

p. Investigation observed that Noticee 2, trading through the TM Motilal Oswal Financial Services Limited net bought 7000 shares in the UPSI period at an average price of Rs.725.05.

q. Noticee 2 is Managing Director of the company TCPL Packaging Limited, a company having expertise in broad range of tobacco packaging products for over 25 years. Company Godfrey Phillips India Limited is client of TCPL Packaging Limited.

r. As per Regulation 2(1)(d) of SEBI PIT Regulations, Noticee 2 is allegedly, a "connected person" because of his "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".

s. Therefore, on the basis of contractual relationship of TCPL with GPIL, Noticee 2 has been alleged to be a "connected person" as per Regulation 2(1)(d) of SEBI PIT Regulations.

t. Further, Noticee 2, in his undertaking during investigation has stated that former President and Managing Director of GPIL, late Mr. K K Modi was his maternal uncle. (passed away on November 02, 2019 i.e. post the UPSI period).

u. In addition to trading of Noticee 2, the trading details/ pattern of entities related to Noticee 2 in the scrip of GPIL during the Investigation Period were also examined. It was noted from the trading pattern that the following entities related to Noticee 2 had also traded in the scrip on August 09, 2019:

Sr No	**Name**	**Relationship with Noticee 2 (Saket Kanoria) and Late Sh K K Modi**
1	Urmila Kanoria ("Noticee 1")	Mother of Noticee 2 and sister of Late Sh K K Modi
2	Narmada Fintrade Pvt. Ltd ("NFPL/ Noticee 3")	Holding company of TCPL, directors and promoters of the company are Urmila Kanoria and K K Kanoria, mother and father of Noticee 2 respectively. Urmila Kanoria is mother of Noticee 2 and sister of Late Sh K K Modi

v. Urmila Kanoria (Noticee 1) is the sister of late Mr. K K Modi. She has submitted vide her email dated August 06, 2021 that she remained in contact with her brother, Late Mr. K K Modi till he died and that they had a normal brother-sister relationship. She had also traded in the shares of GPIL on August 09, 2019 i.e. just one day prior to the date of quarterly financial results.

w. Further, Noticee 2 and her husband, K K Kanoria are the promoters and directors of NFPL (Noticee 3). Noticee 3 is also the holding company of TCPL of which Noticee 2 is the MD. Noticee 3 had also traded in the shares of GPIL on August 09, 2019 i.e. just one day prior to the date of quarterly financial results. Noticee 3 had submitted that decision to purchase shares of GPIL was taken by K K Kanoria. However, Noticee 1 (Urmila Kanoria) and K.K. Kanoria were authorized severally by a resolution of Board of Directors dated July 27, 2005 to buy, sell and deal in securities on behalf of Noticee 3.

x. In view of the aforesaid, Noticees 1, 2 and 3 are alleged to be connected persons.

y. It is alleged that Late Mr. K K Modi had shared the UPSI with his sister, Ms. Urmila Kanoria/ Noticee 1. The UPSI was further passed on by Noticee 1 to Noticee 2/ Saket Kanoria (son) and also to Noticee 3, by virtue of being director of NFPL/ Noticee 3.

z. <u>Analysis of trading pattern of the Noticees across the market:</u>
The following is the trading history across the market of allegedly connected entities obtained from BSE and NSE.

Pre UPSI Period (28/03/2019 to 27/06/2019)

Name of Entity	Historical Trading Details (BSE)		Historical Trading Details (NSE)	
	No. of scrips dealt in during the period	Gross Value of Trades (in Rs.)	No. of scrips dealt in during the period	Gross Value of Trades (in Rs.)
Notice 1 (Urmila Kanoria)	Nil		7	2,92,65,729
Noticee 2 (Saket Kanoria)			Nil	
Noticee 3 (Narmada Fintrade Pvt Ltd)			Nil	

During UPSI Period (28/06/2019 to 10/08/2019)

Name of Entity	Historical Trading Details (BSE)		Historical Trading Details (NSE)	
	No. of scrips dealt in during the period	Gross Value of Trades (in Rs.)	No. of scrips dealt in during the period	Gross Value of Trades (in Rs.)
Noticee 1	1	10,23,206	1*	7,24,088
Noticee 2	Nil		1*	50,75,384
Noticee 3	1	10,15,927	1*	7,19,553

Post UPSI Period (11/08/2019 to 23/11/2019)

Name of Entity	Historical Trading Details (BSE)		Historical Trading Details (NSE)	
	No. of scrips dealt in during the period	Gross Value of Trades (in Rs.)	No. of scrips dealt in during the period	Gross Value of Trades (in Rs.)
Noticee 1	Nil		10*	7,13,53,507
Noticee 2			Nil	
Noticee 3			7*	95,97,067

*Includes trade in the scrip of GPIL

aa. Analysis of trading pattern of Noticees in the scrip of GPIL

The following is the trading history in the scrip of GPIL, of allegedly connected entities obtained from BSE and NSE.

Pre UPSI Period (28/03/2019 to 27/06/2019)

Date	Buy Qty.	Wt. Avg. Buy Price (in Rs.)	Buy Value (in Rs.)	Sell Qty.	Wt. Avg. Sell Price (in Rs.)	Sell Value (in Rs.)
Noticee 1						
02-Apr- 19	-	-	-	6000	1148.54	68,91,229.80
03-Jun-19	1000	917.21	917208	-	-	-
Noticee 2		NIL				
Noticee 3		NIL				

During UPSI Period (28/06/2019 to 10/08/2019)

Date	Buy Qty.	Wt. Avg. Buy Price (in Rs.)	Buy Value (in Rs.)	Sell Qty.	Wt. Avg. Sell Price (in Rs.)	Sell Value (in Rs.)
Noticee 1						
09-Aug- 19	1000	724.09	724087	-	-	-
Noticee 2						
09-Aug- 19	7000	725.05	5075383.95	-	-	-
Noticee 3						
09-Aug-19	1000	719.55	719552.50	-	-	-

Post UPSI Period (11/08/2019 to 23/11/2019)

Date	Buy Qty.	Wt. Avg. Buy Price (in Rs.)	Buy Value (in Rs.)	Sell Qty.	Wt. Avg. Sell Price (in Rs.)	Sell Value (in Rs.)
Noticee 1						
21-Aug-19	-	-	-	2000	1000.22	20,00,447
Noticee 3						
21-Aug-19	-	-	-	1000	993.07	993068.25
Noticee 2	NIL					

bb. It was observed from the above tables that the Noticees purchased shares of GPIL on August 09, 2019, i.e. on immediately preceding day of declaration of quarterly financial results of GPIL. The next trading day was August 13, 2019. The table given below shows the value of shares on August 09, 2019 and August 13, 2019, which were purchased by the Noticees:

Name of entity	Date of purchase	No of shares purchased	Purchase value (Rs.)	Closing price as on Aug 13, 2019 (Rs.)	Value of shares as on Aug 13, 2019 at close (Rs.)
Noticee 2	August 09, 2019	7000	50,75,383.95	850.70	59,54,900
Noticee 1	August 09, 2019	1000	7,24,087.80	850.70	8,50,700
Noticee 3	August 09, 2019	1000	7,19,552.50	850.70	8,50,700

cc. It was observed that Noticee 2 had sold shares of TCPL of which he was MD and purchased shares of GPIL in last three years. Except these two scrips, he has not traded in any other scrip.

dd. It was further observed that Noticee 1, 2 and 3 had traded in the scrip of GPIL on August 09, 2019, i.e. just one day prior to the announcement of financial results for the quarter ended June 30, 2019. As also mentioned earlier, the announcement was price sensitive and positive, which resulted in increase in price of the scrip of GPIL in the immediately succeeding trading sessions.

ee. In view of the aforesaid, Noticees 1, 2 and 3 were alleged to be connected persons in terms of regulation 2(1)(d) of SEBI PIT Regulations. It was alleged that Late Sh K K Modi had shared the UPSI with his sister, Noticee 1. The UPSI was further passed on by Noticee 1 to Noticees 2 (son of Noticee 1) and Noticee 3 (promoted by Noticee 1).

ff. It was alleged that Noticee 1 had access and possession of UPSI, being sister of Late Mr. K K Modi, who was a connected person and hence, 'insider' at the time of the aforementioned trades and that she had communicated UPSI with

Noticees 2 and 3. Hence, she was alleged to have violated Regulation 3(1) of the SEBI PIT Regulations.

gg. Therefore, It was alleged that Noticees 1, 2 and 3, being connected persons, and being ‘Insiders’ as per Regulation 2(1)(g) of the SEBI PIT Regulations, having traded in the scrip of GPIL while in possession of UPSI, have violated Regulation 4(1) of the SEBI PIT Regulations.

hh. It was also alleged that Noticee 1 had access and possession of UPSI, being sister of Late Mr. K K Modi, who was a connected person and hence, ‘insider’ at the time of the aforementioned trades and that she had communicated UPSI with Noticees 2 and 3. Hence, she was alleged to have violated Regulation 3(1) of the SEBI PIT Regulations.

5. Vide mail dated November 24, 2021, the authorized representatives (AR) of the Noticees requested for inspection of documents relied upon in the SCN. The same was granted by the Adjudicating Officer and they were advised to visit SEBI premises on December 01, 2021 to inspect the documents. The AR was allowed to inspect all documents relied upon in the SCN, including letter from GPIL dated March 05, 2021 alongwith Annexures to the letter; extracts of CEO Report; Statement of examination on oath of Mr. Saket Kanoria (Noticee 2); Urmila Kanoria’s (Noticee 1) letter dated August 06, 2021.

6. The proceedings of inspection of documents were acknowledged by the AR and was shared with the Noticees vide mail dated December 01, 2021.

7. Submissions made by Authorised Representatives (AR) of the Noticees vide letter dated December 13, 2021 are reproduced hereunder:

a. *Our Clients deny and dispute the allegations made in the SCN in toto. Merely by juxtaposing individual factual positions, one cannot draw an inference of violative insider trading. The standard of assessing evidence is preponderance of probabilities and not preponderance of possibilities. It is not open to SEBI to allege that if an allegation is possible, it should become a sustainable charge, and in fact, it is SEBI's duty to assess as a reasonable person would, if a cogent and logical probability of communication of UPSI and its use to trade is made out.*

b. *Merely by reason of not specifically dealing with any of the allegations / contentions or statements under the SCN, Our Clients do not and shall not be deemed to have admitted the veracity and / or authenticity of the contents mentioned in the same.*

c. *Our Clients have previously also made submissions in respect of the various queries raised by your office, through i) Mrs. Urmila Kanoria's letters dated August 5, 2021and March 30, 2021; ii) Mr. Saket Kanoria's emails/letters dated July 16,2021, June 28,2021 and March 17, 2021; and iii) NFPL's letter dated August 5, 2021. Our Clients repeat, reiterate and once again submit for the sake of brevity, whatever has been stated under our Clients submission letters/emails to your office. The same were enclosed by the AR with their submissions.*

d. *GPIL and TCPL cannot be treated as "connected persons" for purposes of PIT Regulations merely because GPIL is a commercial client of TCPL. By this token, every client or supplier who has a business relationship with a listed company would ipso-facto become a "connected person" for purposes of the PIT Regulations, and any trade by anyone connected with such connected person can be accused of being motivated by communication of UPSI. Such an approach would be unreasonable, arbitrary and extreme. Instead, one must* *see whether the nature of the client relationship was one that is reasonably likely to place the counterparty in a position of having access to UPSI.*

e. *The SCN does not adduce any evidence of how TCPL or for that matter Noticee 2 at all had a relationship with GPIL that afforded them access to price sensitive information, much less information relating to the specific UPSI in this case. This is a vital ingredient in the definition of "connected person" that the SCN has overlooked. Regulation 2(1)(d) of SEBI PIT Regulations, which defines "connected persons", along with the Note under the sub-regulation was quoted by the AR.*

f. *The mere fact that Noticee No. 2 was the nephew of the late MD of GPIL does not render them as "connected persons". These two individuals are admittedly not "immediate relatives". A maternal uncle and his nephew are relatives but if that were to suffice to draw such an extreme adverse inference, the PIT Regulations need not have taken the trouble to qualify that such deeming fiction would cover only immediate relatives. Even if they had been immediate relatives, it would only been a rebuttable deeming fiction. In the instant case, they are not even in a position of the deeming fiction of being connected, which requires the application of Regulation 2(1)(d), which in turn requires demonstration of reasonable likelihood of having access to UPSI.*

g. *Besides, they were not even financially dependent on each other nor did they consult each other on trading decisions. There is no material on record or any other evidence at all, to show any deeper linkage or connection either in the form of call data records or other communication proximate to the trades, that can reasonably be said to be unusual or a radical departure from past conduct to warrant any adverse inference of any communication of UPSI.*

h. *Likewise, the mere fact that Noticee No. 1 was a relative of the late Mr. KK Modi is also insufficient to allege a "connection". For an "immediate relative" to be relevant for violations under the PIT Regulations, added ingredients are* *required viz.: (a) financial dependency or (b) consultation on trading decisions. There is not a shred of evidence in the material on record to suggest either of these ingredients. Therefore, SEBI has not discharged the burden of proof to show that the late MD of GPIL and Noticee No.1 could be regarded as "Connected persons". This is even more stark when Mr. KK Modi is no more. One cannot make presumptions about a dead man or tarnish the life of a man who is now dead, but suggesting without any reasonable support to allege that a dead man was guilty of communicating UPSI.*

i. *Indeed, there is no evidence at all either in the form of call data records or other evidence to point to the frequency of communication that is unusual when viewed in the light of the natural, reasonable and expected pattern of calls / communications that one can expect between two siblings;*

j. *The mere fact that two persons are related cannot ipso facto mean that one would communicate UPSI to the other. One would need something more and when nothing more is available, one must not level serious allegations as adverse as insider trading, lightly. The PIT Regulations have been consciously legislated to ensure that such a standard is stipulated in the law, and ignoring it or dismissing it lightly, cannot be resorted to.*

k. *Merely because financial results were announced by the listed company, every relative without the requisite ingredients and every client without the requisite ingredients cannot be assumed to be in possession of the results - more so, when there is not a whisper of a violation by insiders in the listed company, and more so when Mr. K K Modi is no more and unavailable to defend himself from such a serious allegation such as violating PIT Regulations.*

l. *Since the allegations against Noticee No. 1 and Noticee No. 2 are based on a complete misreading of the PIT provisions, the charge against Noticee No. 3 which is sought to be roped in, solely on the basis of Noticee No. 1's* *association with the late MD of GPIL, the charge against Noticee No.3, too ought to be dropped.*

m. TCPL *and Noticee No.2 are not persons connected with GPIL*

- *The SCN makes a fundamental error in treating Noticee No. 1 as a ("connected person" of GPIL owing simply to a contractual relationship between GPIL and TCPL. A contractual relationship between TCPL and GPIL cannot mean that TCPL, let alone its officers and directors, would become privy to all the information including UPSI relating to GPIL.*
- *The SCN was also required to demonstrate that the contractual relationship is of a nature that can be reasonably be said to afford access to UPSI. Not every business or professional relationship with a listed company can be said to reasonably allow or afford access to UPSI relating to the listed company in question.*
- *The definition of "connected person" and the appended "Note" make it abundantly clear that a mere relationship, be it professional, business or contractual is insufficient, to allege that there is a "connected person" relationship. One would also need to demonstrate that the connection is expected to put such person in possession of UPSI.*
- *In the instant case, Noticee No. 2 by virtue of being a Managing Director of TCPL can at best be said to be connected with TCPL. However, it is absurd to suggest that he is "connected" to all listed companies that TCPL may have a business relationship with including GPIL. Likewise, merely because there have been trades in shares of one of the listed companies, the connection would not come alive for making it a violative trade, without anything more to show.*
- *TCPL is a manufacturer of packaging materials viz. hinge lid blanks, tipping papers etc. and GPIL is one amongst its many clients / customers. TCPL's business of supplying packaging materials to GPIL does not require or*

entail TCPL or its officials having any insight let alone access to any information relating to the financial position of GPIL. Indeed, such information would not at all be germane to TCPL for acting as a supplier of packaging materials.

- *Besides, GPIL had business of merely Rs. 36.78 crore with TCPL for the year 2019-20. The turnover of GPIL during that period was Rs. 3174.89 crore. Such a miniscule scale of business with TCPL would hardly put TCPL in a position of being reasonably aware of the revenues of Rs. 3174.89 crore of GPIL in that year, or its expense pattern, or its provisions, or its taxation, all of which, among other financial information would combine to present a picture of the true and fair view of the accounts of GPIL. It would not at all be reasonable to conclude that with a business relationship that involved a merely Rs. 36.78 crore of business as compared to the turnover Rs. 3174.89 crore, TCPL would be in a position to know the larger picture of how GPIL was performing, for TCPL and its promoters to become aware of the financial results of GPIL.*
- *As regards the allegation that Noticee No. 2 is a nephew of the Late MD of GPIL, this too is clutching at straws and does not render Noticee No.1 a connected person to GPIL. Indeed, this facet simply muddies the waters and seeks to cause prejudice, without any credible explanation or basis to suggest that such a relationship afforded access to UPSI.*
- *The PIT Regulations are very clear that the mere fact that two persons may be related does not ipso-facto render one privy to any UPSI that may be in possession of the former. Indeed, SEBI has consciously in the PIT Regulations narrowed the list of relatives who may be deemed connected persons to "immediate relatives", and to it has added the requirement of financial dependency and consultation for conduct of trades. An uncle and his nephew are not "immediate" relatives as defined in the PIT Regulations,*

and even for immediate relatives the other factual ingredients are to be met. In this regard, AR quoted regulation 2(1)(f) of SEBI PIT Regulations which defines "immediate relatives".

- *Even for persons who are "immediate relatives", it would be incumbent on SEBI to establish either a financial dependency or consultation in matters of trading in securities. In the absence of either of the two conditions being met, even immediate relatives let alone distant relatives such as an uncle and his nephew, cannot be said to have access to UPSI that a relative may be privy to.*
- *Noticee No. 2's trading pattern too belies any inference of it being motivated in possession of UPSI. Indeed, Noticee No. 2 purchased a mere 7,000 shares on August 9, 2019 as a long term investment and these shares were not sold after the UPSI became public. They continue to be held to this day.*
- *Indeed, considering the shares of GPIL were trading at a low price in the month of August 2019, in fact, at the 52-week low price of Rs. 690 (as of August 6, 2019), the shares presented a good opportunity to purchase at that level. They were purchased at the average price of Rs.725 which was to maintain the historical holding. The miniscule quantity of shares purchased itself demonstrates that the trades were not motivated by any UPSI in his possession.*
- *Therefore, even with the pattern of trading, there is nothing to find fault with the Noticees or to draw an inference as serious and adverse as violative insider trading. The Noticees place reliance on the judgement of the Hon'ble Supreme Court in the case of Kishore Ajmera (also referred to in the judgement cited below) and crave leave to rely on the same during the personal hearing.*
- *AR also relied upon the observation of Hon'ble Supreme Court in Chintalapati Srinivasa Raju v. SEBI, {2018} 7 SCC 443 that a person is a*

relative of a "Connected person" cannot by itself be ground to visit such person with a charge of insider trading.

- *Insider trading is one of the most heinous acts that a person can be charged with under securities regulations. Consequently, SEBI is required to establish a higher level of preponderance of probabilities to establish "insider trading" rather than use a "say so" i.e.ipse-dixit as has been ruled by the Hon'ble Supreme Court in Chintalapati Raju's case. The SCN does not bring on record any material against the Noticees to suggest that they can reasonably be expected to have had knowledge of the UPSI.*
- *AR also relied upon and quoted from the judgement of Learned Whole Time Member of SEBI vide an order dated May 12, 2016 (Ref: WTM/SR/SEBI/EFD/ 26/05/2016) in the matter of Sabero Organics Gujarat Limited and contended that SEBI has also ignored its own precedents where it has emphasized the requirement that communication of UPSI should be established by cogent material.*

n. *Noticee No. 1 is not an immediate relative of the late Mr. KK Modi.*

- *Likewise, Noticee No. 1 rnerely by virtue of being a relative of the late KK Modi cannot become a "connected person", in the absence of showing that she was either an "immediate relative" of Mr. KK Modi or that she was in frequent communication with him, that would give rise to an inference of communication of UPSI. There is not a whisper in the SCN of Noticee No. 2 being financially dependent on Mr. KK Modi or that she consulted him in matters of trading in securities.*
- *Noticee No. 1 is a senior citizen aged 79 years and given her age, does not take active part in financial matters. Her investments and decisions relating to the same, are generally looked after by her husband Shri Kailash Kumar*

Kanoria. She primarily looks after her family matters and matters related to charitable institutions promoted by her family.

- *Noticee No. 1's net worth as on March 31, 2019 was Rs. 16.24 crore and as on March 31, 2020 was Rs. 20.16 crore. She had substantial means and had she intended to profit from any alleged UPSI purportedly passed on to her by her late brother, she would have invested a sizeable sum in the shares of GPIL on August 9,2019 and not just bought 1,000 shares for a miniscule sum of Rs. 7 lakhs approximately.*
- *Her trading pattern demonstrates that the value of the shares traded on her behalf during the year 2019-2020 was approximately Rs.12.23 Cr. out of which Rs. 1.54 Cr. is attributable to trades in GPIL which is an insignificant 12.59 %of her total trading portfolio. The value of the shares held by her on March 31,2019, for GPIL was Rs. 69 Lakh only, as against the total value of her investment of Rs. 10.45 Cr. Therefore, the investment in GPIL is a miniscule component of a much larger trading portfolio.*
- *It is submitted that since her holding in the shares of GPIL was only 1000 shares as on June 30, 2019,and the price was quite low in August 2019, she purchased 1000 shares in the said month. Further, since she was making nominal profit from GPIL shares, she sold 2000 shares of GPIL on August 21, 2019. Subsequently, she also purchased 2000 shares of GPIL in February 2020 which she sold in March 2020 at a low price thereby incurring losses.*
- *The SCN has not examined her past trading history and trading pattern and simply jumped to the conclusion that since she was related to the late Mr. KK Modi, her trades in GPIL "must have" been motivated allegedly by the UPSI that was purportedly passed on to her by her brother. This is untenable. The fact that she had a normal sibling relationship does not mean that Mr. K K Modi was communicating UPSI. Indeed, when the bulk*

of her investments are in entities other than GPIL, it stands to reason that she did not have any special insight into GPIL let alone information that it would pose a significant profit for the quarter ended June 30,2019.

- *As observed by the Hon'ble Supreme Court in the Chintalapati Raju's case (supra), the mere fact that the two persons may be related, cannot without more, be sufficient to allege that trades of one relative were motivated by UPSI passed by the other.*
- *The UPSI according to the SCN was positive in nature. An insider who seeks to profit from good news, would buy shares and sell the same upon publication of the good news. On the other hand, an insider who seeks to profit from bad news, would sell shares before publication of the bad news.*
- *Far from this being the trading pattern, the Noticees bought just 9,000 shares of GPIL for just Rs. 65.37 lakh, which belies the inference of this being motivated by UPSI. Indeed, out of the 9,000 shares purchased, over 75% of the shares continue to be retained by Noticee No. 2.*
- *In Manoj Gaur v SEBI Appeal No. 64 of 2012, Order dated October 3, 2012), the Hon'ble SAT held that the miniscule scale of the trades by the spouse of an insider points to the fact that the trades were not motivated by UPSI.*

o. *NFPL's trades wrongly impugned:*

- *Narmada Fintrade Private Limited or NFPL is an investment company and regularly trades in securities of various companies. The decision of buying and selling of shares of various companies including GPIL was made by the director of Narmada Fintrade Private Limited viz. Mr. Kailash Kumar Kanoria. It is Mr. B.K. Naulakha who works as an Investment Consultant-cum-Accountant and assists in execution of trade instructions for and on behalf of NFPL.*

p. *The trading instructions for buying the aforesaid shares of GPIL were executed by Mr. B. K. Naulakha for and on behalf of the noticees as a part* *of a single transaction but split amongst the respective demat accounts of the notices / Our Clients.*

q. *It has been alleged in the SCN that late Mr. K K Modi, the ex-managing director of GPIL became privy to the UPSI on July 11,2021. It is pertinent to note that, the price of the shares of GPIL on July 11, 2021was Rs. 772.70/- and had been dropping ever since April 2019 and further, the lowest price of the shares between July 11,2021and August 9,2021 (the date of purchase of shares by the Noticees) was Rs.690.30/- on August 6,2019.*

r. *It is submitted that had one been in knowledge and possession of the UPSI since July 11, 2021 through Mr. K K Modi, NFPL would have purchased the shares of the GPIL on August 6, 2019 on which date the price of the shares were the lowest during the UPSI period. Besides, Mr. K K Modi has expired and is unavailable when such a serious charge of communication of UPSI is being levelled against a dead man. Besides, NFPL did not have access to UPSI when it purchased the shares on August 9, 2019. This is evident from the fact that NFPL too had substantial resources around Rs.95.70 crore as on March 31, 2019 and Rs. 96.32 crore as on March 31,2020. As on July 31,2019, NFPL had fixed deposits of Rs. 29.27 crore which could have been invested in the securities of GPIL had it been privy to the purported UPSI.*

s. *Besides, there is no material for SEBI to allege that the late Mr. K K Modi had access to UPSI prior to the meeting of the Board of Directors of GPIL. GPIL vide its letter dated March 5, 2021to SEBI, has clarified that "the financial results of the GPIL for the quarter ended on June 30, 2019 prepared as per the requirements of IND AS and were directly placed before the Audit Committee / Board in their respective meetings held on August 10, 2019. These results were not shared either with the members of the Board or Audit Committee prior to such meetings". There is nothing on record to show when draft financials were available and to whom they were sent and whether the* *late Mr. K K Modi had them, and in what form he had them etc. Besides, it is apparent that GPIL has stated that results were not shared with members of the Board of Directors prior to the meeting - which is the standard practice across listed companies. Therefore, the allegations are purely conjectural and not sustainable.*

t. *Strictly without prejudice to the above, it being clear that no case for violation of PIT Regulations being made out, it should also be noted that none of the factors in Section 15J would be attracted. There is no allegation of any unlawful gain that has accrued to the Noticees or any loss caused to the investors as a result. There is also no allegation that the alleged default was repetitive. Therefore, the proceedings are not of a nature that would warrant a monetary penalty. In any case, the absence of the key link- the late Mr. K K Modi - to defend himself, and the minuscule nature of trades and the misreading of the provisions of the PIT Regulations, are all pointers to there being no case to be made at all , leave alone imposition of any penalty. Section 15-I of the SEBI Act empowers and requires the Learned Adjudicating Officer to have regard to all facets of the matter and determine if at all any penalty is warranted.*

u. *In view of the aforesaid, we kindly request that these proceedings against Our Clients be dropped. Our Clients also request that they be given an opportunity of a personal hearing, in order to explain these matters in perspective.*

8. The AR appeared on behalf of the Noticees at the scheduled time on January 20, 2022. The AR reiterated the submissions made vide letter dated December 13, 2021. The AR also made additional submissions, which he confirmed to submit in writing. The AR requested for time till January 31, 2022 to make post-hearing written submissions, which was granted by the Adjudicating Officer.

9. AR made post-hearing submissions on behalf of Noticees vide letter dated January 31, 2022 which are reproduced below:

   a. *The allegations in the SCN are untenable and the proceedings are liable to be dropped, for the following reasons.*

   b. *The SCN makes assumptions about a deceased.*

      - *At the threshold, the Late Mr. K.K. Modi , the purported tipper or source of the UPSI, admittedly passed away before these proceedings commenced. Therefore, his stand is incapable of being discerned and he is being condemned unheard. Any inference about the Late Mr. K.K. Modi having violated Regulation 3 in aid of an al legation that the Noticees have violated Regulation 4, in the absence of the deceased, would be a conjecture and a surmise, and an exercise in preponderance of possibilities instead of an exercise on preponderance of probabilities;*
      - *Likewise, the Noticees too do not have the opportunity to defend themselves, including by subjecting a deceased to cross-examination. This has led to the Noticees being deprived of the opportunity to effectively rebut the allegation, that they allegedly received UPSI from the deceased.*
      - *Consequently, on this facet of the matter, the case against the Noticees would fall within the ambit of "not proved" only because it necessarily cannot fall within the zone of "proved" or "disproved".*

   c. *Circumstantial evidence conclusively belies charge of insider trading*

      - *In the absence of empirical evidence that can be taken due to the prime link being a deceased person (which alone is a ground for discharging the SCN), the Noticees would like to buttress their defence with reliance on their pattern of conduct, which would belie the charge of insider trading. Had the Noticees been in possession of UPSI as suspected ,they would have taken much larger positions and made much larger purchases and* *that too when the price was much lower, to get a far bigger bargain. On the contrary, by the time the purchases were made, the price had already gone up substantially and the trades were minor in size.*

d. *The following points are noteworthy:*

- *Noticee No. 1 in fact held 6,000 shares of GPIL (acquired in past) which she had sold on April 2, 2019. A purchase of 1,000 shares of GPIL was made on her behalf on June 3, 2019, prior to the UPSI Period. There was nothing unusual or extraordinary about her trades on August 9, 2019, which too was for just 1,000 shares. In fact, during the financial year 2019-20, trades on behalf of the Noticee No. 1 in other scrips are valued at an aggregate value of Rs. 12.23 crores- a fraction of the trades in GPIL during that year, which amounts to a mere Rs. 1.55 crores. The SCN picks merely the dates of the purchase of GPIL shares to wrongly infer that there were no other trades in other scrips, but the aforesaid scale would reasonably deal with and belie any adverse inference in this regard.*
- *As far as trades by Noticee No. 3 are concerned, the trading decisions were taken by one Mr. B.K. Naulakha, which has consistently been pointed out. NFPL too has a robust trading history and its trades in GPIL were not motivated by any alleged UPSI passed on to its officials by other Noticees.*
- *The Noticees are alleged to have traded being motivated by the UPSI on August 9, 2019. The trades in question were executed on August 9, 2019, at an average price of Rs. 725.05, Rs. 724.09 & Rs. 719.55 by the Noticees 1, 2 & 3, respectively. The closing price on this date was Rs. 708.95. In sharp contrast, it is a matter of record that the price of GPIL shares had been available at a much lower price - for example, on August 2, 2019 (when the closing price of the scrip on the NSE and BSE was Rs 693.25 and Rs 694.25). GPIL has confirmed that the draft financial results had not been made known to any director until August 10, 2019, at the Board*

Meeting. The Late Mr. K.K. Modi is alleged to have become aware of the purported UPSI based on a CEO Report received on July 11, 2019. If the Noticees are deemed and presumed to have access to everything that the Late Mr. K.K. Modi had access to, they had an opportunity to trade in GPIL shares right from July 11, 2019 to August 9, 2019 when the shares were available at a much lower price. If mere presumptions and inferences are to be drawn, it would only be reasonable to see that they would have traded much earlier at a much lower price, which they did not. The corollary would therefore be that the Noticees did not have access to the quarterly results at all - their trades on August 9, 2019 were not motivated by the results at all - minuscule as they were, and more expensive as they were.

- *No insider acting with a view to profit from information asymmetry, would wait until the scrip becomes expensive to purchase, and that too invest a small sum in the scrip. An insider in possession of unpublished positive news, would prefer to buy far more shares at a far lower price as soon as the alleged UPSI is presumed to have come into play.*
- *Being persons with substantial resources, had the Noticees known that GPIL's profits would rise by 224%, they would not have bought just 9,000 shares.*
- *In Manoj Gaur v SEBI Appeal No. 64 of 2012, Order dated October 3, 2012). the Hon'ble Securities Appellate Tribunal held that the miniscule scale of the trades by the spouse of an insider points to the fact that the trades were not motivated by UPSI (See Paras 17-18 of Manoj Gaur);*

e. *Everv business counterparty is not reasonably likely to have access to results*

- *GPIL is in the business of manufacturing tobacco. TCPL is in the business of packaging.*
- *GPIL's commercial relationship with TCPL entails supply of packaging material by the latter for distribution by the former, of its tobacco products.*

This in much is the same way in which TCPL supplies packaging material to various other companies in other industries that involve packaging. Such a commercial relationship does not give TCPL let alone Noticee No.1 as its MD, any insight into GPIL's financial position let alone the fact that GPIL's quarterly results for June 30, 20 I 9, would witness a meteoric, 224.61 % rise in profits.

- *The SCN has failed to correctly apply the test of 'connected person ', which, as a matter of legislation, lays down the standard of "reasonable expectation of access to UPSI" as an essential ingredient. Such a specific requirement that makes the provision reasonable is not to be done away with by merely stating that there is some family connection coupled with a supplier connection. Not every business or commercial relationship with a listed company, can rendered a nephew of the MD of a listed company to be privy to financial UPSI of the listed company*
- *The words 'reasonable expectation ' of access requires SEBI to adduce evidence to show that the position of the outsider vis-a-vis the listed company was of a nature that required the former to have access to the latter's UPSI, as part of its engagement with the listed company. This is why the vital difference between "probability" and "possibility" should not be lost sight of. Beyond the existence of a commercial relationship between TCPL and GPIL, nothing has been shown, rendering the so-called connection moot and vague.*

f. *<u>No immediate relation or financial de pendence on the Late M r. K.K. Modi</u>*

- *Noticee No. 2 is K.K. Modi's nephew. They are not "immediate relatives". Therefore, they are not deemed connected persons. Even for immediate relatives, the PIT Regulations stipulate that only those immediate relatives* *who are financially dependent on a connected or who consult a connected person for trading decisions, would be the immediate relatives that would be brought within the scope of coverage. These are essential and important ingredients that cannot be wished away by simply stating that Noticee No. 1 is a nephew of the Late Mr. K.K. Modi, who is not even alive today.*

- *The onus is on SEBI to establish through a standard of preponderance of probability, including in the form of frequent communication through call data records etc., to show, even circumstantially, that the two were connected persons - nothing of that sort is available in the instant case*
- *Evidence of insider trading is often circumstantial but circumstantial evidence does not mean that ingredients of the PIT Regulations that stipulate what the circumstantial evidence should point to, can be dismissed. Reliance on circumstantial evidence is not synonymous with reliance on suspicion, conjecture or surmise. Reasonable inferences would have to be drawn from foundational facts. Instead, the SCN has sought to simply assume, what it was required to prove. The fact that late Mr. K.K. Modi and the Noticees were relatives may, at best, be a ground to commence an investigation, but if at the end of the investigation, having found no other evidence, the investigation department ought to have dropped the charge as not being proved. Instead, it has simply recommended initiation of adjudication proceedings, on nothing more than suspicion*
- *While the case against Noticee No.2 rests on nothing more than suspicion, it is not any different as far as Noticee No.1 is concerned. The SCN has lost sight of the definition of*
- *"immediate relative" and adduces no evidence that Noticee No. 2 was financially dependent on the deceased or that the two had consulted each other in trading decisions to even warrant a prima facie inference that the latter communicated UPSI.*

- *Indeed, it is for this reason that SEBI, even in ex-parte orders passed on a prima- facie basis, adduces evidence in the form of call data records to show proof of frequency communication, since it is aware that merely being a relative is an insufficient basis to allege insider trading*
- *In the present case, not only is the purported tipper dead, even at the completion of an investigation, SEBI's case is where it was when the investigation commenced with no evidence to show: (i) frequency of communication, (ii) financial dependency or (iii) consultation of trading decisions. On this ground alone, the proceedings are liable to be dropped*
- *The AR also referred to Hon'ble Supreme Court's judgement in Chintalapati Srinivasa Raju v. SEBI, (2018) 7 SCC 443 and Learned WTM Order in the matter of Sabero Organics to emphasize that merely being a relative is an insufficient basis to allege insider trading.*

g. Consequently, this is not a fit case for sustaining a serious charge of insider trading much less imposing a monetary penalty.

ISSUES FOR CONSIDERATION, EVIDENCE AND FINDINGS

10. After perusal of the material available on record, I have the following issues for consideration.

ISSUE I: Whether Noticee 1 has violated regulation 3(1) and 4(1) of SEBI PIT Regulations?

ISSUE II: Whether Noticees 2 and 3 have violated regulation 4(1) of SEBI PIT Regulations?

ISSUE III: Does the violations, if any, on part of the Noticees attract penalty under Section 15G of the SEBI Act, 1992?

ISSUE IV: If so, how much penalty should be imposed on the Noticee taking into consideration the factors mentioned in Section 15J of the SEBI Act, 1992?

11. Before moving forward it is pertinent to refer to the relevant provisions of SEBI PIT Regulations which read as under:

SEBI (Prohibition of Insider Trading) Regulations, 2015

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 alsointended to lead to organisations developing practices based onneed-to-know principles for treatment of information in their possession.

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.*

[Explanation –When a person who has traded in securities has been in possession of unpublished price sensitive information, his trades would be presumed to have been motivated by the knowledge and awareness of such information in his possession.]

Provided that the insider may prove his innocence by demonstrating the circumstances including the following: –

(i) the transaction is an off-market inter-setransfer between insiders who were in possession of the same unpublished price sensitive information without being in breach of regulation 3 and both parties had made a conscious and informed trade decision.

Provided that such unpublished price sensitive information was not obtained under sub-regulation (3) of regulation 3 of these regulations.

Provided further that such off-market trades shall be reported by the insiders to the company within two working days. Every company shall notify the particulars of such trades to the stock exchange on which the securities are listed within two trading days from receipt of the disclosure or from becoming aware of such information.

(ii) the transaction was carried out through the block deal window mechanism between persons who were in possession of the unpublished price sensitive information without being in breach of regulation 3 and both parties had made a conscious and informed trade decision;

Provided that such unpublished price sensitive information was not obtained by either person under sub-regulation (3) of regulation 3 of these regulations.

(iii) the transaction in question was carried out pursuant to a statutory or regulatory obligation to carryout a bona fide transaction.

(iv) the transaction in question was undertaken pursuant to the exercise of stock options in respect of which the exercise price was pre-determined in compliance with applicable regulations.

(v)in the case of non-individual insiders: –

(a) the individuals who were in possession of such unpublished price sensitive information were different from the individuals taking trading decisions and such

decision-making individuals were not in possession of such unpublished price sensitive information when they took the decision to trade; and

(b)appropriate and adequate arrangements were in place to ensure that these regulations are not violated and no unpublished price sensitive information was communicated by the individuals possessing the information to the individuals taking trading decisions and there is no evidence of such arrangements having been breached;

(vi) the trades were pursuant to a trading plan set up in accordance with regulation 5.

NOTE: When a person who has traded in securities has been in possession of unpublished price sensitive information, his trades would be presumed to have been motivated by the knowledge and awareness of such information in his possession. The reasons for which he trades or the purposesto which he applies the proceeds of the transactions are not intended to be relevant for determining whether a person has violated the regulation. He traded when in possession of unpublished price sensitive information is what would need to be demonstrated at the outset to bring a charge. Once this is established, it would be open to the insider to prove his innocence by demonstrating the circumstances mentioned in the proviso, failing which he would have violated the prohibition

FINDINGS

ISSUE I. Whether Noticee 1 has violated regulation 3(1) and 4(1) of SEBI PIT Regulations?

12. It has been alleged in the SCN that Noticee 1, being sister of Late Mr. K K Modi, who was Managing Director and Director in charge of finance of GPIL, was a connected person and insider in terms of SEBI PIT Regulations and hence, she has violated regulation 3(1) of the said regulations. It was also alleged that Noticee

1 has violated regulation 4(1) of SEBI PIT Regulations by trading in the shares of GPIL while in possession of UPSI. To find whether Noticee 1 has violated regulation 3(1) and 4(1) of SEBI PIT Regulations, it is important to examine three questions, namely (a) whether the information can be classified as UPSI?; (b) whether Noticee 1 was a connected person and consequently, an insider?; (c) whether Noticee 1, being an insider, communicated UPSI and traded in the shares of GPIL?

13. It is observed that on August 10, 2019, GPIL informed NSE about financial results of the Company for the period ending June 30, 2019.The quarterly Net profit for the period ending June 30, 2019 was ₹114.88 crores as compared to profit of ₹ 35.39 crores as on March 31, 2019, an increase of 224.61% in profits.

Particulars	**March 31, 2019**	**June 30, 2019**	**% Rise**
Total Revenue (in crores)	₹672.76	₹848.28	26.08%
Net Profit (in crores)	₹35.39	₹114.88	224.61%

14. Further, during the post announcement period, the price of the scrip moved from a close price of Rs. 708.95 on August 09, 2019 to a close price of Rs. 1055.00 on August 19, 2019 i.e. registering a rise of 42.88% in 4 trading days.

15. The Company made profit of Rs. 114.88 crores during the quarter ending June 30, 2019 as compared to a profit of Rs. 35.39 crores during the quarter ending March 31, 2019 i.e. a significant increase by 224.61% in the profits of the company. It is also observed from the annual report of GPIL for the FY 2018-19 that it had made an overall profit of Rs. 240.97 crores for FY ending 2018-19.

16. The definition of the term "unpublished price sensitive information" under regulation 2(1)(n) of the SEBI PIT Regulations is reproduced herein below:

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

(i)financial results; [emphasis supplied]

(ii)dividends;

(iii)change in capital structure;

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

(v)changes in key managerial personnel.

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

17. It is observed that the disclosure of aforesaid financial results resulted in price-rise by approx 20% on August 13, 2019 and 42.88% in the first four trading days after the disclosure of financial results.

18. In view of the above, quarterly financial results of GPIL for the quarter ended June 30, 2019 was unpublished price sensitive information until it was disclosed to the stock exchanges on August 10, 2019.

19. The next question to address the issue is whether Noticee 1 is a connected person and insider in terms of SEBI PIT Regulations. The definition of "connected person" and "insider" as per regulation 2(1)(d), (f) and (g) is mentioned as under:

(d)"connected person" means,-

(i)any person who is or has during the 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 inany 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 companywhether temporary or permanent,thatallows such person, directly or indirectly,access to unpublished price sensitive information oris reasonably expected to allow such access.

(ii) Without prejudice to the generality of the foregoing, the persons falling within 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); or

(b).a holding company or associate company or subsidiary company; or

(c).an intermediary as specified in section 12 of the Act or an employee or director thereof; or

(d).an investment company, trustee company, asset management company or an employee or director thereof; or

(e).an official of a stock exchange or of clearing house or corporation; or

(f).a member of board of trustees of a mutual fund or a member of the board of directors of the asset management company of a mutual fund or is an employee thereof; or

(g).a member of the board of directors or an employee, of a public financial institution as defined in section 2 (72) of the Companies Act,2013; or(h).an official

or an employee of a self-regulatory organization recognised or authorized by the Board; or

(i).a banker of the company; or

(j).a concern, firm, trust, Hindu undivided family, company or association of persons wherein a director of a company or his immediate relative or banker of the company, has more than ten per cent.of the holding or interest;

NOTE: It is intended that a connected person is one who has a connection with the company that is expected to put him in possession of unpublished price sensitive information. Immediate relatives and other categories of persons specified above are also presumed to be connected persons but such a presumption is a deeming legal fiction and is rebuttable. This definition is also intended to bring into its ambit persons who may not seemingly occupy any position in a company but are in regular touch with the company and its officers and are involved in the know of the company's operations. It is intended to bring within its ambit those who would have access to or could access unpublished price sensitive information about any company or class of companies by virtue of any connection that would put them in possession of unpublished price sensitive information.

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 decisions relating to trading in securities;

NOTE: It is intended that the immediate relatives of a "connected person" too become connected persons for purposes of these regulations. Indeed, this isa rebuttable presumption.

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

i) a connected person;or

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

20. Thus, a connected person will be considered an insider. Also, immediate relative of connected person is also connected person if the immediate relative is either financially dependent on such connected person or consults such person in taking decisions relating to trading in securities.

21. Late Mr. K K Modi was Managing Director and Director in charge of Finance of GPIL at the time of disclosure of UPSI. It was observed that GPIL, vide letter dated March 05, 2021 also mentioned that Key Management Information System (MIS) report containing overall financial performance of the company on IGAAP basis referred to as 'CEO report' was prepared and circulated by CFO Sunil Agrawal on July 11, 2019 and it was shared with nineteen persons, including Late Mr. K K Modi (then President, Managing Director and Director in charge of Finance). On perusal of the CEO Report, it was observed that it contained clear figures relating to profit of the company in comparison to the respective quarter of the last financial year and also to the last year. Thus, Late Mr. K K Modi, was privy to the UPSI which was made public only on August 10, 2019. In view of the aforesaid, there is no hesitation in finding Late Mr. K K Modi was a connected person.

22. Noticee 1 was sibling (sister) of Late Mr. K K Modi. She has also submitted vide email dated August 06, 2021 that she remained in contact with Late Mr. K K Modi, till he expired. I also note that she, along with Noticees 2 and 3 purchased shares of GPIL on August 09, 2021, i.e. on the trading immediately preceding the day on which UPSI was disclosed to the exchanges on August 10, 2021. It is solely based

on this, it has been alleged in the investigation report and the show cause notice that the Noticees had been alleged to have indulged in insider trading.

23. In this regard, the AR, on behalf of Noticee 1 has submitted that Noticee 1 is senior citizen, aged 79 years and does not take active part in financial matters, and such decisions are taken by her husband, Mr. K K Kanoria. It was also submitted that her investment in GPIL was less than 13% of her trading portfolio in the financial year 2019-20, and also a very small percent of her net-worth at that time. Had she intended to make such gains, she could have invested a larger amount in the scrip of GPIL on August 09, 2021. It was submitted that Noticee 1 was not financially dependent on Late Mr. K K Modi and she was not consulting Late Mr. K K Modi for her financial decisions. It was also contended that there is no mention in the SCN regarding Noticee 1's financial dependency on Late Mr. K K Modi or evidence that she used to consult her brother, Late Mr. K K Modi for her financial decisions. Also, there is no evidence provided by SEBI which shows that she had frequent communication with Late Mr. K K Modi, which would give rise to an inference of communication of UPSI.

24. I find it relevant to mention that circumstances that led to the allegation against Noticee 1 for violation of regulations 3(1) and 4(1) of SEBI PIT Regulations:

a. After the disclosure of quarterly financial results by GPIL on August 10, 2019, it was observed that prices rose by more than 42% within 4 trading days.
b. It was observed that Late Mr. K K Modi, managing director and director in charge of finance of GPIL during that period, who was privy to the UPSI, was brother of Noticee 1.
c. Noticee 1 traded in the scrip of GPIL on August 09, 2019. Also, the UPSI was price-positive information, and Noticee 1 had purchased shares of GPIL.

d. Noticee 2 was son of Noticee 1, and he had also purchased sharesof GPIL on the same day, i.e. August 09, 2019.
e. Noticee 3 was a private company, whose promoters were Noticee 1 and her husband, and Noticee 3 also traded in scrip of GPIL on the same day, i.e. August 09, 2019.
f. Hence, on the basis of sufficient circumstantial evidence, it was alleged that Noticee 1 received information from Late Mr. K K Modi and communicated UPSI to Noticees 2 and 3, and also traded in the scrip of GPIL while in possession of UPSI, thus violating regulation 3(1) and 4(1) of SEBI PIT Regulations.

25. I observe that Noticee 1 was sister of Late K K Modi and was in close touch with Late Mr. K K Modi. In view of the relationship with Late K.K. Modi, Noticee 1 can be termed as immediate relative however as per regulations 2(1) (d) & (f) of SEBI PIT Regulations, immediate relative has to be financial dependent on the connected person. Thus from the above provisions I find that merely being sister of connected person and Insider will not make a person connected , the real test lies in regulation 2(1)(f) of SEBI PIT Regulations. However, I find that there is no evidence in the SCN to show whether Noticee 1 was financially dependent or used to consult Late Mr. K K Modi for her financial decisions. I also find that there is no evidence like call records, to show how the UPSI was communicated by Late Mr. K K Modi to Noticee 1. Therefore, Noticee 1 cannot be considered a connected person or an insider in terms of provisions of SEBI PIT Regulations.

26. It needs to be appreciated that the SEBI PIT 2015 regulations requires it to substantiate the allegation of Insider Trading with evidence to show the movement of information from one to the other. Based on the material available on records it is clear that there is no information available to show the communication of unpublished price sensitive information.

27. I find it proper to rely on the recent judgement of Hon'ble Supreme Court in Balram Garg vs. SEBI (Civil Appeal No. 7054 of 2021) dated April 19, 2022, wherein it was observed that

"*given the fact that the entire case against the appellants for the offence of insider trading was based on the nature of close relationship between the parties, once it has been rightly held by the WTM that the appellants are neither "connected persons" within the meaning of Regulation 2(1)(d) nor "immediate relatives" within the meaning of Regulation 2(1)(f) of PIT Regulation, the question of ipso facto relying on the nature of relationship between the parties to come to the conclusion that they were "in possession of or having access to UPSI" while trading with the shares of the company is legally unsustainable."*

"the onus was actually on SEBI to prove that the appellants were in possession of or having access to UPSI. The legislative note to Regulation 2(1)(g) makes the above position of law explicitly clear. It states that:

"... The onus of showing that a certain person was in possession of or had access to unpublished price sensitive information at the time of trading would, therefore, be on the person leveling the charge after which the person who has traded when in possession of or having access to unpublished price sensitive information may demonstrate that he was not in such possession or that he has not traded or he could not access or that his trading when in possession of such information was squarely covered by the exonerating circumstances.""

"*We are also of the opinion that in the absence of any material available on record to show frequent communication between the parties, there could not have been a presumption of communication of UPSI by the appellant Balram Garg. The trading pattern of the appellants in C.A. No.7590 of 2021 cannot be the* *circumstantial evidence to prove the communication of UPSI by the appellant Balram Garg to the other appellants in C.A.No.7590 of 2021. It would also be pertinent to note here that Regulation 3 of the PIT Regulations, which deals with communication of UPSI, does not create a deeming fiction in law. Hence, it is only through producing cogent materials (letters, emails, witnesses etc.) that the said communication of UPSI could be proved and not by deeming the communication to have happened owing to the alleged proximity between the parties. In this context, even the show-cause notices do not allege any communication between the Appellant Balram Garg and the other appellants in C.A. No.7590 of 2021."*

28. While there is strong circumstantial evidence as mentioned in above paras and based on preponderance of probabilities, it seems that Noticee 1 communicated and traded while in possession of UPSI. However, in the absence of cogent material available to show as to how the UPSI was communicated to Noticee 1 and on the basis of aforementioned observations of Hon'ble Supreme Court, I am constrained to find that Noticee 1 is not in violation of provisions of regulations 3(1) and 4(1) of SEBI PIT Regulations.

ISSUE II: Whether Noticees 2 and 3 have violated regulation 4(1) of SEBI PIT Regulations?

29. The SCN alleges that Noticees 2 and 3 have violated regulation 4(1) of SEBI PIT Regulations, by trading in shares of GPIL, while in possession of UPSI, which was communicated to them by Noticee 1, who was alleged to be a connected person and insider.

30. Noticee 2 is son of Noticee 1 and nephew of Late Mr. K K Modi. He is Managing Director of TCPL, which supplies packaging materials to GPIL, and has a business

relationship with GPIL since long time. Noticee 3 is a private company, which is promoted by Noticee 1 and her husband, who were also authorized by their Board to trade on behalf of Noticee 3.

31. Irrespective of the above facts and also that Noticees 2 and 3, along with Noticee 1, have traded on the same day which was immediately preceding the day of disclosure of UPSI, which resulted in price rise by more than 42% in 4 trading days, consequent to my finding that Noticee 1 is not a connected person and insider and in absence of cogent material on record which shows the communication of UPSI to Noticees 2 and 3, I find that Noticees 2 and 3 are not in violation of regulation 4(1) of SEBI PIT Regulations.

32. In view of the above, I do not find it to be a fit case for imposition of penalty under section 15G of SEBI Act, 1992. Hence, the SCN dated November 09, 2021 is disposed of, accordingly.

33. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticees and also to the Securities and Exchange Board of India.

Place: Mumbai **BARNALI MUKHERJEE**

Date: April 29, 2022 **ADJUDICATING OFFICER**