

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
ADJUDICATION ORDER NO. Order/PM/PA/2022-23/16347**

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

In respect of:

**Prateek Sarawgi
PAN: BMKPS0835E**

In the matter of Infosys Ltd.

A. BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) carried out an investigation in the matter of circulation of unpublished price sensitive information (hereinafter referred to as “**UPSI**”) in the scrip of Infosys Ltd. (hereinafter referred to as “**Company**”) to ascertain any possible violation of the provisions of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the “**SEBI Act**”) and SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as the “**PIT Regulations**”) from December 16, 2016 to January 15, 2017 (hereinafter referred to as “**Investigation Period**”).
2. It was observed that the Company had announced financial results for the quarter ended on December 31, 2016 on January 13, 2017 on BSE Ltd. (hereinafter referred to as “**BSE**”) and National Stock Exchange of India Ltd. (hereinafter referred to as “**NSE**”) between 09:04 AM to 09:18 AM. The aforesaid financial result was considered as UPSI. In relation to the above,

as per the Company's submission, the trading window was closed from December 16, 2016 to January 15, 2017.

3. It was observed that Prateek Sarawgi (hereinafter referred to as "**Noticee**") was working as an associate manager-business finance with the Company and was a "designated person" in terms of PIT Regulations for the period January 01, 2017 to January 15, 2017. The Noticee was part of a presentation team which was responsible for making a power point presentation (hereinafter referred to as "**PPT**") on the financial result for quarter ended on December, 2016 for the board of directors as well as audit committee. From the above, it was observed that the Noticee was in possession of UPSI with respect to the aforesaid financial results, and therefore, was an insider in terms of regulation 2(1)(g) of the PIT Regulations.
4. It was observed that Noticee, while being in possession of UPSI, had traded in the scrip of the Company on January 12, 2017 and January 13, 2017, which allegedly violated sections 12A(d) and (e) of the SEBI Act read with regulation 4(1) of the PIT Regulations. Further, it was observed that the Noticee, being a designated person, executed the aforesaid trades when the trading window of the Company was closed, which allegedly violated clause 4 of the code of conduct framed under schedule B of regulation 9(1) and (2) of the PIT Regulations (hereinafter referred to as "**CoC**").
5. Given the above, SEBI initiated adjudication proceedings against the Noticee for the aforesaid alleged violations under sections 15G and 15HB of the SEBI Act wherein Sangeeta Rathod was appointed as the adjudicating officer. Pursuant to internal restructuring, the undersigned was appointed as the adjudicating officer.
6. A show cause notice (hereinafter referred to as "**SCN**") bearing ref. no. EAD-8/PM/NJMR/10242/2021/1 dated May 12, 2021 was delivered at the last known address of the Noticee. Thereafter, two hearing notices were delivered at the last known address of the Noticee through which he was

granted two hearing opportunities. Neither did the Noticee submit a reply nor did he avail any of the hearing opportunities granted to him. In light of the above, the proceeding was concluded based on the material available on record. *Vide* order dated August 09, 2021 the Noticee was found to be in violation of: (i) section 12A(d) and (e) of SEBI Act read with regulation 4(1) of the PIT Regulations; and (ii) clause 4 of the CoC and a penalty of Rs 12 lakhs was imposed.

7. Thereafter, the Noticee filed an appeal before the Hon'ble Securities Appellate Tribunal (hereinafter referred to as "**SAT**") against the aforesaid adjudication order on the ground that the Noticee did not receive the SCN and the hearing notices. Hon'ble SAT *vide* order dated October 18, 2021, allowed the appeal and directed the undersigned to re-decide the matter on merits after serving the SCN to the Noticee. It also directed the following:

"The appellant will appear before the AO on November 15, 2021 on which date the appellant would be served with the show cause notice and the AO will proceed thereafter in accordance with law."

B. APPOINTMENT OF ADJUDICATING OFFICER

8. SEBI appointed the undersigned as the adjudicating officer *vide* order dated October 28, 2021 under sub-section (1) of section 15-I of the SEBI Act and rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as the "**SEBI Adjudication Rules**") read with section 19 of the SEBI Act to inquire into and adjudge under sections 15G and 15HB of the SEBI Act for the aforesaid alleged violations.

C. SHOW CAUSE NOTICE, REPLY AND HEARING

9. In compliance with directions of Hon'ble SAT, the Noticee was given a hearing opportunity on November 15, 2021. On the said date, the Noticee and his authorized representative (hereinafter referred to as "**AR**") appeared before me. The Noticee and AR were informed that a scanned

copy of the SCN along with the annexures would be sent to them *vide* email. Further, they were given time till November 29, 2021 to submit their reply to the SCN. The SCN and the annexures were sent to the Noticee and his AR *vide* email on November 15, 2021 and the Noticee acknowledged the receipt of the said email. The allegations levelled in the SCN have been summarized hereunder:

- (i) During the Investigation Period, SEBI carried out an investigation in the matter of circulation of UPSI to ascertain possible violations of provisions of SEBI Act and PIT Regulations.
- (ii) It was observed that the Company had announced financial results for the quarter ended on December 31, 2016 on January 13, 2017 on BSE and NSE between 09:04 AM to 09:18 AM. The details of the aforesaid corporate announcement and its impact on the price of the scrip of the Company on BSE and NSE is provided below:

Date	Announcement	Price movement in the scrip of the Company					Impact on price
January 13, 2017 On BSE from 09:06 AM to 09:23 AM.	Company announced the following:	BSE					On
		Date	OP	HP	CP	Vol.	13/01/17
		12/01/17	972.25	1004.4	1000.05	261761	(the day of
	1. Standalone Q3 results.	13/01/17	1026.3	1045	975.15	1266558	announcement
	2. Consolidated Q3 results.	16/01/17	965	965.5	955.7	274905	of
	3. Auditor's report for the quarter ended December 31, 2016.						result for
	4. Outcome of board meeting.						quarter
5. Fact sheet, IFRS-INR press release and IFRS-USD press release.						ended on	
6. Extract of audited consolidated financial results for the quarter and nine months ended							December
							r, 2016),
							the scrip
							closed
							2.48%
							below its
							previous
							day's
							closing
							price on
							BSE.

Date	Announcement	Price movement in the scrip of the Company					Impact on price																				
	December 31, 2016.																										
On BSE at 10:32 AM.	An update on INR press release.																										
On NSE from 09:04 AM to 09:10 AM.	Company submitted to the stock exchange the following: 1. The financial results for the period ended December 31, 2016. 2. Outcome of board meeting along with a copy of press release. 3. Copy of fact sheet.	NSE <table><tr><th>Date</th><th>OP</th><th>HP</th><th>CP</th><th>Vol.</th></tr><tr><td>12/01/17</td><td>977.55</td><td>1004.4</td><td>1000.05</td><td>5927870</td></tr><tr><td>13/01/17</td><td>1030</td><td>1040</td><td>975.8</td><td>15638123</td></tr><tr><td>16/01/17</td><td>965</td><td>965.45</td><td>955.65</td><td>6175686</td></tr></table>					Date	OP	HP	CP	Vol.	12/01/17	977.55	1004.4	1000.05	5927870	13/01/17	1030	1040	975.8	15638123	16/01/17	965	965.45	955.65	6175686	On 13/01/17 (the day of announcement of result for quarter ended on December 2016), the scrip closed 2.42% below its previous day's closing price on NSE.
Date	OP	HP	CP	Vol.																							
12/01/17	977.55	1004.4	1000.05	5927870																							
13/01/17	1030	1040	975.8	15638123																							
16/01/17	965	965.45	955.65	6175686																							
On NSE at 10:24 AM.	Update on the INR press release included in the outcome of board meeting held on January 13, 2017.																										

- (iii) The chronological events related to financial results for the quarter ended on December 31, 2016 as furnished by the Company are tabulated below:

Date	Particulars of events
December 15, 2016	Intimation of trading window closure to stock exchanges: Trading window was closed from December 16, 2016 to January 15, 2017. Intimation of meeting of board of directors on January 13, 2017 to consider the financial results.
December 16, 2016	Newspaper advertisement published and stock exchanges intimated of the same.
January 4-5, 2017	Confirmation taken from all the teams regarding when they will close all accounting entries pertaining to their respective areas.
January 05, 2017	Books closed for most of the areas and confirmed through email by corporate finance team to all finance teams. All subsequent entries were approved by the corporate finance team. For few items such as tax, reclassification etc., the computation commenced post books closure.
January 06, 2017 onwards	Post consolidation of subsidiaries, financials/stock exchange releases prepared by technical accounting team.

Date	Particulars of events
	Corporate finance team prepared other documents relating to financial results- fact sheet, press releases, investor sheets. Documents are prepared and checked post closure of financials over the next few days to ensure accuracy.
January 08, 2017 onwards	Preparation of CFO presentation commenced and the financial numbers were inserted 3 days before the date of announcement.
January 10, 2017	Presentation by CFO and DY CFO to the CEO and COO to provide financial update.
January 10-11, 2017	Hard copy of financials shared only with designated statutory auditors for audit purposes.
January 11, 2017	Draft press releases prepared by investor relations team and circulated to the CFO and members of the corporate finance team. Stock exchange release, press releases and CFO presentation reviewed by CFO.
January 12, 2017	Stock exchange release, press releases and CFO presentation reviewed by the CEO and COO. Audit committee meeting was held in two parts. The first part commenced at 11:30 AM to discuss agenda items 1 to 16 and adjourned at around 1:30 PM. The second part was reconvened for the financials section at 7:00 PM to discuss agenda items from 17 to 22 and concluded at around 9:00 PM. Hard copies of stock exchange and press release were shared with audit committee and necessary sign-offs obtained before the results are announced to exchanges.
January 12-13, 2017	Board meeting was held in two parts. The first part commenced at 6:00 PM on January 12, 2017 to discuss business updates and was adjourned at around 07:00 PM. The second part was reconvened to discuss other agenda items on January 13, 2017 at 7:30 AM and concluded at 8:50 AM. Final sign-off on press releases, stock exchanges release obtained.
January 13, 2017	Stock exchanges were intimated about the outcome of the board meeting on January 13, 2017 between 09:04 AM to 09:18 AM.

- (iv) From the chronology of events provided above, it was observed that since the activities relating to preparation of financial results for quarter ended on December, 2016 started on January 06, 2017, the aforesaid date is taken as the date when the UPSI first came into existence. Further, the Company announced the financial results on the stock exchanges on January 13, 2017. Hence, January 13, 2017 is taken as the date when the Company made the aforesaid UPSI public. Therefore, the period from January 06, 2017 to January 12, 2017 is considered as the period of UPSI (hereinafter referred to as **“UPSI Period”**).

- (v) From the information provided by the Company, it was observed that the Noticee was working as an associate manager-business finance with the Company and was part of a presentation team which was responsible for making a PPT on the financial result for quarter ended on December, 2016 for the board of directors and audit committee. Further, the aforesaid team had information regarding organization wide revenue and cost numbers from January 08, 2017 to January 13, 2017. Thus, it was observed that the Noticee was an insider in terms of regulation 2(1)(g) of the PIT Regulations.
- (vi) It was observed that the Noticee, while being in possession of UPSI (i) bought 100 shares of the Company on January 12, 2017; and (ii) bought 400 shares and sold 75 shares of the Company on January 13, 2017. It was further observed that on January 13, 2017, Noticee had placed his first order at 09:19 AM whereas the financial result of the Company for quarter ended on December, 2016 was announced on the stock exchanges between 09:04 AM to 09:18 AM. The details received from NSE regarding the trades of the Noticee are provided below:

Name	Date of trading	Instrument	Buy quantity	Sell quantity	Buy value	Sell value
Prateek Sarawgi	12/01/2017	EQ	100	0	99,040	0
	13/01/2017	EQ	400	75	3,90,375	74,525

- (vii) It was observed that since the Noticee had traded in the scrip of the Company on the aforesaid dates, while being in possession of UPSI, he had allegedly violated section 12(d) and (e) of the SEBI Act read with regulation 4(1) of the PIT Regulations.
- (viii) It was also observed that the Noticee being a designated person for the period January 01, 2017 to January 15, 2017, had traded in the scrip of the Company, when the trading window of the Company was closed due to the December, 2016 financial results from December

16, 2016 to January 15, 2017. It was observed that the aforesaid trades of the Noticee had allegedly violated clause 4 of the CoC provided under the PIT Regulations.

10. The Noticee submitted his reply to the SCN *vide* email sent on November 29, 2021. Thereafter, *vide* email sent on November 30, 2021, the Noticee was given another hearing opportunity on December 09, 2021. On the scheduled hearing date, the Noticee and the AR appeared before me and reiterated the submissions made *vide* the First Reply. They further requested time till December 14, 2021 to make fresh submissions which was acceded to. *Vide* email sent on December 10, 2021, Noticee submitted his additional submissions. The submissions made by the Notice *vide* the aforesaid replies have been summarized below:

Submission 1: Inordinate delay in issuance of the SCN

- (i) The allegations in the SCN against the Noticee pertain to the period December 16, 2016 to January 15, 2017 *i.e.*, around 4 years ago. The said inordinate delay has severely prejudiced the Noticee. On this ground alone, the current proceedings ought to be discontinued.
- (ii) Even though there is no limitation period prescribed under the SEBI Act and the regulations thereunder, the authority is required to exercise its powers within a reasonable period.
- (iii) Facts of the matter would show that SEBI has not exercised its powers within a reasonable period, therefore, proceedings need to be discontinued and penalty should not be imposed. In support of the above, the Noticee has relied on the following orders of Hon'ble SAT:
 - (a) Libord Finance Ltd. vs. SEBI, (Appeal No. 37 of 2008), decision dated March 31, 2008.

- (b) Shri Ashok K. Chaudhary vs. SEBI, (Appeal No. 69 & 70 of 2008), decision dated November 05, 2008.
- (c) Ashlesh Gunvantbhai Shah vs. SEBI, (Appeal no. 169 of 2019), decision dated January 31, 2020.
- (d) Ashok Shivilal Rupani and Anr. vs. SEBI, (Appeal no. 417 of 2018), decision dated August 22, 2019.

Submission 2: Proviso (v) of regulation 4(1) of the PIT Regulations is applicable to the Noticee as the concerned trades were executed by his father

- (i) The trading and demat account of the Noticee was opened in the year 2007 by his father Mr. Lalit Kumar Sarawgi, with Ashika Stock Broking Limited when he was 18 years old. Although the aforesaid account was in the Noticee's name, from the time the aforesaid account was opened, it was operated exclusively by his father. Noticee came to know of the trades concerned in the present matter on receipt of the SCN, and he had not instructed his father to execute trades in the scrip of the Company. The Noticee has furnished a duly notarized affidavit given by his father confirming that trading in his account was undertaken by his father without involvement of the Noticee.
- (ii) In support of the above, the Noticee has submitted the following:
 - (a) The Noticee was born in the year 1989 as per his PAN. The date of opening of his trading account is August 08, 2007, which shows that the account was opened when he was 18 years old.

- (b) Know your client (KYC) form pertaining to his account, contains address and contact number of his father, for interacting with the stock broker. The Noticee has provided a copy of his KYC form dated August 08, 2007 which pertains to his account.
- (c) The contract notes with respect to his trading account, from the year 2007, inclusive of the contract notes of the concerned trades, were sent to the email ID of the Noticee's father i.e., "lksarawgiassociates@gmail.com". The Noticee has provided a copy of the email sent from the stock brokers to the aforesaid email ID pertaining to the contract notes dated January 13, 2017.
- (d) The trading and demat account of the other members of the Noticee's family is also handled by Noticee's father, particularly of Narayani Devi Sarawgi (grandmother of Noticee), Sandeep Sarawgi (uncle of Noticee), and Sunita Sarawgi (mother of Noticee).
- (e) The Noticee's mother Mrs. Sunita Sarawgi was registered as an authorized person of the broker Ashika Stock Broking Limited. In the aforesaid capacity, she was *inter alia* handling the account of Noticee. Noticee's father is a dealer who was operating the trading terminal allotted to Noticee's mother as an authorized person of the broker. Noticee's father was using the aforesaid trading terminal for placing orders from the trading account of Noticee and other family members. The Noticee has provided a copy of letter addressed from the compliance officer of the stock broker to the Noticee *inter alia* regarding the trading terminal ID.

(f) During financial year 2016-2017, Noticee's father through Noticee's account had traded in other shares apart from shares of the Company. Further, the trades undertaken by the Noticee's father in the shares of the Company were:

(f.1) In ordinary course based on his commercial wisdom.

(f.2) Without knowing that the Noticee was a "designated person" or that the Noticee was part of the financial team which was involved in preparation of financial results for the quarter ending on December, 2016 or that there was a restriction on him to trade in the shares of the Company.

(f.3) Based on price movement in the Company' scrip and the news appearing in media.

(f.4) Not motivated by possession of alleged UPSI.

The Noticee has furnished a copy of his trading details during the financial year 2016-2017.

(iii) Since the Noticee did not trade in the scrip of the Company in possession of UPSI, the allegation of insider trading against the Noticee does not arise.

(iv) Proviso (v) of regulation 4(1) of the PIT Regulations applies in the present circumstances. The aforesaid proviso states that in case of a non-individual insider, an insider may prove his innocence by demonstrating that the individuals who were in possession of UPSI were different from the individuals taking trading decisions, and the latter were not in possession of UPSI when they took the decision to trade. The Noticee was a person in possession of UPSI, and the

decision to trade was independently taken by the Noticee's father. Since the Noticee's father was not in possession of UPSI, the question of the concerned trading being motivated by USPI does not emerge.

Submission 3: Trading pattern, quantum of shares traded by the Noticee and the resultant profit negates the allegation that the Noticee had traded on basis of UPSI

- (i) The Noticee had purchased 100 shares of the Company on January 12, 2017 at the rate of Rs 990. Thereafter, on January 13, 2017, after the financial results for the quarter ending on December, 2016 were announced on the stock exchanges, the Noticee had bought 400 shares and sold 75 shares of the Company.
- (ii) The financial results declared on January 13, 2017 pertaining to quarter ended on December, 2016 were positive. Typically, an insider will purchase the shares prior to a positive UPSI and sell immediately on the UPSI becoming public. After the UPSI became public on January 13, 2017, between 09:04 AM to 09.18 AM, instead of selling shares immediately, the Noticee further purchased 400 shares. The details of the trading activity of the Noticee on January 13, 2017 is as follows:
 - (a) At 9:19:47 AM, 25 shares were sold from the trading account of the Noticee.
 - (b) At 9:59:50 AM, 100 shares were bought from the trading account of the Noticee.
 - (c) Between 2.16 to 2.18 PM, 300 shares were bought from the trading account of the Noticee.

- (d) Between 3.02 to 3.03 PM, 50 shares were sold from the trading account of the Noticee.
- (iii) From the above it can be seen that the Noticee has only sold 75 shares. If the Noticee had traded on basis of UPSI, after purchase of 100 shares on January 12, 2017, the Noticee would have sold entire 100 shares on January 13, 2017 as opposed to only 75 shares. Further, the Noticee also bought 400 shares on the same day. The aforesaid trading pattern demonstrates that the Noticee did not trade based on UPSI.
- (iv) In addition to the above, the UPSI Period ended on January 12, 2017. Thus, the allegation of insider trading against the Noticee pertains to buying 100 shares on January 12, 2017, which is a miniscule/insignificant quantum of shares. The total amount of funds deployed by the Noticee during the trading window closure period (*i.e.*, from December 16, 2016 to January 15, 2017) was Rs 23,35,042.59 and the total amount deployed by the Noticee's father in the shares of the Company was only Rs 99,289. Further, the Noticee's father had deployed total of Rs 37 lakhs in the trading account of the Noticee's family members. If the intention was to indulge in insider trading, the Noticee would have deployed majority or all of the funds in the shares of the Company. The Noticee has provided a copy of trading details of the family members of the Noticee during the trading window closure period.
- (v) The overall trading pattern in the trading account will demonstrate that the trading in the Noticee's account was undertaken by his father in the normal course and the trading: (a) had no nexus with the alleged possession of UPSI; (b) was not motivated by the knowledge and awareness of UPSI; and (c) was not on the basis of UPSI. If the Noticee wanted to indulge in insider trading, his father would have

traded in the name of other family members and not his, so as to not leave any trace of insider trading.

- (vi) Additionally, the shares bought on January 12, 2017, allegedly based on UPSI were 100 shares. On January 13, 2017, the Noticee only sold 75 shares, however, assuming that the Noticee had sold 100 shares as opposed to 75 shares, at a price of Rs 993, the total gain of the Noticee amounts to Rs 311, which is insignificant to give rise to suspicion of insider trading. A professional employee would not put his professional reputation at stake for gaining a mere amount of Rs 311.

Submission 4: The Noticee has not violated clause 4 of the CoC prescribed under PIT Regulations as he has not executed the concerned trades

- (i) As provided above, the charge that the Noticee had traded during the trading window closure period is not attracted in the present case as the Noticee's father had executed the concerned trades.
- (ii) The Noticee has not made any disproportionate gain or gained any unfair advantage or caused loss to any investor. Trading in the shares of the Company during January, 2017 to February, 2017 (including the concerned trades) has resulted in a total profit of Rs 11,020 to the Noticee. The Noticee has provided a calculation of profit accrued to the Noticee by trading in the scrip of the Company during the aforesaid period.
- (iii) The Noticee has bought 100 shares of the Company on January 12, 2017, and the rest of the shares were traded by the Noticee after UPSI became public. The quantum of shares traded by the Noticee when the trading window of the Company was closed was insignificant. The alleged violation, if occurred at all, is an unintentional, technical, procedural and venial breach, and

therefore, no penalty should be imposed on the Noticee. In support of the above, the Noticee has relied on the following cases:

- (a) Hindustan Steel Ltd. vs. State of Orissa, Civil Appeal Nos. 883-892 of 1966, AIR1970SC253, decided by the Hon'ble Supreme Court on August 04, 1969.
- (b) Bharjatiya Steel Industries vs. Commissioner, Sales Tax, U.P, Civil Appeal No. 1768 of 2008, (2008)11SCC617, decided by the Hon'ble Supreme Court on March 05, 2008.

Submission 5: Section 15HB is not applicable for violation of clause 4 of CoC prescribed under the PIT Regulations

- (i) Section 15HB of the SEBI Act applies only when no separate penalty is provided. In the present case, clause 10 (erstwhile clause 12) of the CoC prescribed under the PIT Regulations itself provides for penalty for its breach. Therefore, penalty cannot be imposed under section 15HB of the SEBI Act.
- (ii) In support of the above, the Noticee has relied on the decision of Hon'ble SAT in the matter of Snehlata Tiwari vs. SEBI (Appeal no 175 of 2020), dated April 28, 2021.

Submission 6: Mitigating factors

The Noticee has submitted that the following mitigating factors ought to be taken into consideration in the present case:

- (i) No past action has been taken against the Noticee by any regulatory authority including SEBI.
- (ii) The alleged violation was unintentional.

- (iii) The alleged violation has neither caused any loss to any investor nor has it adversely affected the investors or the securities market in any manner. Further, there are no investor complaints in relation to the alleged violation.
- (iv) There has been an undue delay in initiating the proceedings which needs to be considered as a mitigating factor while imposing penalty under section 15J of the SEBI Act. In support of the above, the Noticee has relied upon the order passed by Hon'ble SAT in the matter of Anita Jajodia and Anr. vs. SEBI (Misc. application no. 586 of 2020, 587 of 2020 and appeal no.30 of 2021) dated January 21, 2021.

D. CONSIDERATION OF ISSUES AND FINDINGS

11. I have taken into consideration the material available on record. The issues that arise for consideration in the present case are as follows:

- I. Whether the Noticee has violated section 12A(d) and (e) of the SEBI Act read with regulation 4(1) of the PIT Regulations?
- II. Whether the Noticee has violated clause 4 of the CoC provided under the PIT Regulations?
- III. Does the violation, if any, attract monetary penalty under sections 15G and 15HB of the SEBI Act?
- IV. If the answer to Issue No. III is in affirmative, then what should be the quantum of monetary penalty?

12. I note that the Noticee has raised a preliminary objection on delay. As summarized above, the Noticee has contended that there has been an

inordinate delay in the issuance of SCN. I find it appropriate to deal with this preliminary contention before moving to the merits of the case.

13. I find that although the time taken and efforts involved in an investigation may vary from case to case, generally investigation per-se is a time consuming process that involves collection, scrutiny and careful examination of unique client code (UCC) details, know your information (KYC) details, trade logs, trade details, transaction statements and details of off-market transactions obtained from various entities including but not limited to the company, the stock exchanges, the depositories, the stock brokers, the registrar to an agent, and therefore no time limit can be fixed in this regard to enable a regulator to take appropriate disciplinary action for the safeguard and improvement of the system/market. I note that in the present case the sequence of events that has led to the passing of the current adjudication order is as follows:

- (i) SEBI started examining the present matter in November, 2017 based on a media report published on November 17, 2017 which stated that financial results of some major companies including that of the Company were posted in private whatsapp groups prior to their announcement on the stock exchanges.
- (ii) After preliminary examination the matter was recommended for further investigation on March 15, 2018 and the investigation was concluded on March 04, 2020.
- (iii) The undersigned was appointed as the adjudicating officer *vide* order dated *vide* order dated January 18, 2021.
- (iv) The undersigned issued the SCN to the Noticee on May 12, 2021.

14. I note that the Noticee has relied on certain orders of Hon'ble SAT in support of his submission regarding delay. My observations with respect to the same are provided below:

- (i) Libord Finance Ltd. vs. SEBI, (Appeal No. 37 of 2008), decision dated March 31, 2008: I note that in the aforesaid matter, the show cause notice was issued after 8 years from the time the alleged violation had occurred. However, in the present case, the Noticee has objected with respect to a delay of 4 years, which is nearly half of the delay period alleged in the aforesaid matter. Further, the facts of the case were that the appellant in its capacity as a merchant banker was acting as a lead manager to an issue for an initial public offering of a company wherein it failed to properly perform its duties, and therefore, it was found by the adjudicating officer that the appellant had *inter alia* violated code of conduct prescribed under the Securities and Exchange Board of India (Merchant Bankers) Regulations, 1992 (hereinafter referred to as “**SEBI MB Regulations**”). On perusing the aforesaid order, I find that the two main reasons for setting aside the impugned order were (i) SEBI was wrong in initiating proceedings against the appellant under section 11B of the SEBI Act, rather it should have proceeded under the SEBI MB Regulations or the Securities and Exchange Board of India (Procedure for Holding Enquiry by Enquiry Officer and Imposing Penalty) Regulations, 2002, as under section 11B of the SEBI Act, SEBI has imposed a harsher penalty than it would have imposed if it had proceeded under the aforesaid regulations; and (ii) the appellant had not renewed its certificate to carry on the business of a merchant banker from 2000, thus, it could not be a threat to the securities market anymore. Power to issue directions under section 11B of the SEBI Act is an enabling provision for protection of investors and the market and not for punishing the delinquent, thus section 11B could not be used for this purpose. The Noticee has relied on this order and claimed that due to delay itself the proceedings ought to be

discontinued, however, from the above, it is evident that delay was not the sole ground for setting the impugned order aside. In fact, the paragraph pertaining to delay appears at the end of the order wherein the Hon'ble SAT has held the following:

“Before concluding, we cannot resist observing that there has been an inordinate delay in initiating action against the appellant. It is alleged to have committed the irregularities in the earlier part of the year 1996 and the show cause notice was admittedly issued in June 2004. How could any one file a proper reply after a lapse of more than eight years. This long delay itself causes grave injustice to the delinquent and results in the violation of the principles of natural justice.....In view of the inordinate delay in initiating action against the appellant and that too, when its certificate of registration had already expired, the impugned order cannot be sustained.”
(emphasis supplied)

The very words “*Before concluding, we cannot resist observing...*” shows that delay in issuance of show cause notice was an additional reason for setting the order aside, and not the sole reason. The aforesaid reasoning is also supported by the use of the words “*and that too, when its certificate of registration had already expired*”. Thus, I find that reliance on this case for discontinuing the current adjudication proceedings by the Noticee is misplaced.

- (ii) Shri Ashok K. Chaudhary vs. SEBI, (Appeal No. 69 & 70 of 2008), decision dated November 05, 2008: In this matter, appeals were filed against order passed by whole time member wherein the appellants were held liable for executing manipulative transactions during the period February, 2000 to November, 2000 leading to price and volume rise. The facts of the matter were that the shares of the company were manipulated by the promoters of the company by executing transactions in the name of the various entities including

the appellants. A show cause notice was issued in the year 2006, and the order was passed in 2008. With respect to the first appellant, the Hon'ble SAT, *firstly*, did not find a link between him and the promoters, and *secondly*, held that the material on record was incomplete to draw an adverse inference against him, hence his appeal was allowed. As regards the second appellant, the Hon'ble SAT held that from the material on record, it was evident that the second appellant had executed reversal trades. Similar to the *Libord Finance case (supra)* as provided above, towards the end of the order the Hon'ble SAT stated:

“Before concluding, we would like to observe that there has been inordinate delay of six years in issuing the show cause notice to the appellants. The Board has been established to promote orderly.... In the case before us we are not setting aside the impugned order on the ground of delay though it was argued by Shri Vinay Chauhan learned counsel for the appellants that the case of his clients had been prejudiced on account of delay as they could not verify after a lapse of six years the details of the transactions imputed to them and the.....”

I am of the view that the aforesaid paragraph is crystal clear that Hon'ble SAT did not set aside the impugned order on the ground of delay. Therefore, I find that on basis of the aforesaid case, I am not inclined to accept the argument of the Noticee that the present proceedings should be dropped due to delay.

- (iii) Ashlesh Gunvantbhai Shah vs. SEBI, (Appeal no. 169 of 2019), decision dated January 31, 2020: In this matter, the appellants had challenged an order passed by the adjudicating officer for violating provisions of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as “**PFUTP Regulations**”). The violation had

occurred in 2010, and the show cause notice was issued in the year 2017. Hon'ble SAT had found that the explanation furnished for delay was unsatisfactory. Hon'ble SAT had *inter alia* stated that:

"We find that after the submission of the preliminary report on April 2, 2012 no further steps were taken in 2012 and the period of 2013-14 has been covered with a vague allegation that there were certain changes in the officers of the Investigation department. We also find that after the report was submitted on February 1, 2016 it took the respondent another 17 months to issue the show cause notice."

I find that it is important to bear in mind that in the aforesaid case the argument of delay raised was for 7 years, whereas in the present case, the Noticee has raised a ground of delay for 4 years. Further, I find that in the aforesaid case, as reproduced above, it was found that the majority part of delay is attributable to concluding investigation, which cannot be compared to the facts of the present case in light of the timeline provided in paragraph 13 above. Further, I find that the present case alleges two violations against the Noticee, one under section 15G, and another under section 15HB of the SEBI Act. The minimum penalty prescribed under section 15G of the PIT Regulations is Rs 10,00,000 whereas for violation under provisions of PFUTP Regulations, the minimum penalty prescribed under section 15HA of the SEBI Act is Rs 5,00,000. This itself shows that insider trading is concerned a more serious violation under the SEBI Act than violation of the PFUTP Regulations. Further, I find that the aforesaid decision of Hon'ble SAT was given in the peculiar facts and circumstances of the aforesaid case which cannot be applied to the present set of facts *inter alia* due to the reasons stated above, thus, there arises no reason to seek parity.

- (iv) Ashok Shivlal Rupani and Anr. vs. SEBI, (Appeal No. 417 of 2018) decided by Hon'ble SAT, on August 22, 2019: I note that in the Ashok

Shivlal matter, the show cause notice was issued after 8 years from the time the alleged violation had occurred. However, in the present case, the Noticee has objected with respect to a delay of 4 years, which is nearly half of the delay period alleged in the aforesaid matter. Further, I note that the delay in the *Ashok Shivlal* matter pertained to disclosure violations under the PIT Regulations, Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 (hereinafter referred to as the “**SAST Regulations**”) and the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015. The Hon’ble SAT had noted in this matter that since the disclosures were already made under the provisions of the SAST Regulations, the non-compliance under the PIT Regulations becomes technical in nature. However, in the present matter, there is no question of technical compliance. Thus, I find that the facts of the present matter are distinguishable on the grounds of the delay period, the alleged violation as well as the considerations involved in allowing the appeal. Further, I note that the aforesaid *Ashok Shivlal* order was appealed before the Hon’ble Supreme Court by SEBI, which was dismissed by it *vide* order dated November 15, 2019, however, it is important to note that the Hon’ble Court had kept the question of law open.

15. In relation to delay, I find it relevant to refer to the following orders of Hon’ble SAT:

- (i) In ***Pooja Vinay Jain vs. SEBI*** (Appeal No. 152 of 2019) decided on March 17, 2020, the Hon’ble SAT held the following:

“On the issue of delay, in the case of Ashok Rupani (supra), this Tribunal, inter-alia, noted the ratio in the case of Mr. Rakesh Kathotia and Ors. vs. SEBI [Appeal No 7 of 2016 decided on May 27, 2019].

Paragraph No. 7 of the case of Ashok Rupani Judgment is as under....

The decision would show that the power to initiate the proceedings must be exercised by the authorities within a reasonable time. This would depend upon the facts and circumstances of the case, nature of the default / statute and prejudice caused to the noticee.

In the present case, the appellant neither put a plea of prejudice before the AO nor before us. It was simply stated that since the proceedings were launched by respondent SEBI after a period seven years, the same should be quashed on the ground of delay. The record would show that all the documents concerning the defense of the appellant were filed by her before the AO. Therefore, for want of any prejudice the proceedings cannot be quashed simply on the ground of delay in launching the same. (emphasis supplied).

- (ii) Similarly, in **M/s. Adamina Traders Private Limited vs. SEBI** (Appeal No. 331 and 366 of 2020) dated December 15, 2021, the trades concerned in the appeal took place in 2013, and the show cause notice was issued by the adjudicating officer in 2018. The appellants raised an argument of inordinate delay in issuance of the show cause notice. Dismissing the aforesaid contention, the Hon'ble SAT held the following:

'We do not find any evidence to hold that there was an inordinate delay in the issuance of the show cause notice. This contention is accordingly rejected. Further, nothing has been shown as to how this delay has prejudiced the appellant. In the absence of any prejudice the delay, if any, cannot be set aside. (emphasis supplied)

To summarize, in the decisions referred above, the Hon'ble SAT has placed reliance on the fact that the appellants had failed to demonstrate how the delay has caused prejudice to them. I find that the argument of delay raised by the Noticee in the current matter is weak as he has not been able to show how he was impaired in defending himself due to the alleged delay, which is essential in view of the orders referred above. Merely submitting that that delay in initiation of adjudication proceedings has caused him prejudice is not sufficient. I find that the paragraphs above clearly establish that SEBI had exercised its power within reasonable period and there was no inordinate delay in issuing the SCN in the present matter, and therefore, the first submission of the Noticee is liable to be dismissed.

I. Issue no. 1: Whether the Noticee has violated section 12A(d) and (e) of the SEBI Act read with regulation 4(1) of the PIT Regulations?

16. Before moving forward, it is pertinent to refer to the relevant provisions of the SEBI Act and the PIT regulations which are alleged to have been violated by the Noticee in the present issue. The said provisions are provided below:

SEBI Act

CHAPTER VA PROHIBITION OF MANIPULATIVE AND DECEPTIVE DEVICES, INSIDER TRADING AND SUBSTANTIAL ACQUISITION OF SECURITIES OR CONTROL

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

12A. No person shall directly or indirectly—

(d) engage in insider trading;

(e) deal in securities while in possession of material or non-public information or communicate such material or non-public information to any

other person, in a manner which is in contravention of the provisions of this Act or the rules or the regulations made thereunder;

PIT Regulations

CHAPTER – II RESTRICTIONS ON COMMUNICATION AND TRADING BY INSIDERS

4. Trading when in possession of unpublished price sensitive information.

(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-se transfer 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 carry out 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 purposes to 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.

**Inserted by Securities and Exchange Board of India (Prohibition of Insider Trading) (Amendment) Regulations, 2018 (w.e.f. April 01, 2019) (hereinafter referred to as “PIT Amendment 2018 Regulations”)*

***Substituted for the word “promoters” by PIT Amendment 2018 Regulations.*

17. I find that there are three important things to be established for attracting the provisions stated in the present issue, (i) the Noticee was an insider of the Company during the relevant period; (ii) the Noticee had received or has had access to relevant UPSI; and (iii) the Noticee had actually traded in the shares of the Company while in possession of UPSI during the UPSI period. I am going to deal with each of the aforesaid points in the subsequent paragraphs.

18. Noticee being an insider and receipt of UPSI by the Noticee:

(i) For determining whether the Noticee was an “insider” under the PIT Regulations, it is important to refer to certain definitions under the PIT Regulations which bear relevance in the present matter. Regulation 2(1)(g) of the aforesaid regulations provides that an “insider” means any person who is: (i) a connected person; or (ii) in possession of or having access to UPSI.

(ii) Further, UPSI is defined under regulation 2(1)(n) of the PIT Regulations as follows:

(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.*
- (vi)**** [].*

***** Omitted by Securities and Exchange Board of India (Prohibition of Insider Trading) (Amendment) Regulations, 2018 (w.e.f. April 01, 2019) which earlier read as follows: “(vi) material events in accordance with the listing agreement”.*

- (iii) I note that the chronology of events as reproduced in paragraph 9 above, provides that since the activities relating to preparation of financial results for quarter ended on December, 2016 started on January 06, 2017, therefore, the aforesaid date is taken as the date when the UPSI first came into existence. Further, I note that the Company had announced financial results for the aforesaid quarter on January 13, 2017 on BSE and NSE between 09:04 AM to 09:18 AM. Thus, I find that UPSI Period should be considered from January 06, 2017 to January 12, 2017.
- (iv) I note from the material available on record that the Noticee was working as an associate manager-business finance with the Company and was part of a presentation team which was responsible for making a PPT on the financial result for quarter ended on December, 2016 for the board of directors and the audit committee. Further, I note that the aforesaid team had information regarding organization wide revenue and cost numbers from January 08, 2017 to January 13, 2017. I find that Noticee in his reply has not contended that he was not an “insider” under PIT Regulations or that he did not receive the aforesaid UPSI, therefore, I have no difficulty in holding that the Noticee was an “insider” as he had received UPSI of the Company pertaining to the financial results declared for the quarter ended on December 2016 under the PIT Regulations.

19. Trading by the Noticee:

- (i) It is pertinent to highlight here that as per explanation to regulation 4(1) of the PIT Regulations when a person who is in possession of UPSI trades, his trades would be presumed to be motivated by knowledge of such information in his possession. Thus, once it is established that a person is an insider and he had traded in possession of UPSI, the onus shifts to the insider to prove that he/she traded on some other basis. In this regard, Hon'ble SAT in the matter of **Mrs. Chandrakala vs. SEBI**, Appeal No. 209 of 2011, dated January 31, 2012 while deciding an appeal for violation of regulation 3(i) of the erstwhile insider trading regulations which is *pari materia* with regulation 4(1) of the PIT Regulations held as follows:

“The prohibition contained in regulation 3 of the regulations apply only when an insider trades or deals in securities on the basis of any unpublished price sensitive information and not otherwise. It means that the trades executed should be motivated by the information in the possession of the insider. If an insider trades or deals in securities of a listed company, it may be presumed that he / she traded on the basis of unpublished price sensitive information in his / her possession unless contrary to the same is established. The burden of proving a situation contrary to the presumption mentioned above lies on the insider. If an insider shows that he / she did not trade on the basis of unpublished price sensitive information and that he / she traded on some other basis, he / she cannot be said to have violated the provisions of regulation 3 of the regulations.”

- (ii) Now that we have established that the Noticee was an insider and in possession of UPSI, it is essential to examine the trades of the Noticee during the UPSI Period. However, before we undertake the aforesaid task, at this juncture, I find it appropriate to deal with the

contention of the Noticee that the alleged violation is not attracted in the present case as the Noticee's father had executed the said trades during the UPSI Period and not the Noticee. The Noticee has claimed that his trading and demat account was operated solely by his father without his involvement, even though the aforesaid accounts were in the Noticee's name. Further, his father did not know that the Noticee was an "insider" on account of having access to UPSI relating to financial results for the quarter ended December, 2016 and the Noticee had also not communicated any information pertaining to the aforesaid UPSI to him. His father had executed the concerned trades in ordinary course of business based on his independent research. In support of this, the Noticee has also furnished certain documents, which are examined one by one hereunder:

- (a) KYC form of the Noticee dated August 08, 2007: I note that the KYC form for opening trading account of the Noticee bears the name of the Noticee. I note from the PAN of the Noticee that he was born in the year 1989, therefore, since the KYC form pertains to the year 2007, I find that I am in agreement with the submission of the Noticee that he was 18 years old when the said trading account was opened. Further, the Noticee has claimed that the KYC form contains the contact details and address of his father, which shows that the trading account was operated by his father. I find that only because the KYC form bears contact details of his father, does not mean that the Noticee was not in control of his trading or demat account. I find it difficult to accept that the father-son duo were so disconnected from each other that father was placing orders from the account of his son, without his son knowing. Further, I note that there are specific sections in the KYC form for providing details of "guardian" and "beneficial owner". If the Noticee's claim is that his account was opened at a very young age by his father, who was exclusively

handling the aforesaid account since its opening, and the KYC form supports the aforesaid position, I find that the Noticee has not furnished any explanation regarding why the sections pertaining to “guardian” and “beneficial owner” have been kept empty in the KYC form. The KYC form nowhere records involvement of Noticee’s father in operation of the said account. Thus, I find that this piece of evidence is completely futile.

- (b) Contract notes pertaining to the Noticee’s trading account: Noticee has claimed in his reply that since the contract notes pertaining to the trading account from which the concerned trades were executed were being sent by the stock broker to his father’s email ID, shows that his father was operating his account. I do not find this submission of any use. Similar to KYC form containing contact details and address of Noticee’s father, I find that the fact the contract notes of the concerned trades were sent to his father’s email ID does not mean that the Noticee was not in control of his trading and demat account.
- (c) KYC forms of Narayani Devi Sarawgi, Sandeep Sarawgi and Sunita Sarawgi: The Noticee has claimed that the Noticee’s father was also operating the trading and demat account of his other family members, and to back this, he has provided copies of the KYC forms of the aforesaid family members who are his grandmother, uncle and mother, respectively. I do not find this piece of evidence relevant at all. The fact that his father was operating demat accounts of other family members has no bearing on control of Noticee’s account. Assuming that the aforesaid submission has any relevance, the Noticee has not explained how the KYC forms support his aforesaid submission. On perusal of the KYC forms, I am unable to find

anything which suggests that Noticee's father was in control of the said accounts. Thus, I find that these set of KYC forms are of no help to the Noticee.

- (d) Affidavit by Noticee's father: Noticee has provided a duly notarized affidavit submitted by his father (Lalit Kumar Sarawgi) dated November 29, 2021 which *inter alia* states the following: (i) the Noticee's father had opened the trading and demat account of the Noticee when he was 18 years old; (ii) since the account was opened, the Noticee's father was solely placing orders and operating the same; (iii) the Noticee's father had placed orders from the account of the Noticee with respect to the trades executed in the Company's scrip on January 12, 2017 and January 13, 2017 without any involvement of Noticee; and (iv) Noticee's father was unaware that the Noticee was a "designated person" or in possession of UPSI relating to financial results for quarter ending December, 2016 of the Company. I find that the aforesaid affidavit is nothing but a self-serving document, and therefore, in my view, it cannot come to the rescue of the Noticee. There has been no explanation furnished by the Noticee or in the aforesaid affidavit regarding the source of funds for executing the said trades. Further, I find that no explanation has come from the Noticee as to why a power of attorney was not made by the Noticee authorizing his father to control his account and execute trades on his behalf.
- (e) Letter from Ashika Stock Broking Limited: The Noticee has provided a copy of letter addressed by the stock broker to the Noticee dated November 29, 2021 through which the concerned trades on January 12, 2017 and January 13, 2017 were placed by the Noticee. The letter states the following: (i) trades in the shares of the Company on the aforesaid dates

were executed through the terminal ID of Lalit Sarawgi (*i.e.*, the Noticee's father) who was the dealer and operating the said terminal; and (ii) Lalit Sarawgi was the dealer of their authorized person Sunita Sarawgi. I find that this letter does not lead to a conclusion that the Noticee's father was exclusively operating Noticee's account. Thus, I cannot bring myself to rely on this letter.

- (f) Involvement of Noticee's parents in stock market: The Noticee has submitted that his mother Mrs. Sunita Sarawgi was registered as an authorized person of the broker Ashika Stock Broking Limited. In the aforesaid capacity, she was *inter alia* handling the account of Noticee. Further, Noticee's father as a dealer was operating the trading terminal allotted to Noticee's mother as an authorized person of the broker. Noticee's father was using the aforesaid trading terminal for placing orders from the trading account of Noticee and other family members. I find that the aforesaid submission does not show that Noticee did not have any control of his account, therefore, it deserves to be dismissed.
- (iii) In view of the aforesaid paragraph, I find that the evidences furnished by the Noticee to buttress his argument that his account was operated by his father falls substantially short. Even if for a second it is assumed that his father was operating his demat account, I find that in absence of specific documentation authorizing his father to operate his account, the Noticee has acted in a reckless manner. I find that even if such documentation were to be provided, I find it difficult to accept that the Noticee could not influence the trades placed by his father.
- (iv) Apart from furnishing the aforesaid documents, the Noticee has contended that proviso (v) of regulation 4(1) of the PIT Regulations

applies in the case of the Noticee. The aforesaid proviso states that in case of a non-individual insider, an insider may prove his innocence by demonstrating that the individuals who were in possession of UPSI were different from the individuals taking trading decisions, and the latter were not in possession of UPSI when they took the decision to trade. The Noticee has submitted that since he was a person in possession of UPSI, and the decision to trade was taken independently by his father, therefore, the question of the concerned trading being motivated by USPI does not arise. However, as already established above, the Noticee has failed to establish that his father was independently operating Noticee's demat account through which the concerned trades were executed. Therefore, the question of one person being in possession of UPSI and other person trading independently, does not arise. Further, it is important to note that the text of the regulation clearly states that the defence of the said proviso is available only to "*non-individual insider*". In this regard, report of the high level committee to review the SEBI (Prohibition of Insider Trading) Regulations, 1992 formed under the chairmanship of former Chief Justice N.K Sodhi notes the following with respect to the aforesaid proviso:

"NOTE: This provision is intended to enable business organisations or groups of entities that trade in securities to put in place arrangements to comply with these regulations such as Chinese Walls and segregation of roles to ensure that unpublished price sensitive information is cordoned off and other arms of the same organisation do not get access to the same. Therefore, if the organisation or group adheres to these safeguards, they would not violate the prohibition in sub-regulation (1)." (emphasis supplied).

The aforesaid note makes it clear that this defence is only available to organisations after ensuring that necessary systems have been put in place to avoid those taking trading decisions to obtain UPSI.

Thus, I find that the second submission of the Noticee that his demat account was operated by his father, and proviso (v) of regulation 4(1) applies in the present case, does not have any merit.

- (v) The Noticee has also contended that the trading pattern, quantum of shares traded by the Noticee and the resultant profit negates the allegation that the Noticee had traded on basis of UPSI. In this regard, I note that the SCN has alleged that on January 12, 2017, Noticee had bought 100 shares of the Company. Further, on January 13, 2017, the Noticee had bought 400 shares and sold 75 shares of the Company. It was noted in the SCN that on January 13, 2017, Noticee had placed its first order at 9:19 AM whereas the result of the Company for quarter ended on December, 2016 was announced on the stock exchanges between 9:04 AM to 9:18 AM. The details received from NSE are provided below:

Name	Date of trading	Instrument	Buy quantity	Sell quantity	Buy value	Sell value
Prateek Sarawgi	12/01/2017	EQ	100	0	99,040	0
	13/01/2017	EQ	400	75	3,90,375	74,525

- (vi) It is germane to refer to the financial results of the Company which have been tabulated below:

Description	Quarter ended			Year ended	
	Sep-16	Dec-16	Mar-17	Mar-16	Mar-17
Operating Income	17310	17273	17120	62441	68484
Other Income	760	820	746	3125	3080
Total Income	18070	18093	17866	65566	71564
Profit Before Tax	5069	5154	4958	18745	19981
Profit after tax (PAT)	3606	3708	3603	13491	14353

From the above, it is evident that profit after tax of the Company increased for the quarter ended on December, 2016 as compared to quarter ended on September, 2016 which shows that the financial

results declared for quarter ending on December, 2016 was positive UPSI.

- (vii) The Noticee has contended that generally an insider will purchase the shares prior to a positive UPSI and sell immediately on the UPSI becoming public. As per the Noticee, after the UPSI became public on January 13, 2017 between 09:04 AM to 09.18 AM, instead of selling shares immediately, the Noticee further purchased 400 shares and sold 75 shares of the Company.
- (viii) I find that the financial result for quarter ended December, 2016 was a positive UPSI event, pursuant to which an insider trading on basis of UPSI, ought to have bought shares before such result became public and sell shares after UPSI becomes public. I find that the Noticee on January 12, 2017 bought 100 shares of the Company of total value Rs 99,040. Thus, so far, the Noticee's behaviour confirms with the behaviour of an insider acting on UPSI. Coming to January 13, 2017, on examination of the trade log with respect to trades executed by the Noticee on the said date, I find that the Noticee had undertaken the following trades in the shares of the Company:

Time	Buy/sell	No. of shares of the Company
9:19:47 AM	S	25
9:59:50 AM	B	100
2.16 to 2.18 PM	B	300
3.02 to 3.03 PM	S	50

- (ix) I find that immediately after declaration of financial results of the Company, the Noticee sold 25 shares of the Company, thereafter he bought 400 shares and then sold 50 shares of the Company. In this regard, I find it appropriate to refer to the order of Hon'ble SAT in the matter of **Mr. Manoj Gaur vs. SEBI**, (Appeal no. 64 of 2012), dated October 03, 2012, wherein it held that:

“We have looked into the trading pattern of Mrs. Urvashi Gaur and Mr. Sameer Gaur. We find that both of them are regularly trading not only in the scrip of the company but in the scrip of other companies as well. Even the trading pattern in respect of trading in the shares of the company shows that only 1000 shares were purchased by Mrs. Urvashi Gaur on October 17, 2008 when she was already holding of 38,985 shares on that date and even thereafter she had been purchasing the shares of the company regularly. As on March 23, 2012, she was holding 59,045 shares of the company. She is the wife of Mr. Manoj Gaur, the Executive Chairman of the company. If Mr. Manoj Gaur had passed on UPSI to Mrs. Urvashi Gaur and she traded on the basis of that UPSI she would not have traded in 1000 shares only. We cannot lose sight of the fact that the company is a widely held listed company with a paid up capital divided into 212,64,33,182 equity shares out of which promoter group holds 44.44 per cent. It is a large infrastructure company engaged in highways, cement, power and education sector and the Executive Chairman of such company would not like to risk the reputation of himself and the company for 1000 shares. Similarly, Mr. Sameer Gaur is also a regular trader of shares of the company. Before trading on October 13,14 and 16, 2008 he was holding 1,10,250 shares of the company. The first sale of 1400 shares was made by him only on May 8, 2009. Till date, he is holding 62,882 shares. Looking at the trading pattern, the number of shares purchased and going by their status, it seems highly improbable that trading was done by them on the basis of UPSI. On the other hand, it is more probable that they traded in the normal course of business. If the intention of Mrs. Urvashi Gaur and Mr. Sameer Gaur had been to capitalize on the UPSI allegedly communicated by Mr. Manoj Gaur, the quantum of purchase would not have been so small. Both the appellants are financially independent and trade independently which is clear from their trading pattern that they have been buying

the shares in similar quantities in the immediate past as well as on later dates. (emphasis supplied).

- (x) I find that if an insider has traded on basis of UPSI, he/she would be expected to buy shares of the company before the information becomes public. Once the information is public, it would lead to a rise in the shares of the company and the insider can benefit by selling the shares he bought by being in possession of UPSI. Conversely, if an insider is in possession of negative UPSI, it is expected he/she sells the share of the company before the information is revealed to the public. In this manner, the insider avoids a loss when the negative information becomes public.

- (xi) I find that the Noticee held 100 shares of the Company before the financial results were announced, however, on declaration of the same on January 13, 2017, he did not sell his entire holding in the Company, rather he bought 400 shares. If the Noticee intended to take advantage of the positive UPSI declaration, he would have not purchased more 400 shares of the Company in addition to holding 75 shares at the time. Further, I find that the Noticee would be cognizant of the fact that with respect to the quarter ended on December, 2016, the total profit after tax of the Company increased from the previous quarter, which would make any prudent person to buy more than 100 shares. From the contract notes and the trading details provided by the Noticee, I note that the Noticee been trading in the shares of other companies as well, thus, I find that the Noticee had the financial capacity to trade in more shares of the Company rather than purchasing meagre 100 shares during the UPSI Period. Based on the totality of circumstances discussed above, I am inclined to give benefit of the doubt to the Noticee that his trades were not motivated by UPSI based on his trading pattern and the quantum of the shares traded.

Accordingly, I hold that the alleged violation of section 12A(d) and (e) of the SEBI Act read with regulation 4(1) of the PIT Regulations, does not stand established against the Noticee.

II. Issue no. 2: Whether the Noticee has violated clause 4 of the CoC provided under the PIT Regulations?

20. Before proceeding further, I find it appropriate to reproduce the text of the provisions which are alleged to be violated by the Noticee in this issue:

Code of Conduct.

9. (1) *The board of directors of every listed company and ¹[the board of directors or head(s) of the organisation of every intermediary shall ensure that the chief executive officer or managing director] shall formulate a code of conduct ²[with their approval] to regulate, monitor and report trading by its ³[designated persons and immediate relatives of designated persons] towards achieving compliance with these regulations, adopting the minimum standards set out in Schedule B ⁴[(in case of a listed company) and Schedule C (in case of an intermediary)] to these regulations, without diluting the provisions of these regulations in any manner.*

⁴*[Explanation – For the avoidance of doubt it is clarified that intermediaries, which are listed, would be required to formulate a code of conduct to regulate, monitor and report trading by their designated persons, by adopting the minimum standards set out in Schedule B with respect to trading in their own securities and in Schedule C with respect to trading in other securities.]*

(2) ⁵*[The board of directors or head(s) of the organisation, of every other person who is required to handle unpublished price sensitive information in the course of business operations shall formulate a code of conduct to regulate, monitor and report trading by their designated persons and*

immediate relative of designated persons towards achieving compliance with these regulations, adopting the minimum standards set out in Schedule C to these regulations, without diluting the provisions of these regulations in any manner.

Explanation - Professional firms such as auditors, accountancy firms, law firms, analysts, insolvency professional entities, consultants, banks etc., assisting or advising listed companies shall be collectively referred to as fiduciaries for the purpose of these regulations.]

¹*Substituted for the words “market intermediary” by PIT Amendment 2018 Regulations.*

²*Inserted by PIT Amendment 2018 Regulations.*

³*Substituted for the words “employees and other connected persons” by PIT Amendment 2018 Regulations.*

⁴*Inserted by PIT Amendment 2018 Regulations.*

⁵*Substituted by PIT Amendment 2018 Regulations. Prior to substitution Sub-regulation (2) read as under: “Every other person who is required to handle unpublished price sensitive information in the course of business operations shall formulate a code of conduct to regulate, monitor and report trading by employees and other connected persons towards achieving compliance with these regulations, adopting the minimum standards set out in Schedule B to these regulations, without diluting the provisions of these regulations in any manner.”*

SCHEDULE B

*[See sub-regulation (1) ⁶[***] of regulation 9]*

Minimum Standards for Code of Conduct ⁷[for Listed Companies] to Regulate, Monitor and Report Trading by ⁸[Designated Persons]

⁹[4. (1) Designated persons may execute trades subject to compliance with these regulations. Towards this end, a notional trading window shall be used as an instrument of monitoring trading by the designated persons. The trading window shall be closed when the compliance officer determines that a designated person or class of designated persons can reasonably be expected to have possession of unpublished price sensitive information. Such closure shall be imposed in relation to such securities to which such unpublished price sensitive information relates. Designated persons and their immediate relatives shall not trade in securities when the trading window is closed.

(2) ¹⁰[Trading restriction period ¹¹[shall] be made applicable from the end of every quarter till 48 hours after the declaration of financial results. The gap between clearance of accounts by audit committee and board meeting should be as narrow as possible and preferably on the same day to avoid leakage of material information.]

¹²[(3) The trading window restrictions mentioned in sub-clause (1) shall not apply in respect of – (a) transactions specified in clauses (i) to (iv) and (vi) of the proviso to sub-regulation (1) of regulation 4 and in respect of a pledge of shares for a bonafide purpose such as raising of funds, subject to pre-clearance by the compliance officer and compliance with the respective regulations made by the Board; (b) transactions which are undertaken in accordance with respective regulations made by the Board such as acquisition by conversion of warrants or debentures, subscribing to rights issue, further public issue, preferential allotment or tendering of shares in a buy-back offer, open offer, delisting offer] ¹³[or transactions which are undertaken through such other mechanism as may be specified by the Board from time to time].

⁶ Omitted by PIT Amendment 2018 Regulations which earlier read as “and sub-regulation (2)”.

⁷ Inserted by PIT Amendment 2018 Regulations.

⁸ Substituted for the word “Insiders” by PIT Amendment 2018 Regulations.

⁹ First paragraph numbered as sub-clause (1) and second and third paragraph combined and numbered as sub-clause (2) by Securities and Exchange Board of India (Prohibition of Insider Trading) (Second Amendment) Regulations, 2019 (w.e.f. July 25, 2019) (hereinafter referred to as “**PIT Amendment 2019 Regulations**”).

¹⁰ Inserted by PIT Amendment 2018 Regulations.

¹¹ Substituted for the word “can” by PIT Amendment 2019 Regulations.

¹² Inserted by PIT Amendment 2019 Regulations.

¹³ Inserted by Securities and Exchange Board of India (Prohibition of Insider Trading) (Amendment) Regulations, 2020 (w.e.f. July 17, 2020)

21. I note that the charge levelled against the Noticee in the present issue is that the Noticee had traded during a period when the trading window of the Company was closed owing to the declaration of financial results for the quarter ended on December, 2016. As per the Company’s submission, the trading window was closed from December 16, 2016 to January 15, 2017. Noticee has not disputed execution of trades undertaken by him in the shares of the Company on January 12, 2017 and January 13, 2017. However, the Noticee has argued that the violation is not attracted as the Noticee’s father had executed the concerned trades and not the Noticee. I have already dealt with this submission in the previous paragraphs, thus, I do not find it necessary to delve into this again. In light of my observations recorded above, the aforesaid submission is not tenable.

22. Further, the Noticee has contended that the breach, if any, is unintentional and technical, therefore, no penalty should be imposed on the penalty. In reliance of the above, the Noticee has cited two judgments of the Hon’ble Supreme Court: (i) Hindustan Steel Ltd. vs. State of Orissa, AIR1970SC253, dated August 04, 1969; and (ii) Bharjatiya Steel Industries vs. Commissioner, Sales Tax, U.P, (2008)11SCC617, dated March 05, 2008. The extract relied upon by the Noticee states that (i) even if minimum penalty is prescribed, if there is a technical or venial breach of the

provisions, the authority would be justified in refusing to impose penalty; and (ii) where a discretionary power has been conferred to levy penalty, the authority may choose to not levy penalty.

23. At the outset, I do not find violation of clause 4 of the CoC prescribed under PIT Regulations to be a technical or venial breach. Closing the trading window acts as a mechanism to prevent designated persons from trading who may be in possession of UPSI, thus, by no stretch of imagination, trading during such period can be considered as a technical breach. Coming to the contention of the Noticee that the trades executed by him were unintentional, I find it appropriate to rely on the findings of Hon'ble SAT in the matter of **Mr. Jangoo Dalal vs. SEBI** (Misc. application no. 42 of 2018 and appeal no. 42 of 2018) dated March 05, 2018, wherein the appeal arose as the adjudicating officer had found the appellant guilty of trading shares when the trading window was closed, and imposed a penalty of Rs 10 lakhs. While dismissing the appeal, the Hon'ble SAT held as follows:

"In relation to the impugned order whereby penalty of Rs. 10 lac is imposed, counsel for the appellant submitted that the sale was effected inadvertently and without any intention to violate the PIT Regulations and, therefore, imposition of penalty is unjustified. We see no merit in the above contention, because, being a non executive director and a 'designated officer', the appellant ought to have known that selling the shares of the company during the period when the trading window was closed without obtaining the pre clearance was in gross violation of the PIT Regulations. Having violated the PIT Regulations even inadvertently, the appellant cannot escape penal liability." (emphasis supplied).

24. The Noticee has further contended that section 15HB of the SEBI Act is not applicable for violation of CoC provided under the PIT Regulations. As per the Noticee, the aforesaid section applies when there is no separate penalty provided, however, in the present case, for violation of CoC, the penalty is

prescribed within the CoC itself. I find that it is worth highlighting that at the time the Noticee committed the alleged violation, clause 12 of the CoC which is relied upon by the Noticee to contend that section 15HB is not applicable, read as follows:

“Without prejudice to the power of the Board under the Act, the code of conduct shall stipulate the sanctions and disciplinary actions, including wage freeze, suspension, recovery, clawback etc., that may be imposed, by the listed company required to formulate a code of conduct under sub-regulation (1) of regulation 9, for the contravention of the code of conduct” (emphasis supplied).

Thus, I find that the text of the aforesaid clause is unambiguously clear that a penalty imposed by the company shall not preclude SEBI’s power to impose penalty.

25. In support of the above contention, the Noticee has placed reliance on the decision of Hon’ble SAT in the matter of Snehlata Tiwari vs. SEBI (Appeal no 175 of 2020), dated April 28, 2021. I note that in the aforesaid case, the appeal arose as Snehlata Tiwari was a designated employee who had executed 65 contra trades and earned a profit of Rs 348 in violation of CoC under the PIT Regulations. Hon’ble SAT in the said case held that in the aforesaid circumstances, a disgorgement of profit would be sufficient. I find that the facts of the present case are distinguishable from the facts of *Snehlata Tiwari (supra)*, in the said case, Snehlata Tiwari was merely a designated employee, however, in the present case, the Noticee is a designated employee in possession of UPSI. I find that this distinction was also made by the Hon’ble SAT in the case of **Mr. Rajendra Kumar Dabriwala vs. SEBI** (Misc. Application No.88 of 2021 And Appeal No.616 of 2019) dated July 05, 2021. In the said matter, Hon’ble SAT held that:

“In the present case, however, we are dealing with a Managing Director cum CEO who had traded while in possession of unpublished price

sensitive information. It was not a case of trading inadvertently. In the circumstances, the decision in the case of Ms. Snehlata Tiwari would not be applicable.”

26. In view of the paragraphs above, I find that none of the submissions of the Noticee has been able to convince me that he has not violated clause 4 of the CoC prescribed under the PIT Regulations.

III. Issue no. 3: Does the violation, if any, attract monetary penalty under section 15G and 15HB of the SEBI Act?

IV. Issue no. 4: If the answer to Issue No. III is in affirmative, then what should be the quantum of monetary penalty?

27. I note that the Apex Court in the case of ***The Chairman, SEBI vs. Shriram Mutual Fund and Ors.*** (Civil Appeal Nos. 9523-9524 of 2003), decided on May 23, 2006, has held that *“In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established.”*

28. As discussed in issue no.1 above, it has not been established that Noticee has violated section 12(d) and (e) of the SEBI Act read with regulation 4(1) of the PIT Regulations. With respect to clause 4 of the CoC under the PIT Regulations, since it has been established in issue no.2 that Noticee has violated the aforesaid provision, I am of the view that a monetary penalty needs to be imposed upon the Noticee under section 15HB of the SEBI Act, which reads as under:

Penalty for contravention where no separate penalty has been provided.

15HB. Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which

no separate penalty has been provided, shall be ¹⁴[liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.]

¹⁴*Substituted for the words "liable to a penalty which may extend to one crore rupees" by the Securities Laws (Amendment) Act, 2014, w.e.f. 08-09-2014.*

29. While determining the quantum of monetary penalty under section 15HB of the SEBI Act, I have considered the factors stipulated in section 15J of the SEBI Act, which reads as under:

Factors to be taken into account while adjudging quantum of penalty

While adjudging quantum of penalty under ¹⁵[15-I or section 11 or section 11B, the Board or the adjudicating officer] shall have due regard to the following factors, namely :—

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
- (b) the amount of loss caused to an investor or group of investors as a result of the default;*
- (c) the repetitive nature of the default.*

¹⁶*[Explanation: For the removal of doubts, it is clarified that the power to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.]*

¹⁵ *Substituted for the words "section 15-I, the adjudicating officer" by the Finance Act, 2018 w.e.f. 08-03-2019.*

¹⁶ *Inserted by Part VIII of Chapter VI of the Finance Act, 2017 vide Gazette Notification No. 7, Extraordinary Part II Section 1 dated March 31, 2017. This shall come into force from April 26, 2017.*

30. In the present matter, the facts of the case clearly establish that the Noticee has violated clause 4 of the CoC under PIT Regulations. Accordingly, I consider it necessary to impose a monetary penalty which would act as a deterrent to the Noticee in future. I note that the investigation has recorded that the Noticee has made a profit of approximately Rs 1330 by executing the aforesaid trades when the trading window of the Company was closed. However, it is not possible from the material on record to quantify the consequent loss caused to investors as a result of the aforesaid default. With respect to the repetitive nature of the default, I find that no prior action has been taken in the past against the Noticee. Lastly, I have considered the mitigating factors submitted by the Noticee as summarized in submission 6 of paragraph 10 above.

E. ORDER

31. After taking into consideration the nature and gravity of the violation established in the preceding paragraphs and in exercise of the powers conferred upon me under section 15-I of the SEBI Act read with rule 5 of the SEBI Adjudication Rules, I hereby impose a penalty of Rs 1,00,000 (Rupees One Lakh Only) on the Noticee under section 15HB of the SEBI Act. I am of the view that the penalty imposed on the Noticee is commensurate with the violation committed by him.
32. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of demand draft in favor of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, or through online payment facility available on the SEBI website www.sebi.gov.in on the following path by clicking on the payment link.

ENFORCEMENT→ ORDERS→ ORDERS OF AO → PAY NOW

33. The Noticee shall forward the said demand draft or the details / confirmation of penalty so paid through e-payment to the Division Chief, Enforcement Department-I, DRA-I, SEBI, in the format given in table below:

Case name	
Name of payee	
Date of payment	
Amount paid	
Transaction no	
Bank details in which payment is made	
Payment is made for	Penalty

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

Date: May 10, 2022
Place: Mumbai

PRASANTA MAHAPATRA
ADJUDICATING OFFICER