BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER No. Order/VV/AK/2022-23/19842

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:

Shailendra Mehta
(PAN: ALGPM2002F)

In the matter of circulation of unpublished price sensitive information (UPSI) through WhatsApp messages with respect to Bata Limited

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A. BACKGROUND

1. During November 2017, there were certain articles published in newspapers / print media referring to the circulation of Unpublished Price Sensitive Information (hereinafter referred to as "UPSI") in various private WhatsApp groups about certain companies ahead of their official announcements to the respective Stock Exchanges. Against this backdrop, Securities and Exchange Board of India (hereinafter referred to as "SEBI") initiated a preliminary examination in the matter of circulation of UPSI through WhatsApp groups during which search and seizure operation for 26 entities of Market Chatter WhatsApp Group were conducted and approximately 190 devices, records etc., were seized. The WhatsApp chats extracted from the seized devices were examined further and while examining the chats, it was found that in respect of around 12 companies whose earnings data and other financial information got leaked in WhatsApp.

2. Accordingly, SEBI carried out an investigation in the matter of circulation of UPSI through WhatsApp messages with respect to Bata Ltd. (hereinafter referred to as "**Bata/Company**"), to ascertain any possible violation of the provisions of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as

"**SEBI Act**") and SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as "**PIT Regulations, 2015**") during the period during the period of January 1, 2016 to February 10, 2016 (hereinafter referred to as "**Investigation Period/"IP**").

3. It was observed that Bata had announced financial results for quarter and nine months ended on December 31, 2015 on February 10, 2016 (15:20:32 hours on BSE, 15:21 hours on NSE). Details of the major corporate announcements made by Bata India Limited, on BSE and NSE, during IP and their impact on the price of the scrip were observed to be as follows

Table 1 Exchange BSE (Price in Rs.)

S.No.	**Date-Time**	**Announcement/News**	**Price Impact/Shares Traded**						**Remarks**
1.	20/01/2016 (14:26:29)	Disclosures under Reg. 29(1) of SEBI(SAST) Regulations, 2011 Life Insurance Corporation of India has submitted the disclosures under Reg. 29(1) of SEBI (SAST) Regulations, 2011	**Date**	**O**	**H**	**L**	**C**	**No. of shares traded**	The number of shares of Bata traded recorded a increase by 2.41 times
			19.01.2016	460.25	468	459	464.9	14540	
			20.01.2016	465	465	447.9	452.45	35042	
2.	22/01/2016 (13:03:19)	Revised Disclosures under Reg. 29(1) of SEBI(SAST) Regulations, 2011 Life Insurance Corporation of India has submitted the revised disclosures under Reg. 29(1) of SEBI (SAST) Regulations, 2011	**Date**	**O**	**H**	**L**	**C**	**No. of shares traded**	The number of shares of Bata traded recorded a decrease by 1.21 times
			21.01.2016	452	460	438.05	447.1	29199	
			22.01.2016	450	477	450	473.1	24136	
3.	27/01/2016 (15:47:55)	Q3 results on Feb 10, 2016 Bata India Ltd has informed BSE that a meeting of the Board of Directors of the Company will be held on February 10, 2016, inter-alia, to consider and approve the Unaudited Financial Results of the Company for the third quarter and nine-month period ended December 31, 2015 (Q3).	**Date**	**O**	**H**	**L**	**C**	**No. of shares traded**	The number of shares of Bata traded recorded a decrease by 1.60 times
			27.01.2016	478.85	488.4	469.05	480.55	61439	
			28.01.2016	480	486.5	474	479.05	38372	
4.	10/02/2016 (15:20:32)	Announces Q3 results (Standalone), Limited Review Report (Standalone) & Results Press Release for the Quarter ended December 31, 2015 Bata India Ltd has announced the following Unaudited Standalone results for the quarter ended December 31, 2015	**Date**	**O**	**H**	**L**	**C**	**No. of shares traded**	The number of shares of Bata traded recorded an increase by 3.83 times
			09.02.2016	477	484	473	481.6	18209	
			10.02.2016	479	496	456.4	488.6	69718	

S.No.	Date-Time	Announcement/News	Price Impact/Shares Traded			Remarks
		The Company has posted a net profit of Rs. 445.690 million for the quarter ended December 31, 2015 as compared to Rs. 349.470 million for the quarter ended December 31, 2014. Total Income has increased from Rs. 5447.240 million for the quarter ended December 31, 2014 to Rs. 6247.090 million for the quarter ended December 31, 2015.				

<u>Table 2- Exchange NSE (Price in Rs.)</u>

<table>
<tr><th>S.No.</th><th>Date-Time</th><th>Announcement/News</th><th>Price Impact/Shares Traded</th><th>Remarks</th></tr>
<tr><td>1.</td><td>25/01/2016 (19:49)</td><td><u>Trading Window</u>
Bata India Limited has informed the Exchange that in terms of the Company s Code of Conduct to Regulate, Monitor and Report Insider Trading and pursuant to the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015, the Trading Window for dealing in shares of Bata India Limited, will be closed from Tuesday, January 26, 2016 to Friday, February 12, 2016 (both days inclusive) for the purpose of consideration and approval of the Unaudited Financial Results for the 3rd quarter ended December 31, 2015 at the Board Meeting to be held on February 10, 2016.</td><td><table>
<tr><th>Date</th><th>O</th><th>H</th><th>L</th><th>C</th><th>No. of shares traded</th></tr>
<tr><td>25.01.2016</td><td>474</td><td>506.75</td><td>470.8</td><td>476.3</td><td>8,36,437</td></tr>
<tr><td>27.01.2016</td><td>483.4</td><td>487.9</td><td>468.75</td><td>480.55</td><td>7,67,898</td></tr>
</table></td><td>The number of shares of Bata traded recorded a decrease by 1.09 times</td></tr>
<tr><td>2.</td><td>10/02/2016 (15:21)</td><td><u>Financial Results Update</u>
Bata India Limited has submitted to the Exchange the standalone financial results along with the Limited Review Report for the period ended December 31, 2015.</td><td><table>
<tr><th>Date</th><th>O</th><th>H</th><th>L</th><th>C</th><th>No. of shares traded</th></tr>
<tr><td>09.02.206</td><td>470.1</td><td>483.9</td><td>470.1</td><td>481.75</td><td>200756</td></tr>
<tr><td>10.02.2016</td><td>483</td><td>497</td><td>457.1</td><td>487.25</td><td>730551</td></tr>
</table></td><td>The number of shares of Bata traded recorded a increase by 3.64 times</td></tr>
</table>

CSE, vide email dated August 26, 2019, submitted the following w.r.t corporate announcements in the scrip of Bata India Ltd." … *we would like to submit that as* *on line trading system of this Exchange namely C-STAR, was non-operational since April, 2013, this Exchange could not disseminate information pertaining to Corporate Announcement of Bata India Ltd. for the period commencing from October 01, 2015 to May 31, 2016 in the on line trading system of this Exchange*."

4. The chronological events related to financial results for the quarter ended December 31, 2015 as furnished by Bata India Ltd., vide its letter dated July 24, 2019 were as below:

Date	Particular of events	Details of names and designations of persons involved
January 1, 2016 – January 10, 2016	Finalization of unit trial balances and start of consolidation process for preparation of yearly results of whole company for the period relating to January 1, 2015 to December 31, 2015 under US GAAP	Aastha Grover, Assistant Manager Chandrima Malik, Manager, Finance Kundan Kumar, Group Manager – Accounts
January 11, 2016 – January 12, 2016	Preparation of the consolidated results as per US GAAP for the calendar year.	Aastha Grover, Assistant Manager Chandrima Malik, Manager, Finance Kundan Kumar, Group Manager – Accounts
January 13, 2016 – January 14, 2016	Preparation of other related reports of Monthly Information Package (MIP) and Financial Reporting Package(Finpack)	Aastha Grover, Assistant Manager Chandrima Malik, Manager, Finance Kundan Kumar, Group Manager – Accounts
January 15, 2016	Submission of financial reporting package under US GAAP to the global headquarter.	Peeyush Gupta, General Manager Saket Mohta, AVP-Finance RK Gupta, Director Finance
January 16, 2016 – January 19, 2016	Preparation of trial balances as per Indian GAAP, by eliminating US GAAP adjustments and identification and accounting for Indian GAAP adjustments.	Aastha Grover, Assistant Manager Kundan Kumar, Group Manager – Accounts
January 20, 2016	Preparation of quarterly results as per the Indian GAAP for the quarter ended on December 31, 2015("Quarterly Financial Statements")	Peeyush Gupta, General Manager Aastha Grover, Assistant Manager Kundan Kumar, Group Manager – Accounts
January 21, 2016 – January 25, 2016	Internal review of the Quarterly Financial Results before handing over to the statutory auditors	Aastha Grover, Assistant Manager Peeyush Gupta, General Manager Saket Mohta, AVP-Finance RK Gupta, Director Finance

Date	Particular of events	Details of names and designations of persons involved
January 26, 2016 – February 9, 2016	Review of the Quarterly Financial Results by the statutory auditors i.e. S R Batliboi & Co. LLP and final confirmation for publication and presentation to the board of directors of Bata India	**<u>Statutory Auditors(S R Batliboi & Co. LLP)</u>** Sanjay Vij (Partner) Prateek Agrawal(Senior Manager) **<u>S R Batliboi & Co. LLP – Audit team members</u>** Dinesh Agarwal, Abhishek Jain, R Sundar, Vijay Kumar Wadhwani, Divya Bushan, Amit Poddar, Akash Mansinka, Shreya Shah, Anchal Poddar, Manjul Prakash, Mallika Malhotra, Mayank Daruka, Naman Agarwal, Pulkit Agarwal, Deepak Arora, Nikhil Chhabra, Diksha Garg, Sachin Kumar Gupta, Avneet Singh, Anurag Agarwal, Ishan Arora, Ankit Barolia, Gaurav Goel, Himanshu Satija, Anshudhar Seth, Srishti Singhal, Paavni Vohra, Anjali Haryana, Manik Goenka, Rajat Gupta, Ateeshay Jain, Jatin Sachdeva, Santosh Suresh Maller, Vibhu Gupta, Pratik Setia, Anubhav Agrawal **<u>Bata team members</u>** Peeyush Gupta Aastha Grover
February 10, 2016	Final quarter Financial Results discussed with the Managing Director of Bata India	R K Gupta, Director Finance Rajeev Gopalakrishnan, Managing Director
February 10, 2016	Results presented before the audit committee and board of directors of Bata	**<u>Persons who attended the board meeting</u>** Mr. Uday Khanna, Chairman(Independent director) Mr. Akshay Chudasama (Independent Director) Ms. Anjali Bansal (Independent Director)(attended over phone) Mr. Christopher Kirk (Non-executive Director) Mr. Rajeev Gopalakrishnan (Managing Director) Mr. Ram Kumar Gupta(Director Finance) Mr. Ravindra Dhariwal (Independent Director) Mr. Shaibal Sinha(Non-executive Director) Mr. Maloy Kumar Gupta(Company Secretary) **<u>Persons who attended the audit committee meeting</u>** Mr. Ravindra Dhariwal, Chairman(Independent Director) Mr. Akshay Chudasama(Independent Director) Ms. Anjali Bansal(Independent Director)(attended over phone) Mr. Christopher Kirk(Non-executive Director) Mr. Shaibal Sinha(Non-executive Director) Mr. Uday Khanna(Independent Director) Mr. Rajeev Gopalakrishnan(Managing Director) Mr. Ram Kumar Gupta(Director Finance) Mr. Sanjay Vij(Partner, S.R. Batliboi & Co. LLP) Mr. Prateek Agrawal(Audit Manager, S.R.Batliboi & Co. LLP) Mr. Maloy Kumar Gupta(Company Secretary)
February 10, 2016	Approved Quarterly Financial Results sent to stock exchanges for dissemination	Maloy Kumar Gupta, Company Secretary & Compliance Officer

5. From the chronology of events as tabulated in para 4 above, information relating to financial results of Bata India Ltd for quarter ended December 31, 2015 was observed to be a Price Sensitive Information (PSI), which came into existence on January 01, 2016. The corporate announcement of unaudited financial results for the quarter ended December 31, 2015 was made to the exchanges (BSE and NSE) by Bata on February 10, 2016 (15:20:32 hours on BSE, 15:21 hours on

NSE). Therefore, the period from January 01, 2016 to 15:20:32 hours on February 10, 2016 was considered as the period of UPSI.

6. The investigation *inter alia* revealed that Shailendra Mehta (hereinafter also referred to as "**Noticee**") among other had communicated the UPSI related to Bata viz; Sales, PAT and EBITDA for QE December 2015 through WhatsApp message. From the WhatsApp chat of the Shruti Vora (retrieved from her device – Apple iPhone 6s, IMEI: 355767073570777) on February 10, 2016, a chat was observed stating., "*Bata hearing pat of 44 vs 43 expectation Ebitda 80 crs vs mkt exp of 73 crs Sales 617 vs exp of 601 crs*". In the following table, financial figures circulated on WhatsApp pertaining to Bata India Ltd. were compared with actual figures disclosed subsequently on exchange to gauge the deviation between two sets of figures

Date and time of WhatsApp message (after adding 5:30 hrs)	**Figures in WhatsApp message**	**Date and time of disclosure on Exchange**	**Actual figures disclosed on Exchange**	**F1W**	**F1A**	**F2 W**	**F2A**	**F3 W**	**F3A**	**%ge Deviations observed in Figures**		
										F1Dev	**F2Dev**	**F3Dev**
10/02/2016 12:28:32	pat of 44 vs 43 expectation Ebitda 80 crs vs mkt exp of 73 crs Sales 617 vs exp of 601 crs	10/02/2016 (15:21 NSE) (15:20:32 BSE)	Net Sales/Income from Operations (Net of excise duty) 617.227 crores Net Profit for the Period 44.569 crores Profit from Operations before other income, finance costs, exceptional item and tax 60.298 crores Depreciation and amortization expense 19.533 crores	617	617.227	44	44.569	80	79.831	-0.04	-1.28	0.21

Note:

i. Abbreviations format used in the above table**:**
   a. Figure1 in WhatsApp (F1W)
   b. Figure1 in Actual (F1A)
   c. Figure1 Deviation (F1Dev)

ii. **EBITDA is calculated as:** EBITDA (Earnings before interest, tax, depreciation and amortization) = Profit from Operations before other income, finance costs, exceptional item and tax + Depreciation and amortization expense = 60.298+19.533 = 79.831 crores

iii. **% ge deviation is calculated as per the following methodology:**
%ge Deviation = (Figure in WhatsApp message-Actual Figures disclosed on exchange) *100/(Actual figures disclosed on exchange).

7. From the above table, it is observed that the financial figures of Bata India Ltd., were communicated through WhatsApp prior to their announcement on stock exchanges. The timing of the said message (incoming) as per extract chat from her device was 05:42:42 hours. However, expert agency, hired for retrieval and backup of the data from the instruments/devices seized, vide email dated March 12, 2018 informed SEBI that their forensic tools generate zero G.M.T. timing by default, so add +5.30 hours as our Indian G.M.T in all the report generated.

8. The details of communication of WhatsApp message related to Bata India Ltd. ("Bata hearing pat of 44 vs 43 expectation Ebitda 80 crs vs mkt exp of 73 crs Sales 617 vs exp of 601 crs") as observed from WhatsApp Chat retrieved from Shruti Vora's device were tabulated below:

Entity from whom Shruti Vora received the message		**Date and Time of receipt of message by Shruti Vora (After adding 5.30 hours)**		**Entities to whom Shruti Vora forwarded the message**		**Date and Time of forwarding of message by Shruti Vora (After adding 5:30 hours)**	
Name	Tel.Number	Date	Time	Name	Tel.Number	Date	Time
Aditya Gaggar*	*9821016310*	10/02/2016	12:28:32	Parikshit Shah*	*8800333788*	10/02/2016	15:13:49
Shailendra Mehta*	*9820393691*	10/02/2016	15:13:35				
Mobile no. of Ms. Shruti Vora: *9820832032*							

***Note:** Remote party name displayed in messages are Adit, Shailendra and Parikshit Shah, respectively

9. It was observed from the WhatsApp chats retrieved from the Shruti Vora's device that the aforesaid message was received by Ms. Shruti Vora from one Mr. Aditya Gaggar and Noticee on February 10, 2016 at 12:28:32 and 15:13:35, respectively. The said WhatsApp message was forwarded by Shruti Vora on February 10, 2016 to Mr. Parikshit Shah on February 10, 2016 at 15:13:49 on one-on-one chat.

10. Vide an undated letter and/or email dated July 23, 2019, Mr. Shailendra Mehta inter-alia, stated that as the matter was quite old, it was difficult for him either to recall on his own or to trace each message received by him on WhatsApp or other

media. Further, he also stated that he was unable to recollect or trace the chat group in which he received the chat message.

11. WhatsApp vide email dated December 27, 2018, expressed its inability to search for given messages in its database citing reasons that WhatsApp users being protected with end-to-end encryption protocol, third parties and WhatsApp cannot read such messages or search for such messages. Further, WhatsApp also submitted that WhatsApp does not store information regarding the sender and recipient of a message.

12. Name and PANs of Ms. Shruti Vora, Mr. Aditya Gaggar and Mr. Shailendra Mehta (persons sending the referred WhatsApp message) were shared with the Company seeking details of any association with the Company. Vide letter dated July 24, 2019, the Company submitted that Bata India, Promoter of Bata India (Bata (BN) B.V.), directors of Bata India who attended the Board meeting and audit committee meeting on February 10, 2016 (except for Christopher Kirk), the persons of Bata India who were involved in the preparation, finalization and announcement of the financial results for the quarter ended December 31, 2015(except for Mr. Sumit Kumar) have confirmed that they are not/were never associated/related/connected etc. in any capacity whatsoever, whether directly and/or indirectly, to either of Shruti Vishal Vora, Aditya Gaggar and Shailendra Champaklal Mehta.

13. Further, vide various emails, the names and PANs of Ms. Shruti Vishal Vora, Mr. Aditya Gaggar and Mr. Shailendra Mehta were shared with the persons from whom the Company was unable to obtain the required confirmation. As per their email replies (except for Christopher Kirk), no connection/relation/association was noted between such persons and Shruti Vishal Vora and/or Aditya Gaggar and/or Mr. Shailendra Mehta as regards Christopher Kirk, the email was undeliverable to the email address as provided by the Company. Further, vide email dated October 30, 2019, Bata India Ltd. stated that they do not have any other contact details with them for Mr. Christopher Kirk.

14. It was noted that the financial figures of Bata India Ltd. (viz; Sales, PAT and EBITDA) circulated through WhatsApp closely matched with those disclosed subsequently by Bata India Ltd. on stock exchanges (deviation in financial figures was within a range of -1.28% to 0.21%). Hence, it was alleged that the aforesaid message related to Bata India Ltd., would fall under UPSI and such circulation of financial figures through WhatsApp was considered as communication of UPSI. It was alleged that the Noticee being insider had communicated the UPSI relating to Bata India Ltd., to other person(s) through Whatsapp messages. Accordingly, it was alleged that the Noticee had communicated UPSI related to Bata India Ltd. viz; Sales, PAT and EBITDA for QE December 2015, to other person (s) through WhatsApp message, which is prohibited and thereby acted in violation of the provisions of Section 12 A (d) & 12 A (e) of the SEBI Act, 1992 read with Regulation 3 (1) of SEBI (PIT) Regulations, 2015.

B. APPOINTMENT OF ADJUDICATING OFFICER

15. Shri B J Dilip was appointed as the Adjudicating Officer (hereinafter referred as "erstwhile AO") by communiqué dated December 12, 2019 under section 19 read with section 15I(1) of the SEBI Act, 1992 (hereinafter referred to as "**SEBI Act**") and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as "**Adjudication Rules**") to conduct adjudication proceedings in the manner specified under Rule 4 of Adjudication Rules read with section 15I (1) and (2) of SEBI Act, and if satisfied that the Noticee is liable, impose such penalty deemed fit in terms of Rule 5 of Adjudication Rules read with Section 15G of SEBI Act. Pursuant to the transfer of erstwhile AO, vide communiqué dated December 31, 2020 the case has been transferred to undersigned. It has been advised that except for the change of the Adjudicating Officer the other terms and conditions of the original orders 'shall remain unchanged and shall be in full force and effect' and that the "*Adjudicating Officer shall proceed in accordance with the terms of reference made in the original orders*."

C. SHOW CAUSE NOTICE, REPLY AND HEARING

16. The Show Cause Notice (hereinafter referred to as "SCN") bearing no. EAD-7/BJD/VS/1225/2/2020 dated January 08, 2020 was served upon the

Noticee under rule 4(1) of the SEBI Adjudication Rules to show cause as to why an inquiry should not be held and penalty not be imposed against it under section 15G of the SEBI Act for the alleged violation of 12A(d) and 12A(e) of SEBI Act and Regulation 3(1) of PIT Regulations, 2015. The SCN was issued through SPAD and duly delivered to the Noticee in terms of Rule 7 of Adjudication rules. Subsequently, Noticee filed his reply through letter dated February 27, 2021 and email dated July 18, 2022. The aforementioned email contain the letter dated February 27, 2021, Securities Appellate Tribunal (hereinafter referred to as "**SAT**") order dated March 22, 2021 and Supreme Court judgment in the matter of Balram Garg vs SEBI (order dated April 19, 2022). Noticee in his reply stated that – "*impugned information of the Company was merely a news/ estimates and generally available information. He was never associated/connected in any matter whatsoever whether directly or indirectly with the Company or its promoter/director of the company. He just forwarded the WhatsApp message with no specific intention*".

17. After giving several opportunities, the hearing was conducted on July 20, 2022 *via* video conferencing on WebEx platform. On the scheduled date of hearing, the authorized representative of the Noticee appeared before me and reiterated the submissions made vide his letter dated February 27, 2021 and placed reliance on Hon'ble Supreme Court order in the matter of *Balram garg (Supra)* and Hon'ble SAT order dated March 22, 2021 (Misc. Application No 346-355 of 2020). The process of adjudication proceeding has been mentioned below:

Noticee	SCN	Inspection	Hearing Concluded
Shailendra Mehta	January 08, 2020	July 11, 2022	July 20, 2022

D. <u>Relevant Provisions</u>

18. **SEBI Act**

12A. No person shall directly and 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;*

19. **PIT Regulations, 2015**

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

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

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

i) a connected person; or

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

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

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

(i) financial results;

(ii)dividends;

(iii)change in capital structure;

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

(v)changes in key managerial personnel.

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

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

E. CONSIDERATION

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

"….

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

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

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

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

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

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

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

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

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

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

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

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

F. Order

24. In view of above, I find it appropriate to conclude the instant adjudication proceeding by disposing of the Show Cause Notice bearing no. EAD-7/BJD/VS/1225/2/2020 dated January 08, 2020 *qua* Noticee *i.e.* Shailendra Mehta, without imposition of any monetary penalty.

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

Date: September 29, 2022 **Vijayant Kumar Verma**

Place: Mumbai **Adjudicating Officer**