BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER NO. Order/PM/PA/2021-22/15069-15073

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:

Noticee No.	**Name of the Noticee**	**PAN**
1.	Ranchhoddas Mohota HUF	AABHR4714H
2.	Vinod Kumar Mohota HUF	AAAHV7187B
3.	Vinay Kumar Mohota	ACDPM2559H
4.	Vinay Kumar Mohota HUF	AAAHV7186A
5.	Swati Mohota	AERPM2348L

In the matter of Mohota Industries Ltd.

*(Noticees 1 to 5 are individually referred to by their respective names or corresponding numbers and collectively referred to as the "**Noticees**")*

A. BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") investigated the scrip of Mohota Industries Ltd. *(formerly known as Rai Saheb Rekhchand Mohota Spg. & Wvg. Mills Ltd.)* (hereinafter referred to as the "**Company**") to ascertain any 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**") by the promoters, directors and key managerial personnel of the Company during the period from July 28, 2015 to August 30, 2016 (hereinafter referred to as "**Investigation Period**").

2. In relation to the above, the Company was requested to provide documents pertaining to the trading plans approved by the Company, *vide* letter dated July 05, 2019. Accordingly, pursuant to the aforesaid email, the Company *vide* letter dated July 11, 2019 submitted trading plans of the members of promoter group of the Company dated July 28, 2015 (hereinafter referred to as "**Trading Plan**") sent to BSE Ltd. (hereinafter referred to as "**BSE**") and National Stock Exchange of India Ltd. (hereinafter referred to as "**NSE**"). Further, *vide* email dated January 07, 2020, the Company submitted details of all the persons for whom the Company had approved the Trading Plan.

3. During the investigation, it was observed that the Noticees were covered under the definition of "insiders" under regulation 2(g) of the PIT Regulations as they were associated with the Company in the manner detailed below:

   (i) Ranchhoddas Mohota HUF (Noticee no. 1) was the promoter of the Company.

   (ii) Vinod Kumar Mohota HUF (Noticee no. 2) was the promoter of the Company. Vinod Kumar Mohota, the managing director and promoter of the Company, was also the karta of Noticee no. 2.

   (iii) Vinay Kumar Mohota HUF (Noticee no. 4) was the promoter of the Company. Vinay Kumar Mohota (Noticee no. 3), a whole time director and promoter of the Company, was also the karta of Noticee no. 4. All the members of Noticee no. 4 were relatives of Noticee no. 3.

   (iv) Swati Mohota (Noticee no. 5) was the spouse of Vinay Kumar Mohota (Noticee no. 3) and was also a member of the promoter group of the Company.

4. On perusal of the Trading Plan, it was observed that the Noticees had undertaken to trade certain number of shares between the period commencing from July 28, 2015 and ending on July 31, 2016 (hereinafter referred to as "**Trading Period**"). However, as per the transaction statements provided by the National Securities Depository Limited (hereinafter referred to as "**NSDL**") and Central Depository Services Ltd. (hereinafter referred to as "**CDSL**") and trade details provided by BSE and NSE, it was observed that the Noticees had not traded in accordance with the Trading Plan.

5. Given the above, SEBI initiated adjudication proceedings against the Noticees for the alleged violation of regulation 5(4) of the PIT Regulations under section 15HB of the SEBI Act.

B. APPOINTMENT OF ADJUDICATING OFFICER

6. Pursuant to the investigation, SEBI initiated adjudication proceedings against the Noticees and appointed the undersigned as the adjudicating officer *vide* order dated August 27, 2020 under section 19 of the SEBI Act read with 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**") to inquire into and adjudge under section 15HB of the SEBI Act for the alleged violation of regulation 5(4) of the PIT Regulations by the Noticees.

C. SHOW CAUSE NOTICE, REPLY AND HEARING

7. A show cause notice (hereinafter referred to as "**SCN**") bearing reference no. EAD-8/PM/NJMR/18251/2020/2 dated October 29, 2020 was served on the Noticees under rule 4 of the SEBI Adjudication Rules to show cause as to why an inquiry should not be held against them in terms of rule 4 of the SEBI Adjudication Rules and penalty should not be imposed under section 15HB of the SEBI Act for the violation alleged to have been committed by them. In the SCN, the Noticees were asked to indicate whether they would

prefer a personal hearing before the adjudicating officer in the matter. I note that the SCN was duly served on the Noticees.

8. The allegations levelled against the Noticees in the SCN are summarized below as follows:

(i) In the Trading Plan, the Noticees had stated that they would undertake the following trades during the Trading Period:

Sl. No.	Security	No. of Shares	Nature of Trade	Name of Share Holder
1.	Equity	14,15,400	Sale	Ranchhoddas Mohota HUF
2.	Equity	83,533	Sale	Vinod Kumar Mohota HUF
3.	Equity	2,80,517	Sale	Vinay Kumar Mohota
4.	Equity	1,47,000	Sale	Vinay Kumar Mohota HUF
5.	Equity	37,100	Sale	Swati Mohota

(ii) Further, the Noticees had stated that during the Trading Period, no trades would be carried out by them for six months beginning from July 28, 2015 to January 27, 2016 (hereinafter referred to as the "**Cool Off Period**").

(iii) However, as per the reply of the Company *vide* letter dated July 11, 2019, it submitted that it had made an application to the stock exchanges dated August 01, 2016 for withdrawal/extinction of the Trading Plan. The reason cited for the aforesaid application was low trading volume. It was noted that there is no provision under the PIT Regulations for withdrawal/extinction of the trading plan.

(iv) In light of the above, the transaction statements provided by NSDL and CDSL and trade details provided by BSE and NSE with respect to the Noticees were examined. On perusal of the above, it was observed that the Noticees had not executed any trades as provided in paragraph 8(i) above.

(v) Thus, it was alleged that the Noticees had violated regulation 5(4) of the PIT Regulations by not executing the trades as per the Trading Plan.

9. The Noticees submitted their reply to the SCN *vide* email sent on July 14, 2021. The submissions of the Noticees are summarized hereunder:

(i) **Submission 1**: Inordinate delay in issuing the SCN

(a) The submission of the Trading Plan to the Company, approval of the Trading Plan by the Company, details regarding sale of shares during the Trading Period and application submitted for withdrawing the Trading Plan were in the public domain from August 01, 2016. However, the SCN was issued on October 29, 2020 *i.e,* after a delay of more than four years. Therefore, the adjudication proceedings should be dropped for the aforesaid reason alone.

(b) In support of the aforesaid submission, the Noticees have placed reliance on the following orders/judgments:

(b.1) Ashok Shivlal Rupani and Anr. vs. SEBI, decided by Hon'ble Securities Appellate Tribunal (hereinafter referred to as "**SAT**"), on August 22, 2019.

(b.2) Mr. Rakesh Kathotia and Others vs. SEBI, decided by Hon'ble SAT, on May 27, 2019.

(b.3) Anilkumar Nandkumar Harchandani and Ors vs. SEBI, decided by Hon'ble SAT, on December 05, 2019.

(b.4) Corporation Bank and Anr vs. Navin J. Shah, decided by Hon’ble Supreme Court, on January 25, 2000.

(b.5) Rajendra Singh and Ors vs. Santa Singh and Ors, decided by Hon’ble Supreme Court, on August 16, 1973.

(b.6) Government of India vs. Citedal Fine Pharmaceuticals, decided by Hon’ble Supreme Court, on July 20, 1989.

(ii) **<u>Submission 2</u>**: Breach of principles of natural justice

(a) After providing inspection on April 01, 2021, *vide* email sent on April 02, 2021, the Noticees requested for copies of certain additional documents. *Vide* email sent on April 15, 2021, the aforesaid request of the Noticees was denied by placing reliance on the following orders of Hon’ble SAT, ***Mayrose Capfin Private Limited vs. SEBI,*** decided on March 30, 2012, ***Shruti Vora vs. SEBI***, decided on February 12, 2020, and ***Anant R Sathe vs. SEBI***, decided on July 17, 2020. The Noticees have stated that due to not providing the requisite documents referred in the April 02, 2021 email along with a copy of the investigation report, the right of the Noticees to deal with the allegations effectively has been trampled.

(b) In context of the paragraph above, the Noticees have submitted that the aforementioned orders of Hon’ble SAT relied upon by me in the April 15, 2021 email for rejecting the request for additional documents are distinguishable and do not apply to the Noticees. Further, the Noticees have placed reliance on the following orders/judgments:

(b.1) Smitaben N Shah vs. SEBI, decided by Hon'ble SAT, on July 30, 2010.

(b.2) H. R. Mehta vs. Assistant Commissioner of Income Tax, Mumbai, decided by Hon'ble Bombay High Court, on June 30, 2016.

(b.3) SEBI vs. Price Waterhouse, decided by Hon'ble Supreme Court, on January 10, 2017.

(b.4) Shri B. Ramalinga Raju vs. SEBI, decided by Hon'ble SAT, on May 12, 2017.

(iii) **Submission 3:** Alleged violation of regulation 5(4) of the PIT Regulations was inadvertent and implementation of the Trading Plan was impractical

(a) The Noticees were unaware of the complexities and impracticality of implementing the Trading Plan as when the PIT Regulations and the Trading Plan submitted by the Noticees were read together, due to the Cool Off Period and the Restricted Periods *(defined below),* the Noticees could effectively trade for only eight trading days during the Trading Period. The aforesaid situation is explained in detail below:

(a.1) Due to the Cool Off Period, the Noticees could not trade for six months from July 28, 2015 to January 27, 2016.

(a.2) Due to the declaration of financial results pertaining to December 2015 quarter on February 14, 2016, the Noticees could not trade upto February 16, 2016.

(a.3) Due to the declaration of financial results pertaining to March 2016 quarter on May 30, 2016, the Noticees could not trade from February 29, 2016 to June 01, 2016.

(a.4) Due to declaration of financial results pertaining to June 2016 quarter on August 13, 2016, the Noticees could not trade from June 02, 2016 to August 17, 2016.

(periods covered under (a.2), (a.3) and (a.4) above are hereinafter collectively referred to as the "**Restricted Periods**").

(b) At the time the Trading Plan was submitted, the concept of Trading Plan was at a nascent stage in India. To support the aforesaid statement, the Noticees have cited an extract from the 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 (hereinafter referred to as the "**Sodhi Committee Report**"). Further, if the Noticees were aware that they could not deviate from the Trading Plan, they would not have submitted the Trading Plan. The Trading Plan was submitted with the honest intention to sell their shares to increase public shareholding. However, due to the periods mentioned in sub-paragraph (a) above coupled with the low trading volume of the shares concerned, the Noticees were unable to execute the trades and had to apply for the withdrawal/extinction of the Trading Plan.

(iv) <u>**Submission 4**</u>: Since the Noticees have deviated from the Trading Plan out of necessity, section 15HB should not be applied for violation of regulation 5(4) of the PIT Regulations. Further, section 15HB should be read in conjunction with section 15J of the SEBI Act.

In this regard, the Noticees has relied on the decision of the Hon'ble Supreme Court in ***SEBI vs. Bhavesh Pabari*** (Civil Appeal No. 11311 of 2013), decided on February 28, 2019.

10. After considering the facts and circumstances of the case, the undersigned granted an opportunity of personal hearing to the Noticees on July 01, 2021 *vide* notice of hearing sent *vide* email on June 21, 2021. *Vide* email sent on June 24, 2021, the authorized representatives of the Noticee (hereinafter referred to as "**ARs**") requested for adjournment of the aforesaid hearing due to the pandemic and lockdown imposed. Therefore, the hearing granted on July 01, 2021 was rescheduled to July 22, 2021 *vide* email sent on June 26, 2021. In view of COVID-19, the hearing was scheduled through video conferencing on cisco webex platform. On July 23, 2021 the hearing was conducted wherein the ARs appeared before me through video conference and reiterated the submissions made by the Noticees *vide* email sent on July 14, 2021. Further, the ARs sought an additional time of seven days to make fresh submissions, if any, which was acceded to, however, *vide* email sent on July 27, 2021 ARs submitted that they do not have any fresh submissions to make. In view of the above, I find it appropriate to proceed based on the material available on record.

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 Noticees have violated regulation 5(4) of the PIT Regulations?

    II. Does the violation, if any, attract monetary penalty under section 15HB of the SEBI Act?

    III. If the answer to Issue No. 2 is in affirmative, then what should be the quantum of monetary penalty?

I. **Issue No. 1: Whether the Noticees have violated regulation 5(4) of the PIT Regulations?**

12. Before moving forward, it is pertinent to refer to the relevant provision of the PIT regulations which is alleged to have been violated by the Noticees. The said provision is reproduced hereunder:

<u>CHAPTER – II RESTRICTIONS ON COMMUNICATION AND TRADING BY INSIDERS</u>

Trading Plans.

(4) The trading plan once approved shall be irrevocable and the insider shall mandatorily have to implement the plan, without being entitled to either deviate from it or to execute any trade in the securities outside the scope of the trading plan.

Provided that the implementation of the trading plan shall not be commenced if any unpublished price sensitive information in possession of the insider at the time of formulation of the plan has not become generally available at the time of the commencement of implementation and in such event the compliance officer shall confirm that the commencement ought to be deferred until such unpublished price sensitive information becomes generally available information so as to avoid a violation of sub-regulation (1) of regulation 4.

NOTE: It is intended that since the trading plan is an exception to the general rule that an insider should not trade when in possession of unpublished price sensitive information, changing the plan or trading outside the same would negate the intent behind the exception. Other investors in the market, too, would factor the impact of the trading plan on their own trading decisions and in price discovery. Therefore, it is not fair or *desirable to permit the insider to deviate from the trading plan based on which others in the market have assessed their views on the securities.*

The proviso is intended to address the prospect that despite the six-month gap between the formulation of the trading plan and its commencement, the unpublished price sensitive information in possession of the insider is still not generally available. In such a situation, commencement of the plan would conflict with the over-riding principle that trades should not be executed when in possession of such information. If the very same unpublished price sensitive information is still in the insider's possession, the commencement of execution of the trading plan ought to be deferred.

Submission 1: Inordinate delay in issuing the SCN

13. With respect to the first submission, I note that the Noticees have contended that the issuance of SCN after more than four years is illegal, unjust and unfair and solely on this basis the adjudication proceedings should be dropped. In relation to the above, 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, trading plans, transaction statements and off-market transfers obtained from various entities including but not limited to the company, the auditors, the stock exchanges, the depositories, the 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) As part of its regulatory exercise, SEBI started examining the present matter on January 29, 2019.

(ii) Further, the detailed investigation in the matter started on June 06, 2019 and was concluded on March 31, 2020.

(iii) The undersigned was appointed as the adjudicating officer *vide* order dated August 27, 2020 which was conveyed through communication dated August 31, 2020.

(iv) The undersigned issued the SCN to the Noticees on October 29, 2020.

14. Further, I note that in the current adjudication proceedings, the Noticees have sought adjournments at various points of time with respect to submitting reply, attending inspection and attending hearings granted to them. The details of the same are provided below:

(i) Pursuant to the request of the ARs, the Noticees were granted an opportunity of inspection on January 12, 2021. *Vide* email sent on January 11, 2021, the ARs requested for rescheduling the inspection granted on January 12, 2021 to January 22, 2021 at 3.00 PM. The aforesaid request was acceded to. Further, on January 21, 2021, the AR confirmed its attendance for the inspection scheduled on January 22, 2021.

(ii) However, on the date of inspection, the ARs did not make an appearance. I note from the material available on record that the ARs did not send any communication regarding their inability to attend the inspection or request for rescheduling the same. Instead, the ARs directly sent an email at 4.23 PM on January 22, 2021 (*i.e,* after the time allotted specifically for inspection scheduled had passed), for rescheduling the inspection granted on January 22, 2021 and cited personal difficulty as a reason for not attending the inspection. I find that the aforesaid conduct of the ARs is reflective of their lackadaisical attitude towards the time of this forum.

(iii) *Vide* email sent on February 10, 2021, the ARs were again given an opportunity of inspection on February 18, 2021. On February 17, 2021, the ARs confirmed their presence for the inspection. However, the ARs *vide* email sent on February 18, 2021 again cited personal reasons for rescheduling the inspection. I note that finally the inspection took place on April 01, 2021.

(iv) *Vide* email sent on April 02, 2021, the ARs requested for certain additional documents. The aforesaid request was denied *vide* email sent on April 15, 2021. The Noticees were informed *vide* another email on the same day that the reply of the Noticees should be submitted by April 30, 2021.

(v) I note that *vide* email sent on May 01, 2021, the ARs requested for additional time to file reply which was acceded to even though the Noticees requested for an extension to submit a reply after the due date of submitting reply had passed. I find that the aforesaid conduct again demonstrates the casual manner in which the Noticees and ARs have dealt with the current proceedings. Pursuant to the email above, the Noticees were given time till May 17, 2021 to file a reply *vide* email sent on May 03, 2021.

(vi) I note that despite the aforesaid extension, the ARs again requested for additional time to submit a reply *vide* email sent on May 19, 2021, *i.e,* the ARs requested for an extension 2 days after the time limit given for submitting the reply had passed.

(vii) *Vide* email sent on June 21, 2021, the Noticees and the ARs were informed that 8 months have passed since issuance of the SCN, and the Noticees have not submitted a reply yet. To expedite the process, a hearing opportunity was given to the Noticees on July 01, 2021. I note that *vide* email sent on June 24, 2021, the ARs sought adjournment with respect to the hearing and requested time till July

15, 2021 for submitting a reply. The request with respect to the reply was acceded to and the hearing was rescheduled to July 22, 2021.

(viii) I note that the ARs submitted the reply with respect to the Noticees *vide* email sent on July 14, 2021 and that the hearing finally took place on July 23, 2021. In the hearing, as noted above, the ARs requested for additional time period of seven days to make fresh submissions, which was allowed. *Vide* email sent on July 27, 2021, the ARs informed that they had no fresh submissions to make in the present matter.

I find that the aforesaid conduct of the Noticees and the ARs clearly exhibits that time and again, on one pretext or the other, the Noticees and the ARs have slowed the current adjudication proceedings. Therefore, I find that if the Noticees and the ARs were concerned regarding the time taken for initiating the adjudication proceedings, their conduct should have been accordingly aligned to aid the undersigned to progress with the current adjudication proceedings without recourse to multiple adjournments. It is on record that the Noticees submitted their reply to the SCN nearly 8 months after the issuance of the SCN, which does not help the aforesaid submission of the Noticees.

15. Moving on, I note that the Noticees have relied on certain orders and judgments in support of their submission regarding delay. My observations with respect to the same are provided below:

(i) <u>Ashok Shivlal Rupani and Anr. vs. SEBI, decided by Hon'ble SAT, on August 22, 2019</u>: 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 Noticees have objected with respect to a delay of 4 years, which is 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. The Noticees were required to carry out trades as per the Trading Plan, which they have not carried out. 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.

(ii) <u>Mr. Rakesh Kathotia and Others vs. SEBI, decided by Hon'ble SAT, on May 27, 2019</u>: Similar to the *Ashok Shivlal (supra)* order, I find that the proceedings in this case pertained to disclosure violations under the SAST Regulations occurring in the years 1999-2000 and 2005-2011. It was argued by the appellants that there was a delay of approximately 11 years in initiating the proceedings. The Hon'ble SAT in this case *inter alia* held that *"the appellant cannot be penalized for the alleged violation which in any case <u>was substantially complied with under Chapter III of the Regulation</u>" (emphasis supplied).* I find that the present case is different from the facts of the *Rakesh Kathotia* case, on two grounds, *firstly*, the delay period in the *Rakesh Kathotia* case was nearly 7 years more than the delay period alleged in the present case, *secondly*, in the *Rakesh Kathotia* case even though the disclosure requirement was not met under the requisite regulation, it was substantially complied with under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations 1997 (hereinafter referred to as "**Old SAST Regulations**"), however, in the present matter, there is no question of substantial compliance by the Noticees. Therefore, I again find that this case relied upon by the Noticees does not have a bearing on the present matter.

(iii) Anilkumar Nandkumar Harchandani and Ors vs. SEBI, decided by Hon'ble SAT, on December 05, 2019: I find that in this case the alleged violation had occurred in 2004, and the show cause notice was issued in 2017, thus, there was a delay of 13 years, which is 9 years more than the delay alleged in the present case. Further, I note that the charge levelled against the appellants was failure to make public announcement under the Old SAST Regulations. I note that while allowing the appeal, the Hon'ble SAT had taken two important considerations into account, *firstly*, the transactions were already disclosed to the BSE by the appellants, and *secondly*, there was lack of documentary evidence available due to which the investigating authority did not recommend making public announcement. I find that the facts of the present matter are distinguishable from the aforesaid matter as both the considerations are absent in the present matter. The information that the Noticees did not trade according to the Trading Plan was not available in the public domain. Further, documentary evidence in the form of statements and trade details from BSE, NSE, CDSL and NSDL are available to show that the Noticees had not traded according to the Trading Plan.

(iv) Corporation Bank and Anr vs. Navin J. Shah, decided by Hon'ble Supreme Court, on January 25, 2000: I find that this case relates to a claim under the Consumer Protection Act, 1986, and therefore, is distinguishable from the facts of the present matter.

(v) Rajendra Singh and Ors vs. Santa Singh and Ors, decided by Hon'ble Supreme Court, on August 16, 1973: I find that this case concerns a dispute regarding possession of land, and therefore, is clearly distinguishable from the facts in the present matter.

(vi) Government of India vs. Citedal Fine Pharmaceuticals, decided by Hon'ble Supreme Court, on July 20, 1989: I find that the paragraph on limitation period in this judgment should be read completely as opposed to the selective text cited by the Noticees. The entire paragraph from which the Noticees have culled out an extract in their reply reads as follows:

"Learned Counsel appearing for the respondents urged that Rule 12 is unreasonable and violative of Article 14 of the Constitution, as it does not provide for any period of limitation for the recovery of duty. He urged that in the absence of any prescribed period for recovery of the duty as contemplated by Rule 12, the officer may act arbitrarily in recovering the amount after lapse of long period of time. We find no substance in the submission. While it is true that Rule 12 does not prescribe any period within which recovery of any duty as contemplated by the Rule is to be made, but that by itself does not render the Rule unreasonable or violative of Article 14 of the Constitution. In the absence of any period of limitation it is settled that every authority is to exercise the power within a reasonable period. What would be reasonable period would depend upon the facts of each case. Whenever a question regarding the inordinate delay in issuance of notice of demand is raised, it would be open to the assessee to contend that it is bad on the ground of delay and it will be for the relevant officer to consider the question whether in the facts and circumstances of the case notice or demand for recovery was made within reasonable period. No hard and fast rules can be laid down in this regard as the determination of the question will depend upon the facts of each case" (emphasis supplied)

Thus, I find that the aforesaid judgment clearly states that the question of delay should be considered keeping the facts and circumstances of the case in mind. I find that in view of the facts stated in paragraph 13 above, there was no inordinate delay in issuing the SCN in the present matter.

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

(i) In ***Hemant Sheth and Ors. vs. SEBI***, (Appeal No. 521 of 2021), decided on January 07, 2022, it was argued by the appellants that the adjudicating officer was appointed on July 04, 2013 but the show cause notice was issued in 2016 and therefore there was an inordinate delay of 30 months for which no plausible explanation was given. The Hon'ble SAT while dismissing the aforesaid contention of the appellants held that:

"9. Insofar as the delay is concerned we find that after the observation made by the WTM in its order of May 10, 2013 SEBI took action and appointed the AO dated July 4, 2013. No doubt the show cause notice was issued in January 2016 but the delay in the issuance of the show cause notice in the instant case will not vitiate the proceedings initiated against the appellants in the peculiar facts and circumstances of the case. Consequently, we are not inclined to quash the proceedings only on the ground of inordinate delay as asserted by the learned counsel for the appellant."

(ii) 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. <u>Further, nothing has been shown as to how this</u>

<u>delay has prejudiced the appellant. In the absence of any prejudice the delay, if any, cannot be set aside</u>." (emphasis supplied)

(iii) 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. 7of the case of Ashok Rupani Judgment is as under…. <u>The decision would show that the power to initiate the proceedings must be exercised by the authorities within a reasonable time.</u> 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. <u>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.</u>" (emphasis supplied).

To summarize, in the decision referred in (i) above, the Hon'ble SAT dismissed the contention of delay owing to the peculiar circumstances of the case. Further, in the decisions referred in (ii) and (iii) above, the Hon'ble SAT has placed reliance on the fact that the appellant had not been able to demonstrate how the delay has caused prejudice to them. I find that the argument of delay raised by the Noticees in the current matter is weak as they have not been able to show how they were impaired in defending themselves due to the alleged delay, which is essential in view of the orders referred above. I find that the paragraphs above clearly establish that there was no inordinate delay in issuing the SCN in the present matter, and therefore, the first submission of the Noticees is liable to be dismissed.

<u>Submission 2: Breach of principles of natural justice</u>

17. Regarding the second submission, I note from the material available on record that the Noticees were given inspection of documents on April 01, 2021. Further, I find that the Noticees have also acknowledged the same in the reply. The list of documents provided for inspection are given below:

(i) Order communicating appointment of adjudicating officer dated August 31, 2020.
(ii) Company reply letters/emails and replies from auditors.
(iii) Replies from Noticees.
(iv) Trading Plan provided by the Company, BSE and NSE.
(v) Trade details provided by BSE and NSE.
(vi) Demat transaction statements provided by NSDL and CDSL.
(vii) Letter dated July 11, 2019 addressed by the Company to SEBI.
(viii) Email dated January 07, 2020 of the Company addressed to SEBI.
(ix) Email dated March 02, 2020 of the Company addressed to SEBI.
(x) Letter dated August 01, 2016 submitted by the Company to the stock exchanges.

18. The Noticees have contended that after the aforesaid inspection, the Noticees *vide* email sent on April 02, 2021 had requested for additional documents which was rejected by the undersigned *vide* email sent on April 15, 2021. I note that while dismissing the aforesaid request, reliance was placed by me on the following cases: ***Mayrose Capfin Private Limited vs. SEBI***, decided on March 30, 2012, ***Shruti Vora vs. SEBI***, decided on February 12, 2020 and ***Anant R Sathe vs. SEBI***, decided on July 17, 2020. However, the Noticees have contended that the aforesaid orders are distinguishable and do not apply to the case of the Noticees. I find that the Noticees have not cared enough to provide reasons for the same. In light of this, I am unable to address this matter-of-fact statement given by

Noticees as I am entirely in the dark regarding the objection of the Noticees with respect to the applicability of the aforesaid cases.

19. Further, the Noticees have placed reliance on the following cases and my observations with respect to them are provided below:

(i) Smitaben N Shah vs. SEBI, decided by Hon'ble SAT on July 30, 2010: The show cause notice in this matter contained extracts of trade logs and order logs which were not provided to the appellant. The Hon'ble SAT had found that the aforesaid documents were necessary for the appellant to prepare her defence, and therefore, not supplying the same amounted to violation of principles of natural justice. I find that in the present matter, the trade details provided by BSE and NSE, the demat statements provided by NSDL and CDSL and a copy of the Trading Plan relied upon in the show cause notice have been given as annexures to the SCN as well as inspection was allowed for the aforesaid documents to enable the Noticees to prepare a comprehensive defence. Thus, I find that this case is not of any help to the Noticees.

(ii) H. R. Mehta vs Assistant Commissioner of Income Tax, Mumbai , decided by Hon'ble Bombay High Court, on 30th June, 2016: I find that this case *inter alia* reiterates the position of the orders referred in paragraph 18 above that the material needed to establish the charges against the noticee should be provided and that the noticee should be granted an opportunity to make a valid defence. I find that both the requirements have been fulfilled in the present matter.

(iii) SEBI vs. Price Waterhouse, decided by Hon'ble Supreme Court on January 10, 2017 and Shri B. Ramalinga Raju vs. SEBI, decided by Hon'ble SAT on May 12, 2017: Since the Noticees have relied on the order of the Hon'ble SAT in the Shri B Ramalinga Raju case, I find it relevant to refer to a paragraph from it regarding the *Price Water House* case, which reads as follows:

"<u>Strong reliance was placed by counsel for the appellants</u> on the decision of this Tribunal in case of Price Waterhouse v/s SEBI (Appeal No. 208 of 2011 decided on 01.06.2011) & decision of the Apex Court in case of <u>SEBI v/s Price Waterhouse (Civil Appeal No. 6003-6004 of 2012 decided on 10.01.2017)</u> wherein the Apex Court directed SEBI to furnish all statements recorded during the course of Satyam's investigation and further directed SEBI to give inspection of all the documents collected during the investigation of Satyam.

In our opinion, aforesaid decisions are distinguishable on facts….
……….Fourthly, <u>Apex Court in case of Price Waterhouse has specifically recorded that the directions given in that case are general directions given as and by way of clarifications without going into the merits of the case. Therefore, directions given in the facts of Price Waterhouse cannot be said to be the ratio laid down by the Apex Court applicable to all other cases.</u> In these circumstances, appellants are not justified in contending that the directions given by the Apex Court in case of Price Waterhouse must be applied to the case of the appellants" (emphasis supplied).

Thus, from the above, it is clear that the directions in the *Price Water House* case cannot be applied to other cases. Further, specifically with respect to the *Shri B. Ramalinga Raju* case, I find that the paragraph relied upon by the Noticees in their reply reiterates the position elucidated in the cases referred in paragraph 18 above.

20. In view of the above, I find that there has been no violation of the principles of natural justice. The Noticees were served a SCN which explained the charges levelled against them along with the annexures which were relied upon. Further, the Noticees were granted an opportunity of inspection and an opportunity of hearing. I find that the Noticees have failed to prove how the additional documents requested *vide* the April 02, 2021 email have hurt

their interests. Moreover, when one considers the nature of specific documents requested by the Noticees, it appears that the Noticees were asking for documents with a motive to make a roving inquiry rather than for using such documents to defend themselves against the allegation made in the SCN. Thus, I find that this submission is bereft of any merit and deserves to be rejected.

Submission 3: Alleged violation of regulation 5(4) of the PIT Regulations was inadvertent and implementation of the Trading Plan was impractical

21. I note from the material available on record that the Noticees were covered under the definition of "insiders" under regulation 2(g) of the PIT Regulations as they were associated with the Company in the manner explained in paragraph 3 above. Further, I note that the Noticees had submitted the Trading Plan to trade certain number of shares during the Trading Period, which at the cost of repetition, is reproduced below for ease of reference:

Sl. No.	Security	No. of Shares	Nature of Trade	Name of Share Holder (Members of the promoter group)
1.	Equity	14,15,400	Sale	Ranchhoddas Mohota HUF
2.	Equity	83,533	Sale	Vinod Kumar Mohota HUF
3.	Equity	2,80,517	Sale	Vinay Kumar Mohota
4.	Equity	1,47,000	Sale	Vinay Kumar Mohota HUF
5.	Equity	37,100	Sale	Swati Mohota

22. I note that the Noticees have neither disputed their classification as "insiders" under the PIT Regulations nor the contents and the submission of the Trading Plan by them to the stock exchanges. However, as per the third submission of the Noticees, the Noticees have feigned ignorance regarding the complexities involved in implementing the Trading Plan. In this regard, the Noticees have demonstrated in the said submission how out of the one year Trading Period approved under the Trading Plan, due to the Cool Off Period and the Restricted Periods, the Noticees could only trade for eight trading days. I find the aforesaid submission of the Noticees irrelevant to the present matter for the following reasons:

(i) I find that the aforesaid submission is fundamentally incompatible with the legal principle enshrined in the maxim "*ignorantia juris non excusat*" which translates into ignorance of law is no excuse. I find that the aforesaid principle has been explained in detail by John Salmond, in one of his revered works, "Jurisprudence or the Theory of the Law", wherein he has provided three reasons for the rigorous principle. I find that out of the said three reasons, one reason is the bedrock for its strict application. The reason is reproduced below verbatim: *"In the second place, even if invincible ignorance of the law is in fact possible, <u>the evidential difficulties in the way of the judicial recognition of such ignorance are insuperable, and for the sake of any benefit derivable therefrom it is not advisable to weaken the administration of justice by making liability dependent on well nigh inscrutable conditions touching knowledge or means of knowledge of the law.</u> Who can say of any man whether he knew the law, or whether during the course of his past life he had an opportunity of acquiring a knowledge of it by the exercise of due diligence?....." (emphasis added).* I find that the provisions pertaining to the Cool Off Period and the Restricted Periods are provided in regulations 5(2)(i) and 5(2)(ii) of the PIT Regulations respectively. I find it hard to believe that the Noticees were conversant with the PIT Regulations enough to submit a trading plan under regulation 5(4) of the PIT Regulations, however, they were blissfully unaware of the restrictions falling under the same regulation which would limit the number of days on which they would be able to trade.

(ii) I note that the Trading Plan itself clearly provides that the Noticees would not trade the shares under the Trading Plan during the Cool Off Period which indicates that the Noticees were aware that they would not be able to trade during the Cool Off Period since inception. In light of this, I am perplexed as to how the Noticees can cite the Cool Off Period as a reason for not trading during the Trading Period in their reply.

Since the provisions regarding the Cool Off Period and the Restricted Periods were in force at the time of submission of Trading Plan, the Noticees cannot conveniently cloak themselves under the garb of lack of knowledge with respect to the same as a ludicrous excuse to escape the consequences of not executing the trades as per the Trading Plan. It is not unjust or inequitable to presume that the Noticees had knowledge of the provisions of the PIT Regulations to frame a Trading Plan taking into account the restrictions provided therein. I find that this submission of the Noticees does not inspire confidence in me at all, and therefore, I find no difficulty in dismissing the same.

23. Lastly, the Noticees have placed reliance on the Sodhi Committee Report to supplement its submission that when the Noticees had submitted their Trading Plan, the concept of trading plan was at nascent stage in India, and therefore, the alleged violation of regulation 5(4) should be excused. It is an established rule of interpretation of statutes that committee reports are an external aid of interpretation. I find that the legal maxim "*verbis legis non est recedendum*" squarely applies in the present case which means that there must be no departure from the words of law. I find that the words of regulation 5(4) of the PIT Regulations are crystal clear that on approval of the trading plan it shall be irrevocable and it would have to be mandatorily implemented without deviating or trading outside the scope of the trading plan. I find that the note appended to the aforesaid provision, which is an internal and stronger aid of interpretation, further supports the literal reading of the provision. In view of the above, I find that relying on the Sodhi Committee Report does not help the case of the Noticees.

24. Taking the aforesaid paragraphs into account, I find that none of the submissions of the Noticees have been able to convince me that they have not violated regulation 5(4) of the PIT regulations. At this stage, I find it relevant to emphasize the note appended to regulation 5(4) of the PIT Regulations. The note provides that changing the terms of the trading plan submitted or trading outside the scope of the trading plan would negate the

purpose of the trading plan. The note further states that trading plans enables the investors at large to have knowledge regarding the trades intended to be executed, so that they can make informed decisions. I find that the aforesaid note lucidly sums up why it is essential to trade as per the trading plan and the impact it has on multiple stakeholders.

II. Issue No 2: Does the violation, if any, attract monetary penalty under section 15HB of the SEBI Act?

25. I note that the Apex Court in the case of ***SEBI vs Shri Ram Mutual Fund*** (Appeal Civil 9523-9524 of 2003) dated 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."*

26. In view of the judgment referred above and the fact that the Noticees have violated regulation 5(4) of the PIT Regulations, I am of the view that a monetary penalty needs to be imposed upon the Noticees 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 *[liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.]*

** 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.*

III. Issue No 3: If the answer to issue no. 2 is in affirmative, then what should be the quantum of monetary penalty?

27. While determining the quantum of monetary penalty under section 15HB of the SEBI Act, I have considered the factors stipulated in section 15-J 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 [1][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.
[2] [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.]

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

[2] 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.

28. In the instant case, it is not possible from the material on record to quantify the amount of disproportionate gain or unfair advantage resulting from the default of the Noticees by not executing the trades as per the Trading Plan or the consequent loss caused to investors as a result of the aforesaid default. With respect to repetitive nature of the default, I find that no other

instances of violation of trading plans have been observed against the Noticees in the past. Hence, the violation committed by the Noticees is not repetitive in nature.

29. In the present matter, the facts of the case clearly establish the violation committed by the Noticees and I consider it necessary to impose monetary penalty which would act as a deterrent to the Noticees in future.

E. ORDER

30. After taking into consideration the nature and gravity of the violations 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 penalty on each of the Noticees under section 15HB of the SEBI Act as tabulated below. I am of the view that the penalty imposed on the Noticees is commensurate with the violation committed by them.

Noticee No.	**Name of the Noticee**	**Penalty Amount (In Rs)**
1.	Ranchhoddas Mohota HUF	1,00,000
2.	Vinod Kumar Mohota HUF	1,00,000
3.	Vinay Kumar Mohota	1,00,000
4.	Vinay Kumar Mohota HUF	1,00,000
5.	Swati Mohota	1,00,000

31. The Noticees 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

32. The Noticees 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-II, 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

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

Date: February 24, 2022
Place: Mumbai

PRASANTA MAHAPATRA
ADJUDICATING OFFICER