**BEFORE THE ADJUDICATING OFFICER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**ADJUDICATION ORDER NO. Order/PM/PA/2021-22/15672-15674**

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**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. | Veenadevi Vinodkumar Mohota | ACDPM2555M |
| 2. | Kiran Bhagat | ABTPB7396L |
| 3. | Vinod Kumar Mohota | ACDPM2554L |

In the matter of Mohota Industries Ltd.

*(Noticees 1 to 3 are individually referred to by their respective names or corresponding numbers and collectively referred to as the "**Noticees**")*

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## 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 "**IP**").

2. During the investigation, it was observed that the Noticees were covered under the definition of "insiders" under regulation 2(1)(g) of the PIT Regulations. Further, it was observed that the Noticees had engaged in insider trading as they had traded in the shares of the Company when they

were in possession of unpublished price sensitive information (hereinafter referred to as “**UPSI”**) relating to the financial results of the Company pertaining to the period ending on March 31, 2016 which was declared on May 30, 2016.

3. It was also observed that the Noticees had undertaken to trade certain number of shares from July 28, 2015 to July 31, 2016 (hereinafter referred to as “**Trading Period**”) as per a trading plan dated July 28, 2015 (hereinafter referred to as “**Trading Plan**”) submitted to BSE Ltd. (hereinafter referred to as “**BSE**”) and National Stock Exchange of India Ltd. (hereinafter referred to as “**NSE**”). It was observed that pursuant to the Trading Plan, Noticees had traded during a period prohibited under the PIT Regulations. Further, it was observed that Noticee 3 being the executor of Smt. Suryankantadevi Mohota had deviated from the Trading Plan.

4. Given the above, SEBI initiated adjudication proceedings against the Noticees for the aforesaid alleged violations.

## B. APPOINTMENT OF ADJUDICATING OFFICER

5. 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 15G and section 15HB of the SEBI Act for the alleged violation of section 12A(d) and (e) of the SEBI Act, regulation 4(1), regulation 5(2)(ii), and regulation 5(4) of the PIT Regulations by the Noticees.

## C. SHOW CAUSE NOTICE, REPLY AND HEARING

6. A show cause notice (hereinafter referred to as "**SCN**") bearing reference no. EAD-8/PM/NJMR/18250/2020/2 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 15G and 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.

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

(i) The board of directors of the Company during the IP were as follows:

| Name | Designation | Original date of appointment | Date of cessation |
|---|---|---|---|
| Dr. Ranchhoddas Mohota | Chairman | 10/08/2006 | 05/09/2018 |
| Shri Vinod Kumar Mohota | Managing Director | 16/08/1994 | NA |
| Shri Vinay Kumar Mohota | Whole Time Director | 01/04/2006 | NA |
| Shri Shantilal B Singhvi | Whole Time Director | 01/04/2011 | 31/03/2019 |
| Shri G Singhee | Independent Director | 27/03/2015 | 31/03/2019 |
| Shri Suresh Rathi | Independent Director | 27/03/2015 | 31/03/2019 |
| Ms. Aditi Bagri | Independent Director | 27/09/2014 | 13/02/2016 |
| Shri Krishnakant Tekriwal | Independent Director | 30/09/2015 | NA |
| Smt Ritu Kabra | Independent Director | 27/09/2016 | 18/06/2019 |

(ii) The financial results of the Company for various quarters which covers the IP are given below:

(In Rs and lakhs)

| Description | F.Y ended (Audited) | | Quarter ended (Unaudited) | | | | |
|---|---|---|---|---|---|---|---|
| | March 31, 2015 | March 31, 2016 | September 30, 2015 (Unaudited) | December 31, 2015 | March 31, 2016 | June 30, 2016 | September 30, 2016 |
| **Total income from operation (Net)** | 31,862 | 32,921 | 8,363 | 7,019 | 8,806 | 8,013 | 7,086 |
| **Total expenses** | 30,571 | 31,689 | 8,092 | 6,705 | 8,477 | 7,753 | 6,818 |

| Description | F.Y ended (Audited) | | Quarter ended (Unaudited) | | | | |
|---|---|---|---|---|---|---|---|
| | **March 31, 2015** | **March 31, 2016** | **September 30, 2015 (Unaudited)** | **December 31, 2015** | **March 31, 2016** | **June 30, 2016** | **September 30, 2016** |
| **Net profit/ (loss) for the period** | 215 | 335 | 84 | 56 | 114 | 53 | 64 |

(iii) The details of the major corporate announcements made by the Company on BSE and NSE during IP and their impact on the price of the scrip are given as follows:

<u>BSE</u>

<table>
<tr><th>#</th><th>Date, time and announcement/ news</th><th>Price impact/shares traded (Price in Rs)</th><th>Remarks</th></tr>
<tr><td>1</td><td>28-07-2015 (14:42:20)<br><br><u>Trading plan under PIT Regulations</u><br>The Company informed BSE regarding Trading Plan of members of promoter group.</td><td><table><tr><th>Date</th><th>O</th><th>H</th><th>L</th><th>C</th><th>No. of shares traded</th></tr><tr><td>27.07.2015</td><td>280.1</td><td>295</td><td>280</td><td>291.2</td><td>5407</td></tr><tr><td>28.07.2015</td><td>294.1</td><td>307.7</td><td>294</td><td>304.4</td><td>6159</td></tr></table></td><td>The number of shares of the Company traded recorded an increase by 1.14 times.</td></tr>
<tr><td>2</td><td>30-05-2016 (17:01:39)<br><br><u>Standalone Financial Results, Auditors Report for March 31, 2016</u><br>The Company informed BSE about:<br><br>1. Standalone financial results for the period ended March 31, 2016.<br><br>2. Standalone auditors report for the period ended March 31, 2016.<br><br>3. Declaration regarding audit report with unmodified opinion.</td><td><table><tr><th>Date</th><th>O</th><th>H</th><th>L</th><th>C</th><th>No. of shares traded</th></tr><tr><td>30.05.2016</td><td>90.3</td><td>93.95</td><td>89</td><td>90.2</td><td>741</td></tr><tr><td>31.05.2016</td><td>90.5</td><td>90.5</td><td>90.5</td><td>90.5</td><td>14000</td></tr></table></td><td>The number of shares of the Company traded recorded an increase by 18.89 times.</td></tr>
<tr><td>3</td><td>01-08-2016 (15:15:09)<br><br><u>Trading plan</u><br>The Company submitted to BSE a copy of the details of promoter seeking withdrawal/ extinction of Trading Plan approved by the Company on July 25, 2015.</td><td><table><tr><th>Date</th><th>O</th><th>H</th><th>L</th><th>C</th><th>No. of shares traded</th></tr><tr><td>29.07.2016</td><td>61.8</td><td>61.8</td><td>59.2</td><td>59.8</td><td>65370</td></tr><tr><td>01.08.2016</td><td>61</td><td>61</td><td>58.5</td><td>60.7</td><td>11485</td></tr></table></td><td>The number of shares of the Company traded recorded a decrease by 5.69 times.</td></tr>
<tr><td>4</td><td>13-08-2016 (16:22:29)<br><br><u>Standalone Financial Results. Limited Review Report for June 30, 2016</u><br>The Company informed BSE about:</td><td><table><tr><th>Date</th><th>O</th><th>H</th><th>L</th><th>C</th><th>No. of shares traded</th></tr><tr><td>12.08.2016</td><td>71.95</td><td>74.3</td><td>68.25</td><td>72.25</td><td>14968</td></tr><tr><td>16.08.2016</td><td>69.25</td><td>73.5</td><td>69.25</td><td>72.15</td><td>4049</td></tr></table></td><td>The number of shares of the Company traded recorded a decrease by 3.70 times.</td></tr>
</table>

| # | Date, time and announcement/ news | Price impact/shares traded (Price in Rs) | Remarks |
|---|---|---|---|
| | 1. Standalone financial results for the period ended June 30, 2016.<br><br>2. Standalone limited review for the period ended June 30, 2016. | | |

## <u>NSE</u>

<table>
<tr><th>#</th><th>Date, time, announcement/ news</th><th colspan="6">Price impact/shares traded (Price in Rs)</th><th>Remarks</th></tr>
<tr><td rowspan="3">1</td><td rowspan="3">28-07-2015 (14:56)<br><br><u>Trading plan under PIT Regulations</u><br>The Company informed the stock exchange with reference to regulation 5(1) of the PIT Regulations, regarding the details of Trading Plan of members of promoter group of the Company.</td><td>Date</td><td>O</td><td>H</td><td>L</td><td>C</td><td>No. of shares traded</td><td rowspan="3">The number of shares of the Company traded recorded a decrease by 1.31 times.</td></tr>
<tr><td>27.07.2015</td><td>279</td><td>295.05</td><td>278</td><td>292.2</td><td>13252</td></tr>
<tr><td>28.07.2015</td><td>294.05</td><td>305</td><td>293.05</td><td>302.95</td><td>10083</td></tr>
<tr><td rowspan="3"></td><td rowspan="3">30-05-2016 (16:38)<br><br><u>Financial result updates</u><br>The Company submitted to the stock exchange the standalone financial results along with the auditors report for the period ended March 31, 2016.</td><td>Date</td><td>O</td><td>H</td><td>L</td><td>C</td><td>No. of shares traded</td><td rowspan="3">The number of shares of the Company traded recorded an increase by 30.54 times.</td></tr>
<tr><td>30.05.2016</td><td>95</td><td>95</td><td>88</td><td>89.35</td><td>492</td></tr>
<tr><td>31.05.2016</td><td>92</td><td>92</td><td>90</td><td>90</td><td>15024</td></tr>
<tr><td rowspan="3">3</td><td rowspan="3">02-08-2016 (14:58)<br><br><u>Updates</u><br>The Company informed the stock exchange regarding the details of promoter seeking withdrawal/ extinction of Trading Plan approved by the Company on July 25, 2015.</td><td>Date</td><td>O</td><td>H</td><td>L</td><td>C</td><td>No. of shares traded</td><td rowspan="3">The number of shares of the Company traded recorded an increase by 8.95 times.</td></tr>
<tr><td>01.08.2016</td><td>59.7</td><td>61</td><td>58.7</td><td>60.5</td><td>12734</td></tr>
<tr><td>02.08.2016</td><td>62.8</td><td>62.8</td><td>59.1</td><td>59.45</td><td>113971</td></tr>
<tr><td rowspan="3">4</td><td rowspan="3">13-08-2016 (16:10)<br><br><u>Financial results updates</u><br>The Company submitted to the stock exchange the standalone financial results along with the limited review report for the period ended June 30, 2016.</td><td>Date</td><td>O</td><td>H</td><td>L</td><td>C</td><td>No. of shares traded</td><td rowspan="3">The number of shares of the Company traded recorded an increase by 1.02 times.</td></tr>
<tr><td>12.08.2016</td><td>70</td><td>73.7</td><td>69.5</td><td>72.8</td><td>17889</td></tr>
<tr><td>16.08.2016</td><td>72.8</td><td>73.75</td><td>71.4</td><td>72.8</td><td>18219</td></tr>
</table>

(iv) On May 30, 2016, the Company made a corporate announcement titled “Standalone Financial Results, Auditors Report for March 31, 2016”. The declaration of the aforesaid results is considered as the first UPSI event under the PIT Regulations (hereinafter referred to as “**UPSI-I**”) Further, on August 13, 2016, the Company made a corporate announcement titled “Standalone Financial Results, Limited

Review Report for June 30, 2016". Similarly, the declaration of the aforesaid results is considered as the second UPSI event under the PIT Regulations (hereinafter referred to as "**UPSI-II**").

(v) The chronology of events with respect to UPSI-I submitted by the Company and the statutory auditors of the Company are tabulated below:

Submitted by the Company:

| # | Dates | Discussions | Particulars |
|---|---|---|---|
| 1. | 18/05/2016 | Notice of trading window closure. | Trading window of the Company will remain closed from 20th May, 2016 to 1st June, 2016 (both days inclusive). |
| 2. | 01/05/2016 to 29/05/2016 (Approximately) | Preparation of financial result. | Closure of accounts, preparation & finalisation of financial results for quarter ended March 31, 2016. |
| 3. | 24/05/2016 | Notice of board meeting. | Notice of board meeting & audit committee meeting to be held on 30th May, 2016 to the directors. |
| 4. | 18/05/2016 to 29/05/2016 (Approximately) | Financial submitted to auditor for checking and finalisation. | Financial result submitted to auditor for finalization of results. |
| 5. | 30/05/2016 at 2:30 PM | Audit committee meeting. | To consider and review financial results for the quarter and financial year ended on March 31, 2016 and forward recommendations to the board of directors. The audit committee examined, reviewed the financial results and forwarded recommendations to the board of directors. |
| 6. | 30/05/2016 at 3:00 PM, concluded at 4:15 PM. | Board meeting. | To consider and adopt un-audited financial results of the Company for the quarter and period ended March 31, 2016. Un-audited financial results of the Company for the quarter and period ended on March 31, 2016 was approved and adopted. |

Submitted by the statutory auditor:

| # | Date | Time | Events |
|---|---|---|---|
| 1 | 07/04/2016 | 12:37 PM | Auditors had discussion of the audit requirements and emailed Mr. Mahajan a format of bank confirmation letter required directly on the auditor's office address for bank reconciliation. |
| 2 | 19/05/2016 | 4:57 PM | Rajendra Singhvi provided the auditors with bank reconciliation for the period March, 2016. |
| 3 | 19/05/2016 | 5:03 PM | Rajendra Singhvi provided the auditors with statements for the period March, 2016, |
| 4 | 19/05/2016 | 5:10 PM | Depreciation details were shared with us by Rajendra Singhvi. Various other details, ledgers *etc.* for audit were given to the auditors by Rajendra Singhvi. |
| 5 | 21/05/2016 | 7:00 PM | Final depreciation details and schedules was shared with auditors by Rajendra Singhvi. |
| 6 | 28/05/2016 | 5:20 PM | Mr. Kanojiya shared with auditors the draft financials for the year. The auditors shared the draft audit report. |

(vi) The chronology of events with respect to UPSI-II submitted by the Company and the statutory auditors of the Company are tabulated below:

Submitted by the Company:

| # | Dates | Discussions | Particulars |
|---|---|---|---|
| 1. | 28/07/2016 | Notice of trading window closure. | Trading window of the Company will remain closed from 30th July, 2016 to 15th August, 2016 (both days inclusive). |
| 2. | 05/08/2016 to 11/08/2016 | Preparation of financial result. | Preparation of financial result for quarter ended June 30, 2016. |
| 3. | 06/08/2016 | Notice of board meeting. | Notice of board meeting to be held on 13th August, 2016 to the directors. |
| 4. | 11/08/2016 to 12/08/2016 | Financial submitted to auditor. | Financial result submitted to auditor for finalization of results. |
| 5. | 13/08/2016 at 2:30 PM | Audit committee meeting. | To consider and review financial Results for the quarter and financial year ended on June 30, 2016 and forward recommendations to the board of directors. Committee examined, reviewed the financial results and forwarded recommendations to the board of directors. |
| 6. | 13/08/2016 at 3:00 PM, concluded at 4:00 PM. | Board meeting. | To consider and adopt un-audited financial results of the Company for the quarter and period ended June 30, 2016. Un-audited financial results of the Company for the quarter and period ended on June 30, 2016 was approved and adopted. |

Submitted by the statutory auditor:

| # | Date | Time | Events |
|---|---|---|---|
| 1 | 10/08/2016 | 4:16 PM | Sachin Kanojiya (Mohota Industries – Company Secretary) emailed the auditors the draft results for the quarter ended June, 2016 for limited review to Kaushal Mehta, Mrinal Girap and Manij Jain's ID. |
| 2 | 11/08/2016 | 1:05 PM | For performing the limited review of the June, 2016 quarter results, a list of requirements was prepared and emailed from Manil Jain's ID to Mohota Mills ID (compliance@rsrmm.com & finance@rsrmm.com with CC marked to Kaushal Mehta). |
| 3 | 11/08/2016 | 4:01 PM | Required data was received from Mohota (finance@rsrmm.com with CC marked to Kaushal Mehta).<br>Auditor's discussions in respect their limited review for quarter ended June, 2016 were held with Mr. Rajendra Singhvi, Sachin Kanojiya and Mr. Mukesh Mahajan. |

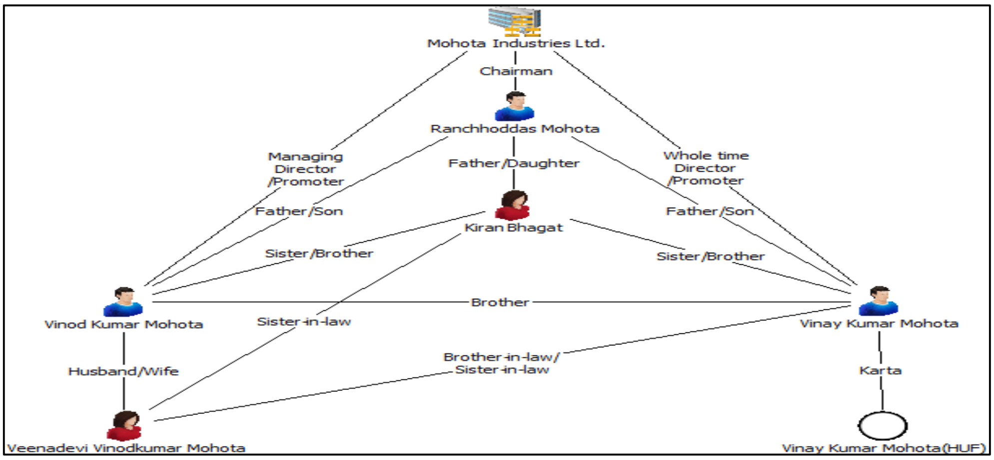
(vii) Based on the chronology of events provided above, two UPSI periods were identified in relation to declaration of financial results of the Company, which are provided below as follows:

(a) UPSI Period I: This UPSI period was in relation to financial results of the Company pertaining to March, 2016 quarter which was declared on May 30, 2016. The UPSI Period arrived at was April 07, 2016 to May 30, 2016,16:38 hours.

(b) <u>UPSI Period II</u>: This UPSI period was in relation to financial results of the Company pertaining to June, 2016 quarter which was declared on August 13, 2016. The UPSI period considered was July 30, 2016 to August 13, 2016, 16:10 hours.

(viii) Pursuant to a request by SEBI, the Company provided details of persons who were having access to and/or in possession of UPSI relating to UPSI-I and UPSI-II. In this regard, the Company provided the list of names and designation *vide* an undated letter with respect to UPSI-I and *vide* a letter dated July 11, 2019 with respect to UPSI-II, which *inter alia* included the name of Noticee 3.

(ix) From the aforesaid letters, it was observed that Noticee 3 was an "insider" as he possessed or had access to UPSI in relation to both UPSI-I and UPSI-II. Further, it was observed that Noticee 1 was a deemed connected person under the PIT Regulations as she was a promoter of the Company as well as spouse of Noticee 3. It was observed that Noticee 2 was also a deemed connected person on account of being the sister of Noticee 3 and Vinay Kumar Mohota who was a whole-time director of the Company. Thus, it was observed that the Noticees fall under the purview of "insiders" under regulation 2(1)(g) of the PIT Regulations. The diagrammatic representation of the relationship of the Noticees and other family members is shown below:



(x) It was alleged in the SCN that Noticee 1 had sold shares of the Company on both the stock exchanges and Noticee 2 had sold shares of the Company on BSE during the first UPSI period (*i.e,* period from April 07, 2016 to May 30, 2016) as well as three months after the said UPSI period (*i.e,* period from May 31, 2016 to August 31, 2016). *Vide* undated letters, Noticee 1 and 2 submitted that Noticee 3 was placing orders from their accounts. In this regard, authorization letters was requested from broker companies with which Noticee 1 and 2 maintained their demat accounts, which was provided. A perusal of the authorization letters confirmed the aforementioned submissions of Noticee 1 and 2. In light of the above, it was alleged that Noticees, being insiders, by trading during the first UPSI period, have violated section 12A(d) and (e) of the SEBI Act and regulation 4(1) of the PIT Regulations.

(xi) Further, in the Trading Plan, the Noticees had stated that they would undertake the following trades during the Trading Period:

| # | Security | No. of shares | Nature of trade | Name of share holder |
|---|---|---|---|---|
| 1 | Equity | 2,91,367 | Sale | Shri Vinod Kumar Mohota |
| 2 | Equity | 3,51,966 | Sale | Smt. Veenadevi Mohota |
| 3 | Equity | 68,075 | Sale | Smt. Kirandevi Bhagat |
| 4 | Equity | 4,47,097 | Sale | Smt. Suryakantadevi Mohota |

(xii) In the Trading Plan, 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**").

(xiii) 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 *inter alia* with respect to Noticee 3 and Smt. Suryakantadevi Mohota. 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.

(xiv) 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:

(a) Noticee 1 had sold 3,39,966 shares of the Company pursuant to the Trading Plan between the period May 05, 2016 to July 01, 2016 as opposed to selling 3,51,966 shares declared in the Trading Plan. With respect to Noticee 2, pursuant to the Trading Plan, Noticee 2 had sold 68,193 shares and bought 118 shares of the Company, having net sale of 68,075 shares between the period May 16, 2016 to June 17, 2016, as opposed to only selling 68,075 shares as provided in the Trading Plan. As per regulation 5(4) of the PIT Regulations, Noticee 1 and 2 were not permitted to deviate from the Trading Plan or execute any trades outside of its scope. Further, it was observed that Noticee 1 and 2 had traded between the period from February 29, 2016 to June 01, 2016, however, in terms of regulation 5(2)(ii) of PIT Regulations, due to declaration of financial results on May 31, 2016 pertaining to quarter ended on March, 2016, Noticee 1 and 2 were not permitted to trade during the aforesaid period. Thus, it was alleged that the aforesaid trades of Noticee 1 and 2 were in violation of regulations 5(2)(ii) and 5(4) of the PIT Regulations.

(b) Noticee 3 had sold 2,78,221 shares pursuant to the Trading Plan between the period July 04, 2016 to July 29, 2016 as opposed to selling 2,91,367 shares as declared in the Trading Plan. It was observed that by not selling shares in accordance with the Trading Plan, Noticee 3 was in violation of regulation 5(4) of the PIT Regulations. Further, it was observed that Noticee 3 had traded during June 02, 2016 to August 17, 2016, and due to declaration of financial results for quarter ending June, 2016, announced on August 13, 2016, in terms of regulation 5(2)(ii) of the PIT Regulations, Noticee 3 was not permitted to trade during the aforesaid period. However, Noticee 3 had traded between the aforesaid period. Therefore, it was alleged that Noticee 3 has violated regulations 5(2)(ii) and 5(4) of the PIT Regulations. Further, it was observed that Smt. Suryankantadevi Mohota had not sold any shares of the Company pursuant to the Trading Plan. On enquiry, it was observed that she had passed away on November 29, 2011, and Noticee 3 was the executor of her Trading Plan. Thus, it was alleged that Noticee 3, as executor of Smt. Suryankantadevi Mohota, had deviated from the Trading Plan and had allegedly violated regulation 5(4) of the PIT Regulations.

8. The Noticees submitted their reply to the SCN *vide* email sent on July 15, 2021. The submissions of the Noticees are summarized hereunder:

**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.

**Submission 2: 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.

**Submission 3: UPSI-I relating to financial results for the quarter ending March, 2016 did not come into existence on April 07, 2016 as alleged in the SCN**

(a) As per the chronology of events for UPSI-I, on April 07, 2016, the statutory auditors had discussion of the audit requirements and emailed Mr. Mahajan, a format of bank confirmation letter required directly on the auditor’s office address for bank reconciliation. The aforesaid communication cannot be construed as UPSI in the hands of the Noticees. Further, from the aforesaid chronology, it is clear that documents such as bank reconciliation, statements, depreciation details, ledger accounts *etc* for the purpose of audit and final depreciation details and schedules were shared with the auditors on May 19, 2016 and May 21, 2016.

(b) The compliance officer of the Company had communicated the closure of trading window for UPSI-I from May 20, 2016 to May 30, 2016. Therefore, UPSI-I could not have come into existence before the trading window was closed *i.e.,* May 20, 2016.

**Submission 4: Trading pattern of the Noticees does not indicate that they had traded on basis of UPSI**

(a) The SCN states that UPSI-I relating to financial result of the Company for quarter ending March, 2016 was positive. The total income had increased by 25.46% and the net profit had increased by 103.57% on quarter to quarter basis from quarter ended on December, 2016 (unaudited results) to quarter ended on March, 2016 (audited results). Further, the total income increased by 3.22% and net profit increased by 55.81% on year to year basis from year ended March, 2015 (audited results) to year ended March, 2016 (audited results). If the Noticees were in possession of UPSI-I on and from April 07, 2016, and the Noticees knew that the financial results of the company were impressive, they would not have sold their shares during the restricted period which commenced from February 29, 2016 to June 01, 2016.

(b) The Noticees sold their shares during the UPSI-I period due to misunderstanding the concept of trading plan under the PIT Regulations. 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:

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

(b.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.

(b.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.

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

**<u>Submission 5: Alleged violation of regulation 5(2)(ii) and regulation 5(4) of the PIT Regulations was inadvertent and implementation of the Trading Plan was impractical</u>**

(a) Due to the Cool Off Period and the Restricted Periods, the Noticees could effectively trade for only eight trading days during the entire Trading Period of one year. The alleged violation of regulation 5(2)(ii) and 5(4) of the PIT Regulations was unintentional and under *bonafide* belief that sale of shares during Restricted Periods was necessary for implementation of Trading Plan.

(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 "**Sodhi Committee Report**"). While submitting the Trading Plan, the Noticees were motivated with honest intention to sell their shares with a view to increase public shareholding. If the Noticees were aware that after submitting the Trading Plan, they would not be able to deviate from it, they would not have sold their shares during the Restricted Periods or made an application to withdraw the Trading Plan.

9. 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 15, 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

10. 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 section 12A(d) and (e) of the SEBI Act and regulation 4(1) of the PIT Regulations?

    II. Whether the Noticees have violated regulation 5(2)(ii) and 5(4) of 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?

11. In their reply, Noticees have responded to the charges levelled against them in two segments, *viz,* first, by raising certain preliminary objections and then by offering their explanations on merit. I find it appropriate to deal with the preliminary contentions before moving to the merits of the case. 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.

12. 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 15, 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.

13. 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) Ashok Shivlal Rupani and Anr. vs. SEBI, 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 Noticees have 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.

(ii) Mr. Rakesh Kathotia and Others vs. SEBI, decided by Hon'ble SAT, on May 27, 2019: 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 was substantially complied with under Chapter III of the Regulation" (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 the first consideration is not relevant and the second consideration is absent in the present matter.

(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*

*<u>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"</u> (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 11 above, there was no inordinate delay in issuing the SCN in the present matter.

14. 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 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. 7 of 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 failed 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.

15. 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.

16. 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.

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

(i) <u>Smitaben N Shah vs. SEBI, decided by Hon'ble SAT on July 30, 2010:</u> 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, correspondences with the Company, auditors and stock broker, copy of the Trading Plan, the trade details provided by BSE and NSE, and the demat statements provided by NSDL and CDSL 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) <u>H. R. Mehta vs Assistant Commissioner of Income Tax, Mumbai , decided by Hon'ble Bombay High Court, on 30th June, 2016:</u> I find that this case *inter alia* reiterates the position of the orders referred in paragraph 16 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) <u>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</u>: 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 16 above.

18. 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.

**I. Issue no. 1: Whether the Noticees have violated section 12A(d) and (e) of the SEBI Act and regulation 4(1) of the PIT Regulations?**

19. 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 Noticees. The said provisions are provided below:

**<u>SEBI Act</u>**

*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 Regulations 2018**").*

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

20. I find that there are three important things to be established for attracting the provisions stated in the present issue, (i) the Noticees were insiders of the Company during the relevant period; (ii) the Noticees had received or had access to relevant UPSI; and (iii) these Noticees 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.

21. Insider:

(i) For determining whether the Noticees were "insiders" 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. "Connected person" is defined under regulation 2(1)(d), which states that:

*"connected person" means,- (i) any person who is or has during the six months prior to the concerned act been associated with a company, directly or indirectly, in any capacity including by reason of frequent communication with its officers or by being in any contractual,*

*fiduciary or employment relationship or by being a director, officer or an employee of the company or holds any position including a professional or business relationship between himself and the company whether temporary or permanent, that allows such person, directly or indirectly, access to unpublished price sensitive information or is reasonably expected to allow such access.*

*(ii) Without prejudice to the generality of the foregoing, the persons falling within the following categories shall be deemed to be connected persons unless the contrary is established, -*
*(a). an immediate relative of connected persons specified in clause (i); or*

*…*

Further, regulation 2(1)(f) provides that "immediate relative" means a spouse of a person, and includes parent, sibling, and child of such person or of the spouse, any of whom is either dependent financially on such person, or consults such person in taking decisions relating to trading in securities. The note appended to the aforesaid definition provides that:

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

(ii) In the reply furnished by the Noticees, it is not disputed by them that they were not "insiders" as per the PIT Regulations. I find from the material available on record that the Noticees were associated with the Company during the IP in the manner provided below:

(a) Noticee 3 was the managing director and promoter of the Company. The annual reports of the Company pertaining to the financial years 2015-2016 and 2016-2017, provides that Noticee 3 has been a director of the Company since 1994. In my view, since Noticee 3 holds the position of managing director and promoter of the Company, in addition to being a connected person, it can be reasonably inferred that he would have access to/be aware of UPSI of the Company. Therefore, I do not have any difficulty in holding that in terms of regulation 2(1)(g) of the PIT Regulations, Noticee 3 was an “insider”.

(b) Noticee 1 was the promoter of the Company and spouse of Noticee 3. In this regard, it is important to note that as per the guidance note released by SEBI dated August 24, 2015, a spouse is presumed to be an “immediate relative”, unless rebutted so. I find that the Noticees in their reply have not made a contrary submission. Further, as brought out before, Noticee 1 is also the daughter-in-law of Ranchhoddas Mohota who was the chairman of the Company, and sister-in-law of Vinay Kumar Mohota who was a whole time director in the Company. Therefore, Noticee 1 is deemed to be a connected person and insider in terms of regulation 2(1)(d)(ii), 2(1)(f) and 2(1)(g) of the PIT Regulations.

(c) Noticee 2 was the promoter of the Company and the sister of Noticee 3. Further, she is the (i) daughter of Ranchhoddas Mohota; and (ii) sister of Vinay Kumar Mohota, who as provided above, held the designation of chairman and whole time director of the Company, respectively. Therefore, similar to Noticee 1, Noticee 2 is deemed to be a connected person and insider in terms of regulation 2(1)(d)(ii), 2(1)(f) and 2(1)(g) of the PIT Regulations.

(d) Thus, I find that Noticee 1 and 2 are not only covered under the definition of “connected person” due to holding a professional relationship with the company as a promoter which gives them access to UPSI, but they are also deemed to be connected persons, as they fall under the definition of "immediate relatives". Thus, I find that Noticee 1 and 2 are "insiders" under the PIT Regulations.

22. Noticee's access to UPSI:

(i) Regulation 2(1)(n) of the PIT Regulations defines "unpublished price sensitive information" as:

(*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 PIT Amendment Regulations 2018 which earlier read as follows: "(vi) material events in accordance with the listing agreement".*

(ii) I find that the aforesaid definition is clear and unequivocal that "financial result" is considered as UPSI without being subject to any condition. Further, I note that the Noticees in their reply have not disputed that the information with respect to declaration of financial results for quarter ending March, 2016 and June, 2016 declared on May 30, 2016 and August 13, 2016, respectively, was UPSI.

(iii) I note that out of the two contentions of the Noticees on merits, one is that the period relating to UPSI-I did not start on April 07, 2016 but rather on May 20, 2016 (*i.e.,* the first day when the trading window was closed). The reasoning provided by the Noticees is that on April 07, 2016, the statutory auditors of the Company had discussion of the audit requirements and emailed Mr. Mahajan, a format of bank confirmation letter required on the auditor's office address for bank reconciliation, which cannot be considered as UPSI in the hands of the Noticees. The Noticees have also contended that it is evident from the chronology provided in paragraph 7(v) above, that on May 19, 2016 and May 21, 2016, documents relating to the financial results were shared by the Company with the statutory auditor. In this regard, it is pertinent to note that the end period of UPSI-I considered in the SCN is May 30, 2016. Thus, according to the Noticees, the UPSI-I period began from May 19, 2016 or May 20, 2016 and ended on May 30, 2016. At this juncture, at the cost of repetition, I find it appropriate to reproduce the chronology of events with respect to UPSI-I submitted by the Company and the statutory auditors of the Company:

<u>Submitted by the Company:</u>

| # | Dates | Discussions | Particulars |
|---|---|---|---|
| 1. | 18/05/2016 | Notice of trading window closure. | Trading window of the Company will remain closed from 20th May, 2016 to 1st June, 2016 (both days inclusive). |
| 2. | 01/05/2016 to 29/05/2016 (Approximately) | Preparation of financial result. | Closure of accounts, preparation & finalisation of financial results for quarter ended March 31, 2016. |
| 3. | 24/05/2016 | Notice of board meeting. | Notice of board meeting & audit committee meeting to be held on 30th May, 2016 to the directors. |
| 4. | 18/05/2016 to 29/05/2016 (Approximately) | Financial submitted to auditor for checking and finalisation. | Financial result submitted to auditor for finalization of results. |
| 5. | 30/05/2016 at 2:30 PM | Audit committee meeting. | To consider and review financial results for the quarter and financial year ended on March 31, 2016 and forward recommendations to the board of directors. The audit committee examined, reviewed the financial results and forwarded recommendations to the board of directors. |
| 6. | 30/05/2016 at 3:00 PM, concluded at 4:15 PM. | Board meeting. | To consider and adopt un-audited financial results of the Company for the quarter and period ended March 31, 2016. Un-audited financial results of the Company for the quarter and period ended on March 31, 2016 was approved and adopted. |

Submitted by the statutory auditor:

| # | Date | Time | Events |
|---|---|---|---|
| 1 | 07/04/2016 | 12:37 PM | Auditors had discussion of the audit requirements and emailed Mr. Mahajan a format of bank confirmation letter required directly on the auditor's office address for bank reconciliation. |
| 2 | 19/05/2016 | 4:57 PM | Rajendra Singhvi provided the auditors with bank reconciliation for the period March, 2016. |
| 3 | 19/05/2016 | 5:03 PM | Rajendra Singhvi provided the auditors with statements for the period March, 2016, |
| 4 | 19/05/2016 | 5:10 PM | Depreciation details were shared with us by Rajendra Singhvi. Various other details, ledgers *etc.* for audit were given to the auditors by Rajendra Singhvi. |
| 5 | 21/05/2016 | 7:00 PM | Final depreciation details and schedules was shared with auditors by Rajendra Singhvi. |
| 6 | 28/05/2016 | 5:20 PM | Mr. Kanojiya shared with auditors the draft financials for the year. The auditors shared the draft audit report. |

(iv) After analyzing the table above, I am hesitant to accept the aforesaid submission of the Noticees. It is important to highlight that the chronology of events pertaining to declaration of March, 2016 results provided by the Company itself states that *"Closure of accounts, preparation & finalisation of financial results for quarter ended Mar 31, 2016"* was undertaken between the period from May 01, 2016 to May 29, 2016. In my view, it cannot be the case that Noticee 3 being the managing director and promoter of the Company, had access to the details of the financial results only ten or eleven days before the declaration of such result on May 30, 2016 when activities such as closure of accounts, preparation and finalization in relation to the said financial statement began on May 01, 2016. Further, if the argument of the Noticees that since documents were shared on May 19, 2016 and May 21, 2016, therefore, UPSI came into existence only then is to be accepted, then it will lead to mischief as the aforesaid interpretation completely negates the steps involved in preparation of the said documents from which conclusions can be reasonably inferred. There are multitude of steps involved before documents relating to financial results are finalized and shared which may only be known to individuals who are involved in preparation of such documents. Such individuals will know with a higher degree of certainty, whether the documents indicate a positive or negative outcome of the financial results to be announced.

(v) In view of the aforesaid discussion, I find that since the wheels of motion for process of announcement of financial results had already been set in motion from April 07, 2016, the said date should be considered as the start date for UPSI-I period. Further, with respect to the contention of the Noticees that since the trading window was closed from May 20, 2016 onwards, the said date should be considered as the start date for UPSI-I, I find that although the PIT Regulations provides that the trading window would be closed when the compliance officer determines that designated persons can reasonably be expected to have possession of UPSI, the aforesaid determination by the compliance officer of the Company does not preclude SEBI from arriving at a different finding. In conclusion, as stated above, the financial results for March, 2016 quarter was declared on May 30, 2016 to NSE at 16:38 hours and BSE at 17:01:39 hours. Therefore, in light of the aforesaid paragraphs, the period for UPSI-I would be from April 07, 2016 to May 30, 2016, 16:38 hours (hereinafter referred to as "**UPSI-I Period**").

(vi) Moving on to UPSI-II, the chronology of events tabulated in paragraph 7(vi) above shows that the trading window of the Company was closed from July 30, 2016. Therefore, UPSI-II had first come into existence on July 30, 2016. Further, it also reveals that the preparation of financial results was done from August 05, 2016 to August 11, 2016. As brought out earlier, the financial results for June, 2016 quarter was declared on August 13, 2016 to NSE at 16:10 hours and to BSE at 16:22:29 hours. Accordingly, the period for UPSI-II would be from July 30, 2016 to August 13, 2016, 16:10 hours (hereinafter referred to as "**UPSI-II Period**").

(vii) For ascertaining whether the Noticees had access to UPSI, during investigation, SEBI requested the Company to provide details of all persons including promoters/directors/employees and/or any other person (whether connected to the Company or not) who were having access to and/or in possession of UPSI relating to UPSI-I. The Company *vide* an undated letter provided the list of the following entities who were aware of the announcement of UPSI-I:

| # | Name of Person | PAN | Designation/Association |
|---|---|---|---|
| 1. | Ranchhoddas Mohota | ACDPM2557K | Chairman/Promoter |
| 2. | Vinod Kumar Mohota | ACDPM2554L | Managing Director/Promoter |
| 3. | Vinay Kumar Mohota | ACDPM2559H | Whole-Time Director/Promoter |
| 4. | Shantilal B Singhvi | AIGPS6094L | Whole-Time Director |
| 5. | G G Singhee | AFAPS9737F | Independent Director |
| 6. | Suresh Rathi | AAWPR1919B | Independent Director |
| 7. | Sachin Kanojiya | DHTPK4023E | Company Secretary |
| 8. | Mukesh Mahajan | ABLPM0478N | CFO |
| 9. | Rajendra Singhavi | AJBPS6513Q | AGM Finance |
| 10. | Govind Binnani | ABJPB0074F | AGM Account & Tax |
| 11. | Kaushal Mehta | AJHPM5797Q | Statutory Auditor M/s Batliboi & Purohit, Chartered Accountants |
| 12. | Manil Jain | AXFPJ4714J | Audit Team, M/s Batliboi & Purohit, Chartered Accountants |
| 13. | Paresh Chokshi | AABPC4421C | Partner, M/s Batliboi & Purohit, Chartered |

(viii) Thereafter, SEBI requested the Company to provide details of all persons including promoters/directors/employees and/or any other person (whether connected to the Company or not) who were having access to and/or in possession of UPSI relating to UPSI-II. *Vide* letter dated July 11, 2019, the Company provided the list of the following entities who were aware of the announcement of UPSI-II:

| # | Name of Person | PAN | Designation/Association |
|---|---|---|---|
| 1. | Ranchhoddas Mohota | ACDPM2557K | Chairman/Promoter |
| 2. | Vinod Kumar Mohota | ACDPM2554L | Managing Director/Promoter |
| 3. | Vinay Kumar Mohota | ACDPM2559H | Whole-Time Director/Promoter |
| 4. | Shantilal B Singhvi | AIGPS6094L | Whole-Time Director |
| 5. | G G Singhee | AFAPS9737F | Independent Director |
| 6. | Krishnakant Tekriwal | AARPT9140K | Independent Director |
| 7. | Suresh Rathi | AAWPR1919B | Independent Director |
| 8. | Ritu Kabra | AAPPI4406H | Independent Director |
| 9. | Sachin Kanojiya | DHTPK4023E | Company Secretary |
| 10. | Mukesh Mahajan | ABLPM0478N | CFO |
| 11. | Rajendra Singhavi | AJBPS6513Q | AGM Finance |
| 12. | Govind Binnani | ABJPB0074F | AGM Account & Tax |
| 13. | Kaushal Mehta | AJHPM5797Q | Statutory Auditor M/s Batliboi & Purohit, Chartered Accountants |
| 14. | Manil Jain | AXFPJ4714J | Audit Team, M/s Batliboi & Purohit, Chartered Accountants |
| 15. | G R Paliwal | AAZPP3226G | Cost Auditor |

(ix) From the tables provided above, it is evident that Noticee 3 being the managing director and promoter of the Company had access to UPSI in relation to both UPSI-I and UPSI-II. Further, with respect to Noticee 1 and 2, since Noticee 1 is the spouse of Noticee 3 and Noticee 2 is the sister of Noticee 3, it can be reasonably inferred that due to sharing a close relationship, Noticee 1 and 2 were also privy to UPSI-I and UPSI-II. Further, the annual report of the Company for financial years 2015-2016 and 2016-2017 provides that the Company had carried out related party transactions with Noticee 1 and Noticee 2. It is important to highlight that as per regulation 4(2) of the PIT Regulations, in case of connected persons, the onus of establishing that they were not in possession of UPSI lies on them. I find that the aforesaid finding has not been disputed by the Noticees in their reply. Thus, based on preponderance of probabilities, I find that Noticee 1 and 2 also had access to UPSI-I and UPSI-II.

23. Trading by the Noticees:

(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. Further, the proviso to regulation 4(1) reads as "*Provided that the insider may prove his innocence by demonstrating the circumstances including the following".* As the text of the proviso contains the word "including", it suggests that the circumstances enumerated in the said proviso are not exhaustive and an insider can demonstrate other circumstances apart from the ones mentioned therein.

(ii) As per the details provided by the stock exchanges, Noticee 3 did not trade in the shares of the Company during UPSI-I Period or UPSI-II Period. However, it was observed that Noticee 1 and Noticee 2 had executed trades in the shares of the Company during UPSI-I Period and UPSI-II Period in the cash segment, which are tabulated below. It is important to note that the Noticees have not disputed execution of the said trades.

(a) **<u>Noticee 1</u>**

<u>On BSE:</u>

| Date | Buy Qty | Wt. Avg. Buy Price (in Rs) | Sell Qty | Wt. Avg Sell Price (in Rs) |
|---|---|---|---|---|
| **3 months prior to UPSI-I Period (January 07, 2016 to April 06, 2016)** | | | | |
| No trades observed related to Mohota Industries Ltd. | | | | |
| **During UPSI-I Period (April 07, 2016 to May 30, 2016)** | | | | |
| 05/05/2016 | 0 | 0 | 1936 | 118.85 |
| 06/05/2016 | 0 | 0 | 5100 | 115.00 |
| 09/05/2016 | 0 | 0 | 9187 | 112.08 |
| 11/05/2016 | 0 | 0 | 3940 | 108.03 |
| 13/05/2016 | 0 | 0 | 4579 | 107.79 |
| 16/05/2016 | 0 | 0 | 1120 | 101.53 |
| **Total** | 0 | 0 | 25862 | 111.33 |
| **3 months post UPSI-I Period (May 31, 2016 to August 31, 2016)** | | | | |
| 17/06/2016 | 0 | 0 | 4632 | 57.16 |
| 20/06/2016 | 0 | 0 | 3672 | 53.74 |
| 21/06/2016 | 0 | 0 | 1250 | 52.83 |
| 22/06/2016 | 0 | 0 | 10000 | 55.81 |
| 23/06/2016 | 0 | 0 | 900 | 56.68 |
| 27/06/2016 | 0 | 0 | 5150 | 53.47 |
| 28/06/2016 | 0 | 0 | 6890 | 53.05 |
| 29/06/2016 | 0 | 0 | 717 | 53.00 |
| 30/06/2016 | 0 | 0 | 5180 | 50.74 |
| 01/07/2016 | 0 | 0 | 38800 | 51.45 |
| **Total** | 0 | 0 | 77191 | 52.79 |
| | | | | |
| **During UPSI-II Period (July 30, 2016 to August 13, 2016)** | | | | |
| No trades observed related to Mohota Industries Ltd. | | | | |

<u>On NSE:</u>

| Date | Buy Qty | Wt. Avg. Buy Price (in Rs) | Sell Qty | Wt. Avg Sell Price (in Rs) |
|---|---|---|---|---|
| **3 months prior to UPSI-I Period (January 07, 2016 to April 06, 2016)** | | | | |
| No trades observed related to Mohota Industries Ltd. | | | | |
| **During UPSI-I Period (April 07, 2016 to May 30, 2016)** | | | | |
| 06/05/2016 | 0 | 0 | 9700 | 115.23 |
| 09/05/2016 | 0 | 0 | 5972 | 112.66 |
| 10/05/2016 | 0 | 0 | 401 | 111.80 |
| 11/05/2016 | 0 | 0 | 3701 | 107.98 |
| 13/05/2016 | 0 | 0 | 3713 | 108.05 |
| **Total** | 0 | 0 | 23487 | 112.24 |
| **3 months post UPSI-I Period (May 31, 2016 to August 31, 2016)** | | | | |
| 17/06/2016 | 0 | 0 | 7685 | 57.13 |
| 20/06/2016 | 0 | 0 | 4156 | 53.61 |
| 21/06/2016 | 0 | 0 | 500 | 53.18 |
| 22/06/2016 | 0 | 0 | 8500 | 56.04 |
| 23/06/2016 | 0 | 0 | 500 | 56.30 |
| 27/06/2016 | 0 | 0 | 24676 | 53.27 |

| Date | Buy Qty | Wt. Avg. Buy Price (in Rs) | Sell Qty | Wt. Avg Sell Price (in Rs) |
|---|---|---|---|---|
| 28/06/2016 | 0 | 0 | 68883 | 53.12 |
| 29/06/2016 | 0 | 0 | 3283 | 53.02 |
| 30/06/2016 | 0 | 0 | 21608 | 50.82 |
| 01/07/2016 | 0 | 0 | 73635 | 51.48 |
| **Total** | 0 | 0 | 213426 | 52.61 |
| | | | | |
| **During UPSI-II Period(July 30, 2016 to August 13, 2016)** | | | | |
| No trades observed related to Mohota Industries Ltd. | | | | |

(b) **<u>Noticee 2:</u>**

<u>On BSE:</u>

| Date | Buy Qty | Wt. Avg. Buy Price (in Rs) | Sell Qty | Wt. Avg Sell Price (in Rs) |
|---|---|---|---|---|
| **3 months prior to UPSI-I Period (January 07, 2016 to April 06, 2016)** | | | | |
| No trades observed related to Mohota Industries Ltd. | | | | |
| **During UPSI-I Period (April 07, 2016 to May 30, 2016)** | | | | |
| 16/05/2016 | 0 | 0 | 22 | 101.10 |
| **Total** | 0 | 0 | 22 | 101.10 |
| **3 months post UPSI-I Period (May 31, 2016 to August 31, 2016)** | | | | |
| 09/06/2016 | 0 | 0 | 40000 | 86.35 |
| 16/06/2016 | 0 | 0 | 8975 | 58.79 |
| 17/06/2016 | 0 | 0 | 2707 | 58.76 |
| **Total** | 0 | 0 | 51682 | 80.12 |
| | | | | |
| **During UPSI-II Period (July 30, 2016 to August 13, 2016)** | | | | |
| No trades observed related to Mohota Industries Ltd. | | | | |

<u>On NSE:</u>

| Date | Buy Qty | Wt. Avg. Buy Price (in Rs) | Sell Qty | Wt. Avg Sell Price (in Rs) |
|---|---|---|---|---|
| **During UPSI-I Period (April 07, 2016 to May 30, 2016)** | | | | |
| No trades observed related to Mohota Industries Ltd. | | | | |
| | | | | |
| **During UPSI-II Period (July 30, 2016 to August 13, 2016)** | | | | |
| No trades observed related to Mohota Industries Ltd. | | | | |

(iii) I note that Noticee 1 and Noticee 2 have submitted *vide* undated letters that all the order placements in the shares of the Company during UPSI-I Period in their accounts was done by Noticee 3. Further, the aforesaid submission has also been admitted by Noticee 3 *vide* his email dated February 27, 2020. In this regard, I note that a copy of the authorization letter addressed by Noticee 1 to Badjate Stock & Shares Pvt. Ltd. dated May 15, 2015 is available on record which provides that with respect to her trading account, Noticee 3 is authorized to place orders, issue instructions for execution of trades and carry out all operations in her account. A similarly worded letter has been addressed by Noticee 2 to ISE Securities & Services Limited for giving authority to Noticee 3 with respect to her trading account. I find that both of the aforesaid letters provide that the authority of Noticee 3 with respect to their respective accounts is to be treated as a standing instruction until further notice in writing. I find that the aforesaid communications sufficiently establishes that Noticee 3 had traded in the shares of the Company during UPSI-I Period from the trading accounts of Noticee 1 and Noticee 2.

(iv) In the fourth submission of the Noticees as summarized in paragraph 8 above, the Noticees have claimed that their trades were not based on UPSI. The Noticees have contended that if their trades were pursuant to UPSI-I, they would not have sold the shares, as the financial results for quarter ending March, 2016 announced on May 30, 2016, was positive. They have submitted that the total income of the Company increased by 25.46% and net profit increased by 103.57% on quarter to quarter basis from quarter ending December, 2015 (unaudited results) to quarter ending March, 2016 (audited results). Further, the total income increased by 3.22% and net profit increased by 55.81%, on year to year basis from year ended March, 2015 (audited results) to year ended March, 2016 (audited results). I note that the aforesaid figures have been reproduced by the Noticees from the SCN. In addition to the data provided above, I note that close price of the scrip of the Company increased from Rs. 90.2 to Rs. 90.5 on BSE and from Rs. 89.35 to Rs. 90 from the day of the announcement of financial results on May 30, 2016 to the next day following the announcement (*i.e,* May 31, 2016). Further, as provided in paragraph 7(iii) above, after the said announcement, the number of shares of the Company traded recorded an increase by 18.89 times on BSE and 30.54 times on NSE.

(v) At this juncture, I find it relevant to refer to the decision of Hon'ble SAT in the matter of ***Mrs. Chandrakala vs. SEBI***, Appeal No. 209

of 2011, dated January 31, 2012, wherein the appeal arose as the adjudicating officer held the appellant to be guilty of insider trading, however, Hon’ble SAT allowed the appeal *inter alia* on the following grounds:

*“…..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…..*

*…..We are also inclined to accept the argument of the learned counsel for the appellant that where an entity is privy to unpublished price sensitive information it will tend to purchase shares and not sell the shares prior to the unpublished price sensitive information becoming public if the information is positive. In this case declaration of financial results, dividend and bonus were positive information but the appellant not only bought but also sold the shares not only during the period when the price sensitive information was unpublished but also prior to and after the information becoming public. A person who is in possession of unpublished price sensitive information which, on becoming public is likely to cause a positive impact on the price of the scrip, would only buy shares and would not sell the shares before the unpublished price sensitive information becomes public and would immediately offload the shares post the information becoming*

*public. This is not so in the case under consideration. The trading pattern of the appellant, as shown in the chart above, does not lead to the conclusion that the appellant's trades were induced by the unpublished price sensitive information….."*

(vi) In ***Mr. Manoj Gaur vs. SEBI***, Appeal no. 64 of 2012, dated October 03, 2012, the Hon'ble SAT *inter alia* held:

*"We had an occasion to deal with a similar situation in the case of Mrs. Chandrakala vs. The Adjudicating Officer, Securities and Exchange Board of India [Appeal no 209 of 2011 decided on January 31, 2012] where we have observed that 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 has traded on the basis of unpublished price sensitive information 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 did not trade on the basis of unpublished price sensitive information and that he traded on some other basis, he cannot be said to have violated the provisions of regulation 3 of the Regulations.*

*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……...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. <u>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.</u> 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….." (emphasis supplied)*

(vii) Thus, from the aforesaid decisions, it is clear that there is a presumption operating against an insider if he/she trades while in possession of UPSI, however, if the insider is able to demonstrate that his/her trades were not motivated by UPSI, the said insider would not be in violation of regulation 3(i) of SEBI (Prohibition of Insider Trading) Regulations, 1992, which is *pari materia* to regulation 4(1) of the PIT Regulations. Further, from the aforesaid decisions, I find that if an insider is in possession of positive 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/she 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.

(viii) I find that the charge levelled against the Noticees is for trading during UPSI-I Period, wherein the result of UPSI-I was positive. As brought out above, with respect to quarter ending March, 2016, the total income and net profit not only increased from the previous quarter but also on a year on year basis. It is important to note that the Noticees have only sold shares during the UPSI-I Period which goes against the expected trading pattern that the Noticees ought to have adopted if they were trading based on UPSI. If the Noticees had traded based on UPSI, they would have bought shares of the Company, as post declaration of UPSI-I, the price of the shares of the Company rose, however, as brought out before, the Noticees have not bought even a single share during the UPSI-I Period. With respect to Noticee 2, I note the trade details reflect that she has sold 22 shares of the Company during UPSI Period-I on BSE. I find it difficult to believe that Noticee 3 traded through the account of Noticee 2, was guided by UPSI, only to sell 22 shares of the Company.

(ix) In ***Abhijit Ranjan vs. SEBI***, Appeal no. 232 of 2016, dated November 08, 2019, the Hon'ble SAT held the following:

*"Further, even if it is assumed that the information was is a price sensitive information, still the appellant cannot be blamed of insider trading for the reasons that he did not trade "on the basis of the information". The appellant was able to show his dire need to infuse fund in the entity under the master restructuring agreement to implement a CDR package as detailed supra. He was even required to sell his agricultural land and flat details of which are already given hereinabove. In these circumstances he sold the shares. In the case of Rajiv B. Gandhi on fact this Tribunal held that the appellants therein were able to rebut the presumption that they traded on the basis of UPSI as they had a necessity to sell the shares. Similar is*

*the case of Gujarat NRE Mineral Resources Ltd. and Mrs. Chandrakala decided by this Tribunal."*

(x) In the ***Abhijit Ranjan*** order *(supra)*, the Hon'ble SAT had given due emphasis to the submission of the appellants explaining the reasoning for trading during the UPSI period. In the present case, the Noticees have submitted that they had traded during the UPSI-I Period as they had undertaken to sell shares of the Company as per the Trading Plan. I note that the Noticees had sold shares of the Company pursuant to the Trading Plan which is dealt in detail in Issue No.2 of this order.

(xi) In view of the fact that the trading pattern of the Noticees does not indicate that that their trading was based on UPSI along with the reason cited by the Noticees for trading during the aforesaid period that they were under the impression that they had to mandatorily trade pursuant to the Trading Plan, I find merit in the fourth submission of the Noticees, and I am inclined to give benefit of the doubt to the Noticees. I find that no evidence is placed before which would explain why the Noticees would sell contrary to the positive nature of UPSI-I. Accordingly, I hold that the alleged violation of section 12A(d) and (e) of the SEBI Act and regulation 4(1) of the PIT Regulations, does not stand established against the Noticees.

**II. Issue no. 2: Whether the Noticees have violated regulation 5(2)(ii) and regulation 5(4) of the PIT Regulations?**

24. In relation to this issue, the provisions alleged to have been violated by the Noticees are reproduced below:

***CHAPTER – II RESTRICTIONS ON COMMUNICATION AND TRADING BY INSIDERS***

***Trading Plans.***

*5. (1) An insider shall be entitled to formulate a trading plan……*

*(2) Such trading plan shall:–*

*(i)…..*

*(ii) not entail trading for the period between the twentieth trading day prior to the last day of any financial period for which results are required to be announced by the issuer of the securities and the second trading day after the disclosure of such financial results;*

*NOTE: Since the trading plan is envisaged to be an exception to the general rule prohibiting trading by insiders when in possession of unpublished price sensitive information, it is important that the trading plan does not entail trading for a reasonable period around the declaration of financial results as that would generate unpublished price sensitive information.*

*(iii)….*

*(iv)….*

*(v)….*

*(vi)….*

*(3)…..*

*(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.*

25. 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:

| # | Security | No. of shares | Nature of trade | Name of share holder |
|---|---|---|---|---|
| 1 | Equity | 2,91,367 | Sale | Shri Vinod Kumar Mohota |
| 2 | Equity | 3,51,966 | Sale | Smt. Veenadevi Mohota |
| 3 | Equity | 68,075 | Sale | Smt. Kirandevi Bhagat |
| 4 | Equity | 4,47,097 | Sale | Smt. Suryakantadevi Mohota |

26. It was alleged in the SCN that based on the transaction statements and trade details provided by NSDL, CDSL, BSE and NSE, Noticees and Smt. Suryakantadevi Mohota had undertaken trades detailed in the paragraphs below.

27. <u>Noticee 1:</u>

(i) The trades executed by Noticee 1 during UPSI-I Period are as follows:

| Date | Exchange | Buy Quantity | Sell Quantity |
|---|---|---|---|
| 05/05/2016 | BSE | 0 | 1936 |
| 06/05/2016 | BSE | 0 | 5100 |
| 06/05/2016 | NSE | 0 | 9700 |
| 09/05/2016 | BSE | 0 | 9187 |
| 09/05/2016 | NSE | 0 | 5972 |
| 10/05/2016 | NSE | 0 | 401 |
| 11/05/2016 | BSE | 0 | 3940 |
| 11/05/2016 | NSE | 0 | 3701 |
| 13/05/2016 | BSE | 0 | 4579 |
| 13/05/2016 | NSE | 0 | 3713 |
| 16/05/2016 | BSE | 0 | 1120 |
| 17/06/2016 | BSE | 0 | 4632 |
| 17/06/2016 | NSE | 0 | 7685 |
| 20/06/2016 | BSE | 0 | 3672 |
| 20/06/2016 | NSE | 0 | 4156 |
| 21/06/2016 | BSE | 0 | 1250 |
| 21/06/2016 | NSE | 0 | 500 |
| 22/06/2016 | BSE | 0 | 10000 |
| 22/06/2016 | NSE | 0 | 8500 |
| 23/06/2016 | BSE | 0 | 900 |
| 23/06/2016 | NSE | 0 | 500 |
| 27/06/2016 | BSE | 0 | 5150 |
| 27/06/2016 | NSE | 0 | 24676 |
| 28/06/2016 | BSE | 0 | 6890 |
| 28/06/2016 | NSE | 0 | 68883 |
| 29/06/2016 | BSE | 0 | 717 |
| 29/06/2016 | NSE | 0 | 3283 |
| 30/06/2016 | BSE | 0 | 5180 |
| 30/06/2016 | NSE | 0 | 21608 |
| 01/07/2016 | BSE | 0 | 38800 |
| 01/07/2016 | NSE | 0 | 73635 |
| **Total** | **-** | **0** | **339966** |

(ii) As evident from the table above, Noticee 1 had sold 3,39,966 shares of the Company pursuant to the Trading Plan between the period May 05, 2016 to July 01, 2016. However, in the Trading Plan, Noticee 1 had declared that she would sell 3,51,966 shares during the Trading Period.

(iii) I note from the material available on record that Noticee 1 was asked to provide details regarding the shares sold pursuant to the Trading Plan and reasons for deviating from the Trading Plan. *Vide* an undated letter, Noticee 1 confirmed that she sold 3,39,966 of the Company. She further stated that she only held 3,39,966 shares of the Company and she had inadvertently stated 3,51,966 in the

Trading Plan. It was alleged in the SCN that the correspondences with the Company, stock exchanges and Noticee 1, did not mention whether the aforesaid error was reported to the Company and/or stock exchanges by Noticee 1. Thus, it is alleged that Noticee 1 had deviated from the Trading Plan in violation of regulation 5(4) of the PIT Regulations.

(iv) It was noted in the SCN that the financial results for the March, 2016 quarter was declared on May 30, 2016 and for June, 2016 was declared on August, 13, 2016. In terms of regulation 5(2)(ii) of the PIT Regulations, Noticee 1 was not allowed to trade between February 29, 2016 to June 01, 2016 and June 02, 2016 to August 17, 2016. However, it was noted that Noticee 1 had traded during the aforesaid period. In view of the above, it is alleged that Noticee 1 had violated regulation 5(2)(ii) of the PIT Regulations.

28. <u>Noticee 2:</u>

(i) The trades executed by Noticee 2 during UPSI-I Period are as follows:

| **Date** | **Exchange** | **Buy Quantity** | **Sell Quantity** |
|---|---|---|---|
| 16/05/2016 | BSE | 0 | 22 |
| 09/06/2016 | BSE | 0 | 40000 |
| 16/06/2016 | BSE | 0 | 8975 |
| 16/06/2016 | NSE | 0 | 11042 |
| 17/06/2016 | BSE | 0 | 2707 |
| 17/06/2016 | NSE | 118 | 5447 |
| **Total** | **-** | **118** | **68193** |

(ii) The table above shows that Noticee 2 had sold 68,193 shares and bought 118 shares of the Company, having net sale of 68,075 shares between the period May 16, 2016 to June 17, 2016 as opposed to only selling 68,075 shares as provided in the Trading Plan. The SCN alleged that Noticee 2 had not declared anything in the Trading Plan regarding buying the aforesaid shares, which amounted to deviating from/trading outside the scope of Trading Plan in violation of regulation 5(4) of the PIT Regulations. Further, similar to the case of

Notice 1, due to regulation 5(2)(ii) of the PIT Regulations, the Noticee was not allowed to trade between February 29, 2016 to June 01,2016 and June 02, 2016 to August 17, 2016. However, as brought out before, Noticee 2 had traded during the aforesaid period. Thus, it is alleged that Noticee 2 had violated regulation 5(2)(ii) and regulation 5(4) of the PIT Regulations.

29. <u>Noticee 3:</u>

(i) The trades executed by Noticee 3 pursuant to the Trading Plan are as follows:

| Date | Exchange | Buy Quantity | Sell Quantity |
|---|---|---|---|
| 04/07/2016 | BSE | 0 | 61278 |
| 04/07/2016 | NSE | 0 | 49222 |
| 05/07/2016 | BSE | 0 | 8565 |
| 05/07/2016 | NSE | 0 | 15300 |
| 07/07/2016 | BSE | 0 | 23084 |
| 07/07/2016 | NSE | 0 | 13016 |
| 08/07/2016 | BSE | 0 | 16375 |
| 08/07/2016 | NSE | 0 | 29950 |
| 13/07/2016 | BSE | 0 | 575 |
| 13/07/2016 | NSE | 0 | 2425 |
| 14/07/2016 | BSE | 0 | 2200 |
| 14/07/2016 | NSE | 0 | 3400 |
| 15/07/2016 | BSE | 0 | 198 |
| 15/07/2016 | NSE | 0 | 3105 |
| 18/07/2016 | BSE | 0 | 13700 |
| 18/07/2016 | NSE | 0 | 3828 |
| 19/07/2016 | BSE | 0 | 1500 |
| 19/07/2016 | NSE | 0 | 4500 |
| 21/07/2016 | NSE | 0 | 11000 |
| 22/07/2016 | BSE | 0 | 10000 |
| 29/07/2016 | BSE | 0 | 5000 |
| **Total** | **-** | **0** | **278221** |

(ii) The table provided above shows that Noticee 3 had sold 2,78,221 shares pursuant to the Trading Plan between the period July 04, 2016 to July 29, 2016. The Trading Plan submitted by Noticee 3 provided that he would sell 2,91,367 shares of the Company. I note from the material available on record that Noticee 3 was asked to provide details regarding the shares sold pursuant to the Trading Plan and reasons for deviating from the Trading Plan. The SCN alleged that he provided the same reason that was provided in Company letter dated July 11, 2019 submitted to the stock exchanges for withdrawal of Trading Plan. It was noted in the SCN that there is no provision under the PIT Regulations for withdrawal/extinction of trading plans. Further, as noted earlier, the financial results for quarter ending June, 2016 was announced on August 13, 2016. In terms of regulation 5(2)(ii) of the PIT Regulations, Noticee 3 was not allowed to trade between June 02, 2016 to August 17, 2016. However, Noticee 3 had traded between the aforesaid period. Therefore, it is alleged that Noticee 3 has violated regulations 5(2)(ii) and 5(4) of the PIT Regulations.

(iii) Further, it was observed that Smt. Suryankantadevi Mohota had not sold any shares of the Company pursuant to the Trading Plan. It was alleged in the SCN that she had passed away on November 29, 2011, and Noticee 3 was the executor of her shares provided in the Trading Plan. Thus, it is alleged that Noticee 3, as executor of Smt. Suryankantadevi Mohota had deviated from the Trading Plan and had violated regulation 5(4) of the PIT Regulations.

30. Noticees in their fifth submission 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 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. 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, the <u>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).*

(ii) I note that the Trading Plan itself clearly provides that the Noticees would not trade 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.

31. 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.

32. In view of the paragraphs above, I hold that Noticees have regulation 5(2)(ii) and 5(4) of 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?**

33. 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."*

34. As discussed in Issue No.1 above, it has not been established that Noticees have violated section 12(d) and (e) of the SEBI Act and regulation 4(1) of the PIT Regulations. With respect to regulation 5(2)(ii) and 5(4) of the PIT Regulations, since it has been established that Noticees have violated the aforesaid provisions, 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 [1][liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.]*

*[1]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.*

35. 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 [5][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.*

*[6] [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.]*

*[5] Substituted for the words "section 15-I, the adjudicating officer" by the Finance Act, 2018 w.e.f. 08-03-2019.*
*[6] 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.*

36. 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 executing trades within the Restricted Periods and deviating from the Trading Plan or the consequent loss caused to investors as a result of the aforesaid defaults. With respect to the repetitive nature of the default, it is important to note that the Noticees has have executed more than one trade during the Restricted Periods, therefore, the violation committed by the Noticee is repetitive in nature.

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

## E. ORDER

38. 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 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 the them.

| **Noticee No.** | **Name of the Noticee** | **Penalty amount (in Rs)** |
|---|---|---|
| 1. | Veenadevi Vinodkumar Mohota | 1,00,000 |
| 2. | Kiran Bhagat | 1,00,000 |
| 3. | Vinod Kumar Mohota | 1,00,000 |

39. 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**

40. 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 |

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

**Date: March 29, 2022**
**Place: Mumbai**

**PRASANTA MAHAPATRA**
**ADJUDICATING OFFICER**