BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OFINDIA

ADJUDICATION ORDER NO. Order/BM/JR/2022-23/ 20900 - 20902

UNDER SECTION15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995

In respect of:

Atul Jitendra Agarwal
ABVPA3766H

Deepesh Joishar
AEUPJ9436R

CARE Rating Limited
AAACC4587F

In the matter of Mercator Limited

<u>Facts of the Case:</u>

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") conducted an investigation for suspected insider trading activities in the scrip of Mercator Limited (hereinafter referred to as "**Mercator**"/ "**Company**") during the period July 01, 2016 to December 31, 2016 (hereinafter referred to as "**Investigation Period**"/ "**IP**"). Pursuant to the investigation, it was observed that Mr. Atul Jitendra Agarwal (hereinafter referred to as "**Noticee 1**") had applied for pre-clearance being in possession of unpublished price sensitive information (hereinafter referred to as "**UPSI**") and have allegedly violated clause 6 of Schedule B of sub-regulation (1) and sub-regulation (2) of Regulation 9 of SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as "**PIT Regulations**"). Further, Mr. Deepesh Joishar (hereinafter referred to as "**Noticee 2**") being the Compliance Officer of Mercator and alleged to be in possession of UPSI failed to disseminate the same promptly, provided pre-clearance to Noticee 1 and failed to announce trading window closure and have allegedly violated clause

4 of Schedule A of Regulation 8 (1) and Clause 4 of Schedule B of sub-regulation (1) and sub-regulation (2) of Regulation 9 of PIT Regulations and Clause 4.1, 6, 7, 8 of the Code of Conduct of Mercator. Additionally, CARE Rating Limited (hereinafter referred to as "**Noticee 3**") delayed in publishing information regarding credit rating downgrade of Mercator on website of credit rating agency and have allegedly violated regulation 8 of PIT Regulations read with Clause 3 and 12 of Regulation 13 and Regulation 15 (2) of SEBI (Credit Rating Agencies) Regulations, 1999 (hereinafter referred to as "**CRA Regulations**"). (Collectively Noticee 1, Noticee 2 and Noticee 3 is referred as "**Noticees**").

Appointment of Adjudicating Officer:

2. SEBI appointed the undersigned as Adjudicating Officer (**AO**) vide communique dated April 21, 2022 under Section 19 read with section 15-I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**"), read with rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties Rules, 1995 (hereinafter referred to as "**Adjudication Rules**") to enquire into and adjudge under the provisions of section 15HB of the SEBI Act the aforesaid alleged violations committed by the Noticees.

Show Cause Notice, Reply and Personal Hearing:

3. Show Cause Notice dated July 29, 2021 (hereinafter referred to as 'SCN') was issued in terms of rule 4(1) of the Rules read with section 15-I of the SEBI Act to the Noticees alleging, inter alia, the following:
   a) *It is observed that company made an announcement on October 07, 2016 regarding credit rating downgrade by CARE. In this regard, company informed to stock exchanges that CARE has revised its rating for short term (from CARE A2+ to CARE A3+) and long term bank facilities/NCDs (from CARE A- to CARE BBB). As per CARE, the rating was revised largely due to deterioration in the capital structure due to losses and one time impairment/provision on account underperformance and sale of the dry bulk subsidiary Mercator Lines (Singapore) Limited. Clause A (3) of Schedule III of Regulation 30 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 considers revision in rating as material and price sensitive information. Since*

Credit Rating downgrade is a material and price sensitive information and can adversely impact price of a scrip hence considered UPSI.

b) *From the sequence of events received from CARE, downgrade was approved on September 28, 2016 and was communicated to company on September 29, 2016. However, company informed that credit rating was communicated to them on October 05, 2016 and company announced said rating to stock exchanges on October 07, 2016 (after market hours). Relying upon the information given by CARE, UPSI period for UPSI relating to downgrading of credit rating (hereinafter referred to as "**UPSI**") has been considered from September 28, 2016 to October 7, 2016.*

c) *It was observed that Atul Agarwal and Manjuli Agarwal who traded during the UPSI were connected to Mercator. The detailed chronology of events in this regard is as under:*

Date	***Discussion / message***	***Details of Name & Designation of persons Present in the Discussion***	***Particulars (details of matter discussed ; conclusions)***
28/09/2016 *At 10.00 am*	*CARE's Internal Rating Committee (IC) decided on the recommendation to downgrade Mercator Ratings from CARE A-/ CARE A2+ to CARE BBB/ CARE A3+*	***A: Rating Committee members*** *1. Mr. Rajesh Mokashi,* *2. Mr. Y H Malegam* *3. Mr. V K Chopra* *4. Mr. V Leeladhar* *5. Mr. P P Pattanayak* ***B: Internal Committee Member*** *6. Mr. T N Arun Kumar* *7. Mr. Milind Gadkari,* *8. Revati Kasture,* *9. Sanjay Agarwal* *10. Vijay Agarwal* ***C: Group Head*** *11. Puneet Bhatia* ***D: Analysts*** *12. Tanu Sharma*	*In the External Rating Committee Meeting held on 28/09/2016 at 3.00pm the committee accepted the recommendation and downgraded ratings.* *Email constitutes the official communication to Mercator, of the rating action by CARE Ratings (downgrade from CARE A-/ CARE A2+ to CARE BBB/ CARE A3+*
29/09/2016 at 3.24pm	*Rating letters for NCD as well as bank facilities*	*2 Letters addressed to Kishor Shah , Group CFO, Mercator Ltd. signed by Puneet Bhatia, AGM of CARE Ratings. Tanu Sharma, Manager of CARE Ratings.* *One for Credit rating for outstanding Non-convertibles Debenture Issue.*	*Email communication sent by CARE Ratings Ltd to Mercator Ltd on 29 September 2016 at 3.24pm, containing the Credit rating for outstanding Non-convertibles Debenture Issue.*

Date	*Discussion / message*	*Details of Name & Designation of persons Present in the Discussion*	*Particulars (details of matter discussed ; conclusions)*
		2nd for Credit rating for bank facilities	
05/10/2016	*Rationale-Mercator and MOGL to offer comments*	*Email from Tanu Sharma, Care Ratings to Chirag Shah, Mercator Ltd.*	*Attached the rationale of ML. with a request to offer ML's comments, if any on the rationale*
07/10/2016	*Communication of above to NSE/BSE*	*Letter dated 07/10/2016 forwarded to BSE and NSE by email at 19.25*	*The revisions in the ratings informed by company to BSE/NSE*
10/10/2016	*Rationale-Mercator and MOGL*	*Email from Chirag Shah addressed to Tanu Sharma with copy Sharmila Jain, Puneet Bhatia, Prasad Patwardhan/Mercator, Kishor Shah*	*Chirag Shah from Mercator submitted his comments on the ema Rational.*
14/10/2016	*Press Release on Care Revises the ratings on the bank facilities and NCDs of Mercator Ltd.*	*(publication of the press release on our website)*	*Published to All*

d) In view of the above, and upon perusal of the reply dated November 10, 2017 and subsequent reply dated November 10, 2021 provided by Noticee 3, it was observed that the UPSI relating to downgrading of credit rating of short term bank facilities / NCD of the Company came into existence on September 28, 2016.

e) On October 7, 2016 at 19:15 pm, the company made an announcement regarding credit rating downgrade by Care Ratings Limited. In view of the above, UPSI period for downgrading of credit rating of short term bank facilities / NCD is considered from September 28, 2016-October 7, 2016.

f) The information of downgrade of credit rating was price sensitive in terms of Clause A (3) of Schedule III of Regulation 30 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015. There was need of announcement of trading window closure for the employee of Mercator during the UPSI of downgrade of credit rating but compliance officer allegedly failed to do the same. The chronology of the event of downgrade of credit rating is as under:

Sr.	*Date*	*Details of correspondence*	*Remarks*
1	*29/09/2016 at 3.24pm*	*Email communication sent by CARE Ratings Ltd to*	*Containing the downgrading of Credit rating for outstanding for short term (from CARE A2+ to*

Sr.	*Date*	*Details of correspondence*	*Remarks*
		Mercator Ltd on 29 September 2016 at 3.24pm,	*CARE A3+) and long term bank facilities/NCDs (from CARE A- to CARE BBB)*
2	*30/09/2016*	*Atul Agarwal, Vice Chairman Resigns*	*He was in possession of UPSI*
3	*03/10/2016*	*Application submitted by Atul Agarwal*	*Regarding sale of entire family's shares*
4	*04/10/2016*	*Clearance provided to Atul Agarwal*	
5	*05/10/2016*	*Email from Tanu Sharma, Care Ratings to Chirag Shah, Mercator Ltd.*	*Attached the rationale of Mercator with a request to offer Mercator's comments, if any on the rationale.*
6	*06/10/2016*	*Atul Agarwal sold his and his wife Manjuli Agarwal's shares*	
7	*07/10/2016*	*Letter of downgrade of credit Rating forwarded to NSE/BSE at 19.25*	*After market hours*

g) *It is observed that vide email dated September 29, 2016 CARE forwarded letter to Mercator's CFO Mr. Kishore Shah informing about Downgrade of Credit Rating. This indicates that the company was aware of Downgrade of Credit Rating. The compliance officer ought to know such price sensitive information and is required to impose a trading window closure for designated person or class of designated persons who can reasonably be expected to have possession of UPSI. However, as per Corporate Announcements available for the company for the period September 29, 2016 to October 7, 2016 no announcement of trading window closure is available for Downgrade of Credit Rating. Further, compliance officer is required to disseminate promptly the UPSI that gets disclosed selectively, inadvertently or otherwise to make such information generally available. The compliance officer allegedly failed in either disseminating the above UPSI or imposing the trading window closure for the above UPSI. Thus, it is alleged that compliance officer Mr. Deepesh Joishar violated provisions of clause 4 of schedule A of Regulation 8 (1) and Clause 4 of Schedule B of sub-regulation (1) and sub-regulation (2) of regulation 9 of PIT Regulations as well as provisions of Clause 4.1, 6, 7, 8 of the Code of Conduct of Mercator.*

h) *In this regard, Atul Agarwal applied for pre-clearance for selling shares of Mercator on October 3, 2016 and got clearance on October 4, 2016. Further, Atul Agarwal remained Vice Chairman of Mercator till September 30, 2016 and ceased to be the Vice chairman with effect from October 1, 2016. Since CARE had informed about Downgrading of Rating on September 29, 2016, by virtue of being Vice chairman Mr. Atul Agarwal was ought to have knowledge of price sensitive information of Downgrading of Rating and is considered as designated person for the above information. However, Mr. Atul Agarwal still applied for pre-clearance for sale of shares of Mercator for himself and his family members on October 3, 2016. This is allegedly in violation of provision of Clause 6 of Schedule B of sub-regulation (1) and sub-regulation (2) of regulation 9 of PIT Regulations which provides that no designated person shall apply for pre-clearance of any proposed trade if such* *designated person is in possession of unpublished price sensitive information even if the trading window is not closed.*

i) *It is observed that CARE decided to downgrade Credit rating in the meeting of Internal Rating Committee held on September 28, 2016 which was communicated to Mercator on September 29, 2016 through email at 15:24. Mercator disclosed about downgrading of Credit rating to exchanges on October 7, 2016 after market hours. However, CARE issued the press release for the aforesaid downgrading on October 14, 2016 on its Website. Chronology of the aforesaid event is as under:*

Sr.	***Date***	***Correspondence***	***Remarks***
1	*28/09/2016 At 10.00 am*	*CARE's Internal Rating Committee (IC)*	*decided on the recommendation to downgrade Mercator Ratings from CARE A-/ CARE A2+ to CARE BBB/ CARE A3+*
2	*29/09/2016 at 3.24pm*	*email communication sent by CARE Ratings Ltd to Mercator Ltd on 29 September 2016 at 3.24pm,*	*Containing the Credit rating for outstanding Non-convertibles Debenture Issue.*
3	*30/09/2016*	*Atul Agarwal, Vice Chairman Resigns*	*In possession of UPSI*
4	*03/10/2016*	*Application submitted by Atul Agarwal*	*For sale of whole family shares*
5	*04/10/2016*	*Clearance provided by ML*	
6	*05/10/2016*	*Email from Tanu Sharma, Care Ratings to Chirag Shah, Mercator Ltd.*	*Attached the rationale of ML. with a request to offer ML's comments, if any on the rationale*
7	*06/10/2016*	*1. Atul Agarwal sells his and 2. Atul Agarwal's Wife Manjuli Agarwal's shares 3. ASIA sold its entire shares*	
8	*07/10/2016*	*Letter of downgrade of credit Rating forwarded to NSE/BSE at 19.25*	*After market hours*
9	*14/10/2016*	*CARE published the news on its Website through Press release*	*Took 17 days to issue the press release.*

j) *It is observed from the above table that CARE had decided to downgrade credit rating on September 28, 2016 in their internal committee meeting, and they informed the same to Mercator vide email dated October 29, 2016. Downgrading of credit rating is a price sensitive information which was published on the website of CARE on October 14, 2016, with a delay of 17 days. Downgrading of credit rating is considered to be a material and price sensitive information in terms of Clause A (3) of Schedule III of Regulation 30 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015. Thus, it is alleged that CARE should have promptly published the downgrading of rating on its website upon informing the same to avoid /misuse of information as it was a price sensitive information and by* *not doing so have allegedly violated regulation 8 of PIT Regulations and Clause 3 and 12 of regulation 13 and regulation 15 (2) of CRA Regulations.*

4. The SCN was duly delivered to the Noticees. Noticee 2 vide email dated August 21, 2022 replied to the SCN stating, inter alia, the following:

   "In the said regards, I like to submit the following

   1) The above inquiry is for period 1 July 2016 to 31 July 2016 and I was Company Secretary and Compliance office of the Mercator Limited (the Company).

   2) Post receipt of email/call from SEBI official (Ms. Sareeta Bhadange), I tried to reach out the Company to give me documents/record to verify the sequence of the events. I was informed that the landlord of the warehouse had not only shifted the record of the Mercator Limited but also destroyed/lost/misplaced/mishandled most of the records and only a very few of the total records were found there.

   3) As per policy, I have not taken any statutory/non statutory record in my custody during my tenure with the Company.

   4) From the documents which I have received along with a Show Cause Notice, I submit as follows:

   a) As part of the process any person wants to trade in the shares of the Company need to submit an application and undertaking to the Compliance officer and such submission Compliance Officer give the approval to trade. In said instance, Mr. Atul Agarwal on 3 October 2016 submitted an application for preclearance and submitted an undertaking stating that he was not in possession or privy to any Unpublished Price Sensitive Information. On 4 October 2016, the Company gave approval to Mr. Atul Agarwal to trade in the shares of the Company.

   b) Further, I can't verify any communication on downgrading Credit Rating was communicated to me and Mr. Atul Agarwal by Company officials."

5. In the interest of natural justice, the Noticees were given an opportunity of personal hearing on September 5, 2022 vide notice dated August 19, 2022. Noticee 1 vide letter dated August 29, 2022 sought inspection of documents. Accordingly, an opportunity to inspect the documents was given to Noticee 1 on September 2, 2022. The documents were inspected by Noticee 1 on the scheduled date. Noticee 1 vide letter/s dated September 5, 2022 sought for replies filed by other Noticees in the matter. Further, Noticee 1 also requested to cross examine certain people

associated with the company and Noticee 3. Noticee 1 also sought inspection of further documents. Vide email dated September 5, 2022, Noticee 1 was informed that inspection of all relevant documents relied upon in the SCN has already been provided to him. Further no statement was recorded or relied upon in the investigation. Therefore, request to cross examine cannot be acceded to.

6. The Authorised Representative (hereinafter referred to as "**AR**") of Noticee 1 vide letter dated September 19, 2022 replied to the SCN stating, inter alia, the following:
   - *Our Client as noted in the SCN itself has disassociated himself formally, fully and finally as of September 30, 2016. In fact, he had disassociated functionally and practically for all purposes since about June, 2016. Our Client though was offered the post of Vice Chairman and the stock exchanges were notified of the same vide communication dated May 27, 2016, the fact is that Our Client had categorically declined to accept such a post and function at such a post as such. He had detailed a letter dated June 29, 2016 expressly declining in writing to accept the alleged post of Vice Chairman. Subsequently, aside of various oral communications, he had also addressed an email communication on July 16, 2016 to the Executive Chairman of the Board of Directors of the Company reiterating the request for ceasing to function / associate with the Company. Almost a week prior to it, Our Client had also written on July 08, 2016 stating that he will be ceasing to function with the company as well as its group companies. Considering that Our Client was not being formally relieved even though he had ceased to function as such in relation to the affairs of the Company, he again communicated his decision through a resignation letter dated August 30, 2016. Thereafter, the Company formally released and intimated the stock exchanges the release of Our Client as such with effect from September 30, 2016.*
   - *Immediately upon formally being so released on September 30, 2016, Our Client as a matter of abundant caution applied to the Compliance Officer of the Company on October 03, 2016 for sale of all the shares that he and his family members held in the Company. It is well known that the employees of private sector do not receive retirement benefits like pension or provident fund to support themselves after retirement. Therefore, private sector employees often restructure their investments after retirement to meet their financial obligations after their salary stops. In the instant case Our Client decided to sell the shares of the Company immediately upon his cessation of his association. Realization of monies through sale of shares as such was done with the objective to meet his financial obligations after retirement while also completely disassociating himself from the company. Also, it is noteworthy that the monies so realized were substantially utilized by Our Client for the purposes of repaying the home loan availed.*

- *Considering that Our Client was undisputedly neither a director nor an employee on the date of the application for pre-clearance submitted to the Compliance Officer of the Company on October 03, 2016, no application was required to be made in law or in terms of the Code of Conduct of the Company. Annexure 4 of the SCN being the relevant portion of the Code of Conduct of Mercator Limited as supplied also does not indicate that former directors / employees are required to seek any kind of pre-clearance. Yet, Our Client as a matter of abundant caution had made such an application even though on the said date Our Client could not even be said to be a designated person / specified person. The relevant portion of the Code of Conduct states that an application for pre-clearance is required to be dealt with within a period of 3 days of the application and that if the permission is so granted trades are required to be executed within one week. Accordingly, the pre-clearance was granted within the specified time period and the trades were also executed within the specified time period even though the Code of Conduct of the Company as such was not applicable to Our Client. The fact that Our Client made an application on October 03, 2016 even though he was not required under law or Code of Conduct, additionally goes on to demonstrate that he did not do anything in surreptitious or clandestine manner, rather carrying out the trade with full disclosure.*
- *In fact, the clearance granted by the Compliance Officer of the Company further proves the affirmation on the part of the Company that Our Client was not in possession of or having access to any UPSI. The remarks contained in the SCN at various places indicating that Our Client was in possession of UPSI or that he could be considered as a designated person or that he was a connected person or that he could be reasonably expected to have possession of UPSI are totally wrong, bereft of all materials and are denied.*
- *In fact, the SCN does not even allege (and rightly so) that those officials of the Company who were dealing with or communicating with the officials of the Credit Rating Agency ("CRA") reported to Our Client in the said period. The SCN does not place reliance upon any documents/ statements which may demonstrate that a mere offer by a company to make someone as Vice- Chairman or any document providing description of role, responsibility, function, etc. Our Client is at a complete loss to comprehend the basis on which the SCN has been issued against him. Our Client certainly was not involved in any dealings in relation to the alleged UPSI or the transactions of rating which came in to existence on September 29, 2016 as per the SCN. To reiterate, Our Client was not in possession of the alleged UPSI, Our Client could not reasonably be expected to have access to the alleged UPSI and that none of the officials of the Company mentioned in the SCN reported to Our Client.*
- *Mere ipse dixit of SEBI that Our Client would have had access to all information pertaining to the Company at all times is completely incorrect. Considering that Our Client was not functioning and was also not involved in the affairs of the company as such at the relevant time,*

he was expressly excluded even to comment or determine the materiality of an event / information and such exclusion of Our Client is ex facie apparent from the disclosure made by the Company to the stock exchanges dated September 13, 2016. The said disclosure dated September 13, 2016 mentions the name of the various functionaries of the Company who would determine materiality of an event / information wherein the name / alleged designation of Our Client has been omitted.

- *Furthermore, without prejudice to the above, the SCN appears to proceed on the premise that the communication made by the Noticee No. 3 to the company on September 29, 2016 (of which Our Client was completely unaware) somehow was a price sensitive information. Considering that the alleged credit rating as done by Noticee No. 3 was a routine exercise and that information in relation to the financial position of the company was continuously and periodically kept in public for instance through quarterly disclosure of accounts inter alia for the period ended on March 31, 2016 (also approved through AGM held on July 30, 2016) as well as the accounts of the period ended June 30, 2016 and that the revision in the credit rating was not on the basis of any of the underlying factor otherwise unknown, the mere revision of the credit rating as done by one credit rating agency cannot really be said to be a material price sensitive information. In fact the said downgrade of the credit rating when formally announced by the company as well as CRA to the public at large in October, 2016 the same was completely disregarded by the public as is reflected from the trading prices of the scrip of the company. Notably as per the investigation report itself there was a rise in the trading price of the scrip rather than the downfall of the scrip. Therefore, the observation made in paragraph 4 of the SCN, being generic in nature that credit rating downgrade "can adversely impact the price of a scrip and hence considered UPSI" is incorrect in the given facts of this case.*
- *As noted above, the delay in the initiation of the proceedings by SEBI after a long lapse of more than 6 years, severely prejudices the ability of Our Client to adequately respond to the SCN and to defend himself in a fair manner. The difficulty has further been compounded by rejection of the three applications filed by Our Client in an illegal manner vide email dated September 05, 2022.*
- *Without prejudice to the aforesaid submission, Our Client submits that SEBI has already enquired into this matter and issued a letter dated March 31, 2022 bearing reference no. SEBI/HO/IVD- ID05/Mercator/13713/2022 ("Advisory Letter") wherein SEBI had alleged that Our Client's sale of shares of the Company violated PIT Regulations. SEBI advised Our Client "to be careful in future to avoid recurrence of such instances".*
- *Further the SCN proceeds on the erroneous assumption that Our Client ought to have been aware of the alleged unpublished price sensitive information (UPSI) pertaining to the downgrade of Mercator. In the absence of any evidence to suggest the same, it cannot be held*

that Our Client was aware, or ought to have been aware, of the dissemination of price sensitive information. Our Client's sale of shares of Mercator on October 6, 2016 was in furtherance of his attempt to completely dissociate himself from Mercator and it was not because of any price sensitive information which was available with him. It is an admitted fact that Our Client was not attending meetings or was part of the company discussions pursuant to his resignation. Hence, presumption of Our Client possessing UPSI is a false and baseless allegation. There is no material to show that Our Client had access to UPSI. As in the definition reproduced above of 'connected persons' – the person should be reasonably be expected to be in possession of UPSI, which cannot be said from the facts in this matter.

7. Pursuant to the receipt of the reply, another opportunity of personal hearing was given to Noticee 1 on October 10, 2022 vide letter dated September 29, 2022. Noticee 1 vide email dated October 6, 2022 sought an adjournment. Acceding to his request final opportunity of personal hearing was given to Noticee 1 on October 17, 2022. The AR of Noticee 1 appeared on the scheduled date and reiterated the submissions made vide letter dated September 19, 2022. He further submitted written statement vide letter dated October 27, 2022 stating, inter alia, the following:

- *SEBI has already conducted an enquiry into the present matter and issued an administrative warning letter dated March 31, 2022. In the said letter, SEBI had alleged that Our Client's sale of shares of the Company violated the PIT Regulations and had advised Our Client "to be careful in future to avoid recurrence of such instances".*
- *Our Client resigned from the Company on August 30, 2016 and was relieved on September 30, 2016. Even prior to this, Our Client had not been involved in the affairs of the Company for a long time and had informed the Executive Chairman of the Company on numerous instances about his intention to disassociate from the Company.*
- *Even as per the disclosure dated September 13, 2016 filed by the Company with the stock exchanges, Our Client's name was not in the list of individuals who were authorised to determine the materiality of an event or information. Further, Our Client was not in India from September 16, 2016 to September 27, 2016 and even after returning to India on September 27, 2016, he did not attend office. Thus, Our Client had no knowledge whatsoever of the alleged UPSI communicated to the Company allegedly on September 29, 2016.*
- *Additionally, there is no communication made to Our Client informing him about the alleged UPSI. Under the PIT Regulations, information is to be shared on a need-to-know basis. Since Our Client had resigned from the Company, it cannot be presumed that price sensitive information was shared with him.*
- *It is settled law that a charge of insider trading is extremely serious, and therefore, any finding of possession of UPSI ought to be based on cogent evidence, and not on*

conjectures and surmises. A person cannot be presumed to be in possession of UPSI merely by virtue of their employment.

- *The credit rating exercise carried out by Noticee No. 3 in the SCN was a routine activity. The information pertaining to the financial position of the Company was continuously released in the public domain, through statements such as quarterly disclosures of accounts. The mere revision of ratings by an agency cannot be said to be price sensitive information.*
- *The Code of Conduct of the Company did not require former directors or employees to seek pre- clearance. Since Our Client was not associated with the Company in any manner after September 30, 2016, he was not required to obtain any pre-clearance for the sale of shares held by him and his family. It is only as a matter of abundant caution that he applied to the Compliance Officer of the Company to seek pre-clearance sale.*
- *It is submitted that Our Client undertook the trade to restructure his finances and to support himself post-retirement. Further, the proceeds from the sale of shares were substantially utilized for the purpose of repayment of home loan which had been availed by him.*
- *It is further submitted that Our Client acquired the shares during his 28 years of employment with the Company. Neither him nor his family members sold even a single share of the Company during his entire career of more than 28 years.*

8. Noticee 2 appeared on September 5, 2022 through video-conferencing mode and reiterated the submissions made vide email dated August 21, 2022.

9. Noticee 3, vide letter dated August 20, 2022 and email dated August 23, 2022 requested for inspection of documents. Acceding to its request an opportunity of inspection of documents was given to it on August 30, 2022. The documents were inspected by the Noticee on the scheduled date. Pursuant to the inspection of documents, the Noticee was advised to file its reply on or before September 20, 2022. Vide email dated September 20, 2022, the Noticee sought further time to submit reply. Accordingly, time was given till October 4, 2022. The Noticee submitted its reply vide letter dated September 30, 2022 stating, inter alia, the following:

    - *To invoke the inapplicable PIT Regulations against a credit rating agency for every listed company whose credit is rated, would create chaos in the credit rating industry. Observations of delay in dissemination routinely form part of inspection reports of rating agencies across the board. If each of these were to be treated as violation of the PIT Regulations, it would have chaotic consequences- and that too when the PIT Regulations govern the issuer company whose securities are listed, and not every service provider to every listed company whose securities are listed.*

- *Prior to 2017, our client reviewed ratings assigned to securities/instruments issued by Companies in meetings of its Internal Rating Committee and External Rating Committee. On the basis of a review of available records, at this substantial distance in time, we have recreated the events that transpired in relation to the review of the rating given to Mercator and the downgrade that is subject matter of the SCN.*
- *On September 28, 2016, the Internal Rating Committee of our client held a meeting (at around lO am) regarding the recommendation to downgrade the rating assigned:*
    a. *to short term bank facilities availed by Mercator from CARE A2+ (signifying 'Strong degree of safety regarding timely servicing of short-term financial obligations') to CARE A3+ (signifying 'Moderate degree of safety with regarding timely servicing of short-term financial obligations'); and*
    b. *to long term bank facilities / NCDs from CARE A- (signifying 'Adequate degree of safety regarding timely servicing of long-term financial obligations') to CARE BBB (signifying 'Moderate degree of safety regarding timely servicing of long term financial obligations').*

- *At 3 pm on the said date, the External Rating Committee also held a meeting and accepted the recommendation to downgrade the rating for Mercator.*
- *This decision was conveyed to Mercator vide letter dated September 29, 2016, addressed to Mr. Kishor Shah, Group CFO of Mercator by email sent at 3.24pmpm on the same date.*
- *Vide email dated October 1, 2016, Mr. Prasad Patwardhan of Mercator Limited asked our client's team to have a call with him regarding the ratings sent to them. The said call took place on October 3, 2016, and Mercator sought a detailed rationale behind the credit ratings.*
- *The dealing official from our client's team, Ms. Tanu Sharma, prepared the rationale and sought the feedback from higher officials. After incorporating the changes suggested by the superiors, vide email dated October 5, 2016, Ms. Sharma shared the rationale behind the credit rating with Mr. Chirag Shah of Mercator, and sought his inputs on the same.*

- *On October 7, 2016, Mercator had a meeting with our client at our client's office regarding the rating action in detail. During this meeting, Mercator conveyed its intention to appeal against the proposed credit rating.*
- *However, it appears that Mercator did not follow through its intention as evidenced by their decision to inform the NSE and BSE regarding the rating change on the same day and made the announcement. Therefore, at this stage itself, the credit rating became generally available information.*
- *It is evident from the stock exchanges' websites that the intimation was made on October 7, 2016 at 7.15pm. After the announcement was made, Mercator subsequently confirmed their acceptance of the rating to our client vide email dated October 10, 2016, sent at 4.08pm. Accordingly, the usual approach of publishing our client's press release with the rating rationale was made completed by our client, which was done on October 14, 2016.*
- *The chronology of events from the decision of our client to downgrade the credit ratings and the press release regarding the new ratings may be summarized as follows:*

Date	**Action/ Event**
28.09.2016	*Internal Rating committee and External Committees of CARE decided to downgrade the credit rating re: Mercator Limited*
29.09.2016	*The letter informing downgrade in rating was sent to Mercator*
1.10.2016	*SATURDAY - HOLIDAY* *Mr. Prasad Patwardhan of Mercator sent an email to Ms. Tanu Sharma of CARE stating that he would call on Monday, 3 Oct 2016 to discuss the rating on the NCD issue of Mercator Ltd*
2.10.2016	*SUNDAY - HOLIDAY*
3.10.2016	*During telephonic discussions the company stated that they are not agreeable to the rating action. They asked the CARE team for detailed Rationale.*
4/ 5.10.2016	*Feedback sought by Ms. Tanu Sharma on the rationale from superiors and the same was incorporated in the document.*
5.10.2016	*Ms. Tanu Sharma sent an email to Mr. Chirag Shah of Mercator with pdf version of press release (brief rationale) and detailed rationale attached as a single document, asking for feedback.*

7.10.2016	*Meeting at CARE office between senior officials from CARE and Mercator to discuss the downgrade rating action. In the meeting CARE explained the company officials about the rationale for the rating action in detail. The company wanted to represent their case by submitting an appeal. However, they changed their decision and informed the BSE and NSE regarding the revised credit ratings.*
8-9.10.2016	*SATURDAY and SUNDAY- HOLIDAYS*
10.10.2016	*Instead of submitting their appeal, the company indicated their acceptance of the rating action vide the email from Chirag Shah who emailed Tanu Sharma his observations on the rationale.*
11.10.2016	*DUSSHERA HOLIDAY*
14.10.2016	*Press Release published by CARE*

- *Our client submits that in the financial year 2016-17, out of over 4200 companies, whose ratings were regularly assigned by our client, about 159 companies had appealed against the rating assigned to them and the same were published after at an average of 27 days from the date of such rating. For remaining around 4000 cases, the average difference between the date of rating and the date of press release was 17 days.*
- *Our client has been submitting the Standard Operating Procedure ("SOP") for credit rating on regular basis to SEBI and our client has been subject to periodic inspections by SEBI. However, no observations regarding delay in publication of credit ratings was ever raised by SEBI. The present proceedings have been initiated 6 years after the press release made by our client in a bona fide and fair manner after giving a reasonable time to Mercator to contest the revised credit ratings. Our client submits that they are prejudiced by the delay and laches and these proceedings ought to be terminated qua them on this ground alone.*

- *It is not disputed that a downgrade in credit ratings is price sensitive information and under the provisions of the Securities and Exchange Board of India (Listing Obligation and Disclosure Requirements) Regulations, 2015 ("LODR Regulations"), a listed entity such as Mercator may have been required to disclose the same without delay.*

- *It is also not disputed that the PIT Regulations requ1res every listed Company to formulate and publish a code of practices and procedures for fair disclosure of Unpublished Price Sensitive Information ("UPSI"), but such information must relate to the information about the listed entity. In other words, the listed company must disclose information about itself.*
- *Our client has indeed formulated and published a code of fair disclosure as required under the PIT Regulations. Such code of fair disclosure covers information relating to our client, which is itself a listed company.*
- *Our client has, from time to time, prepared Rating Manuals setting out the Rating process and methodology. The Manual which was applicable for the relevant period, i.e., September - October 2016 inter alia, provided that once the rating is determined, the company is notified of the rating by means of a 'rating letter'. The major considerations supporting the rating are given to the company in the form of a 'rationale' for the rating. Our client gives two weeks' time from the date of notifying the company of the rating to accept the rating. Once the rating is accepted, our client publishes this information in maJor newspapers and financial media, wherever applicable (credit analysis ratings, ratings of parallel marketers and bank loan ratings are not disseminated through the media). If the company is not satisfied with the rating assigned, the company may provide with additional data and appeal to our client to take a review of the rating.*
- *Each such representation is placed before the Rating Committee, which considers the same and reviews the rating. The decision of the Rating Committee is again notified to the company, who has the option to accept or reject the rating. If the company wishes not to accept the rating, the same is not published and is kept strictly confidential and is also not kept under surveillance. The manuals prepared by our client were submitted to SEBI from time to time.*
- *In this light, the following submissions are made:*
  - *(a) Thus, the word "promptly" as used in Regulation 15 (2) of the CRA Regulations has to be interpreted in the context of compliance with the Rating Manual.*

(b) *The procedure of providing Mercator with an opportunity to contest the rating and its rationale has to be complied with. This procedure is not even disputed by SEBI and is in fact accepted by SEBI.*

(c) *It is only vide Circular dated June 30, 2017 that SEBI stipulated timelines for issuing the press release regarding rating and changes in the same. Even in the said circular, the CRA is given time of 5 working days of the Rating Committee Meeting to publish the rating and inform the stock exchange regarding the same.*

(d) *Moreover, SEBI has accepted the right of client to challenge the rating and as per a subsequent circular made it mandatory for the rating agencies to constitute appeals committee and review its decision.*

(e) *Thus, the word "promptly" cannot be taken to mean that any deadline can be inferred without objective tests of following the procedure. SEBI's own circular which came later in time provided for five working days.*

(f) *Therefore, the insinuation that our client failed to comply with Regulation 15 (2) of the CRA Regulations because they did not disclose the revised ratings on the date of the meeting i.e. September 29, 2016 1s erroneous and unsustainable. In view of the above, the insinuation that our client failed to comply with Clause 3 of the Code of Conduct for CRAs is erroneous and unsustainable.*

(g) *There is no allegation that the press release published by our client had any untrue statement or that the same suppressed any material fact or made any misrepresentation. Therefore, the allegation that our client violated Clause 12 of the Code of Conduct for CRAs is erroneous and unsustainable.*

10. Another opportunity of personal hearing was given to Noticee 3 to appear before the undersigned on October 10, 2022. Vide email dated October 3, 2022, Noticee 3 sought an adjournment. Final opportunity of personal hearing was given to Noticee 3 on October 17, 2022. Noticee 3 appeared on the scheduled date and reiterated the submissions made vide letter dated September 30, 2022. Thereafter, Noticee 3 sent further submissions vide email dated October 20, 2022 forwarding the copy of the email received from Mercator dated October 10, 2016 and stating inter alia, the following:

- *"The Rating Letter/s are shared with the client before a press release is issued regarding the same. The Client revert with comments or suggestions or seeks a discussion.*
- *Thereafter, the draft rating rationale is sent to the client and their comments are sought. This is done to check for factual inaccuracies if any; which may lead to a change in the rating rationale and/ or the rating itself. In this case, the draft rating rationale was sent to the client on 5.10.2016; but the client replied with their comments citing factual inaccuracies by their email of 10.10.2016 after they had informed the stock exchanges regarding the revision in rating.*
- *Based on the client's comments, changes may be incorporated in the Rating Rationale and the final Rating Rationale is sent to the client. In this case, since the client had themselves disclosed the revision in rating to the stock exchanges on 7.10.2016, press release was issued on 14.10.2016."*

CONSIDERATION OF ISSUES AND FINDINGS

11. The issues that arise for consideration in the instant matter are:
    (a) Whether Noticee 1 has violated clause 6 of Schedule B of sub-regulation (1) and sub-regulation (2) of regulation 9 of PIT Regulations; whether Noticee 2 has violated clause 4 of Schedule A of Regulation 8(1) and clause 4 of Schedule B of sub-regulation (1) and sub-regulation (2) of regulation 9 of PIT Regulations and Clause 4.1, 6, 7, 8 of the Code of Conduct of Mercator Ltd.; whether Noticee 3 has violated regulation 8 of PIT Regulations and Clause 3 and 12 of regulation 13 and regulation 15 (2) of CRA Regulations;
    (b) Do the violations, if any, on the part of the Noticees attract monetary penalty under section 15HB of SEBI Act?; and,
    (c) If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15J of the SEBI Act?

12. The relevant provisions are mentioned hereunder:

PIT Regulations

Code of Fair Disclosure.
8.(1) The board of directors of every company, whose securities are listed on a stock exchange, shall formulate and publish on its official website, a code of practices and procedures for fair disclosure of unpublished price sensitive information that it would follow in order to adhere to each of the principles set out in Schedule A to these regulations, without diluting the provisions of these regulations in any manner.
Clause 4 of Schedule A of Regulation 8 (1)
Clause 4: Prompt dissemination of unpublished price sensitive information that gets disclosed selectively, inadvertently or otherwise to make such information generally available.

Clause 4 of Schedule B of sub-regulation (1) and sub-regulation (2) of regulation 9 of PIT Regulations
4.(1) Designated persons may execute trades subject to compliance with these regulations. Towards this end, a notional trading window shall be used as an instrument of monitoring trading by the designated persons. The trading window shall be closed when the compliance officer determines that a designated person or class of designated persons can reasonably be expected to have possession of unpublished price sensitive information. Such closure shall be imposed in relation to such securities to which such unpublished price sensitive information relates. Designated persons and their immediate relatives shall not trade in securities when the trading window is closed.
(2) Trading restriction period shall be made applicable from the end of every quarter till 48 hours after the declaration of financial results. The gap between clearance of accounts by audit committee and board meeting should be as narrow as possible and preferably on the same day to avoid leakage of material information.]
(3) The trading window restrictions mentioned in sub-clause (1) shall not apply in respect of –
(a) transactions specified in clauses (i) to (iv) and (vi) of the proviso to sub-regulation (1) of regulation 4 and in respect of a ledge of shares for a bonafide purpose such as raising of funds, subject to pre-clearance by the compliance officer and compliance with the respective regulations made by the Board;
(b)transactions which are undertaken in accordance with respective regulations made by the Board such as acquisition by conversion of warrants or debentures, subscribing to rights issue, further public issue, preferential allotment or tendering of shares in a buy-back offer, open offer, delisting offer] [or transactions which are undertaken through such other mechanism as may be specified by the Board from time to time].

Clause 6 of Schedule B of sub-regulation (1) and sub-regulation (2) of regulation 9 of PIT Regulations

When the trading window is open, trading by designated persons shall be subject to pre-clearance by the compliance officer, if the value of the proposed trades is above such thresholds as the board of directors may stipulate.

<u>Clause 3 and 12 of Regulation 13 of CRA Regulations</u>

CODE OF CONDUCT FOR CREDIT RATING AGENCIES [REGULATION 13] CODE OF CONDUCT

3. A credit rating agency shall fulfil its obligations in a prompt, ethical and professional manner.

12. A credit rating agency shall not make any untrue statement, suppress any material fact or make any misrepresentation in any documents, reports, papers or Information furnished to the board, stock exchange or public at large.

<u>Regulation 15 (2) of CRA Regulations.</u>

Monitoring of ratings

15.*(2) Every credit rating agency shall disseminate information regarding newly assigned ratings, and changes in earlier rating promptly through press releases and websites, and, in the case of securities issued by listed companies, such information shall also be provided simultaneously to the concerned regional stock exchange and to all the stock exchanges where the said securities are listed.*

<u>FINDINGS</u>

Noticee 1

13. Before proceeding with the matter on merits, I would first deal with the contention of delay in the initiation of proceedings by SEBI after a lapse of more than 6 years. From the material available on record it is observed that investigation in the matter was initiated pursuant to the approval of the recommendation dated May 10, 2018 by Joint Scrutiny Committee and Investigating Authority (hereinafter referred to as "**IA**") in the matter was appointed on July 23, 2018. Subsequently, due to internal transfer of officers, another IA was appointed vide order/s dated September 18, 2020 and December 1, 2020. During the process of investigation, emails were sent to various entities seeking information and analyzing the replies received. Investigation in the matter was completed and enforcement actions were approved in the matter on March 25, 2022. The undersigned was appointed as the Adjudicating Officer in the matter on April 20, 2022. There after SCN was issued on July 29, 2022. Considering the serious charge of violation of PIT Regulations was analysed, I do not find that there is any inordinate delay in the matter. In this regard, I am inclined to rely upon the decision of Hon'ble SAT in the matter of Bipin R Vora vs SEBI (order dated March 22, 2006) held that:

"As regards the plea of delay and latches and submission that the show cause notice is barred by limitation, I do not find any merit in these contentions as the time and efforts involved in an investigation though may vary from case to case, generally investigations per-se is a time consuming process which invariably involve collection, scrutiny and careful examination of voluminous records/ order-trade details of all the concerned including the exchanges/recording of statements etc. 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".

14. In view of the above, I conclude that there is no merit in the submission that proceedings have been initiated after long lapse of time.

15. Further, the AR of Noticee 1 had filed three applications which were: (i) Application seeking direction for production of documents and/ or issuing summons for production of documents by SEBI; (ii) Application for seeking copies of replies and documents filed with SEBI by other Noticees and (iii) Application to summon certain persons and to cross-examine them. It is observed that inspection of documents was conducted on September 2, 2022. During the inspection, all the relevant documents replied upon for framing charges in respect of Noticee 1 was provided to him. Noticee 1 sought copies of replies of the other Noticees in the matter. As observed, the charges in respect of each Noticee is distinct and not inter-connected. Further, Noticee 1 did not give any reason or justification for seeking copies of replies of other Noticees. It is further observed that no statements were recorded or replied upon. Therefore, the question of providing an opportunity of cross-examination does not arise. It is also observed that vide email dated September 5, 2022, Noticee 1 was already apprised of the same.

16. I have gone through the submissions made by the Noticees and the other material on record and I now proceed to deal with the same. It is alleged that Noticee 1 had applied for pre-clearance being in possession of unpublished price sensitive information even if the trading window was not closed and violated clause 6 of schedule B of sub-regulation (1) and sub-regulation (2) of regulation 9 of PIT

Regulations. Noticee 3 had approved the credit rating downgrade of Mercator on September 28, 2016 and communicated the same to Mercator on September 29, 2016. Subsequently, Mercator announced said rating to stock exchanges on October 07, 2016 (after market hours). The company informed to stock exchanges that CARE has revised its rating for short term (from CARE A2+ to CARE A3+) and long term bank facilities/NCDs (from CARE A- to CARE BBB). The downgrading of credit rating is UPSI in terms of Clause A (3) of Schedule III of Regulation 30 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015. As the information came into existence on September 28, 2016 and disclosure to the stock exchanges was done on October 7, 2016, the period from September 28, 2016 to October 7, 2016 can be termed as UPSI period.

17. The chronology of events in this regard is as under:

Sr.	Date	Details of correspondence	Remarks
1	28/09/2016 At 10.00 am	CARE's Internal Rating Committee (IC) decided on the recommendation to downgrade Mercator Ratings from CARE A-/ CARE A2+ to CARE BBB/ CARE A3+	In the External Rating Committee Meeting held on 28/09/2016 at 3.00pm the committee accepted the recommendation and downgraded ratings.
2	29/09/2016 at 3.24pm	Email communication sent by CARE Ratings Ltd to Mercator Ltd on 29 September 2016 at 3.24pm,	Containing the downgrading of Credit rating for outstanding for short term (from CARE A2+ to CARE A3+) and long term bank facilities/NCDs (from CARE A- to CARE BBB)
3	30/09/2016	Atul Agarwal, Vice Chairman Resigns	He was allegedly in possession of UPSI
4	03/10/2016	Application submitted by Atul Agarwal	Regarding sale of entire family's shares
5	04/10/2016	Clearance provided to Atul Agarwal	
6	05/10/2016	Email from Tanu Sharma, Care Ratings to Chirag Shah, Mercator Ltd.	Attached the rationale of Mercator with a request to offer Mercator's comments, if any on the rationale.
7	06/10/2016	Atul Agarwal sold his and his wife Manjuli Agarwal's shares	

8	07/10/2016	Letter of downgrade of credit Rating forwarded to NSE/BSE at 19.25	After market hours

18. From the information available on record I find that Noticee 1 was offered the post of Vice Chairman and the stock exchanges were notified of the same vide communication dated May 27, 2016. Noticee 1, vide letter dated June 29, 2016 declined the said offer. Further vide email dated July 16, 2016 once again expressed his unwillingness to continue as the Vice Chairman and director of Mercator. Noticee 1 submitted his final resignation letter dated August 30, 2016 which was accepted by the company and vide letter dated August 31, 2016, the stock exchanges were intimated that from close of business hours on September 30, 2016 Noticee 1 shall cease to be the Executive Vice Chairman and director of Mercator. Accordingly, Noticee 1 resigned from his post as Vice Chairman on September 30, 2016.

19. It is observed that Noticee 3 had approved the credit rating downgrade of Mercator and communicated the same to the company on September 29, 2016. Investigation had observed that since Noticee 3 had informed about downgrading of rating on September 29, 2016, by virtue of being Vice chairman Noticee 1 ought to have knowledge of price sensitive information of downgrading of rating and is considered as designated person for the above information. I observe that there is no evidence on record to show that the UPSI had reached Noticee 1 during his tenure as Vice Chairman. Further, I note that the letter/ email dated September 29, 2016 through which the company was informed about the UPSI was not addressed to the Noticee. As it was already disclosed that Noticee 1 shall cease to be the Executive Vice Chairman and director from close of September 30, 2016, it is unlikely that he will be kept abreast of such a sensitive information. Further, it is observed vide letter dated September 13, 2016, Noticee 2 in his capacity of Company Secretary of Mercator submitted details of the persons authorized to determine materiality of an event or information and making disclosure to stock exchange. The name of Noticee 1 does not appear in the list. Therefore, in absence of any evidence on record to show that Noticee 1 received the information pertaining to downgrading of credit rating, I am inclined to accept the submissions of Noticee 1 that he was

not in possession of the UPSI. It is observed that he had applied for pre-clearance on October 3, 2016 when he was not associated with the company in any manner. As he was not in possession of the UPSI, while seeking pre-clearance, the violation of clause 6 of Schedule B of sub-regulation (1) and sub-regulation (2) of regulation 9 of PIT Regulations against Noticee 1 does not stand established. Further, he had already resigned from Mercator on September 30, 2016.

Noticee 2

20. It is alleged Noticee 2 being insider having possession of UPSI and Compliance Officer of Mercator failed to disseminate promptly the UPSI. He further provided pre-clearance to Noticee 1 and failed to announce trading window closure for the UPSI of downgrade of credit rating. These actions by Noticee 2 was allegedly in violation of clause 4 of schedule A of Regulation 8 (1) and Clause 4 of Schedule B of sub-regulation (1) and sub-regulation (2) of regulation 9 of PIT Regulations as well as provisions of Clause 4.1, 6, 7, 8 of the Code of Conduct of Mercator.

21. It is observed that vide email dated September 29, 2016 Noticee 3 forwarded letter to Mercator's CFO Mr. Kishore Shah informing about Downgrade of Credit Rating. This indicates that the company was aware of downgrade of Credit Rating. Further vide email dated October 5, 2016, Noticee 3 forwarded the rationale for the downgrade of credit rating seeking comments from Mercator. On October 7, 2016, a meeting was conducted between senior officials of Mercator and Noticee 3 to discuss the downgrade rating action. Mercator wanted to represent its case by submitting an appeal. However, it changed its mind and vide letter dated October 7, 2016 signed by Noticee 2 in his capacity of Compliance Officer informed BSE and NSE of the revision of its credit rating. In view of the above I find that there was no delay on the part of Noticee 2 in disseminating the information. Hence, the allegation of violation of clause 4 of schedule A of regulation 8(1) of PIT regulations does not stand established.

22. Noticee 2, being the compliance officer was responsible to impose a trading window closure when there is any UPSI for designated person or class of designated persons who can reasonably be expected to have possession of UPSI.

Further it is observed from the list mentioned in the letter dated September 13, 2016 written by Noticee 2 to the stock exchanges that being the Compliance Officer of Mercator he was one of the persons along with others authorized to make disclosures to stock exchanges after receiving material information. As per the PIT Regulations and Code of Conduct of Mercator, the trading window shall be closed when the Compliance Officer determines that a designated person or class of designated persons can reasonably be expected to have possession of UPSI. However, it is observed that the Noticee 2 failed to announce closure of the trading window during the UPSI period when the credit rating of Mercator was downgraded which is a price sensitive information. No trading window closure information was given to the exchanges by Noticee 2. In view of the above, I find that the allegation of violation of clause 4 of Schedule B of sub-regulation (1) and sub-regulation (2) of regulation 9 of PIT Regulations and clause 7 of the Code of Conduct of Mercator stand established.

23. It was further alleged in the SCN that Noticee 1 who was the vice chairman of Mercator and resigned on September 30, 2016 had applied for pre-clearance on October 3, 2016 which was provided to him on October 4, 2016. As discussed in paragraph 19, Noticee 1 was not in possession of UPSI when he had sought for pre-clearance. Noticee 2 submitted that prior to giving the pre-clearance he had obtained a declaration stating that Noticee 1 was not in possession or privy to any UPSI. Further Noticee 1 had already resigned from Mercator on September 30, 2016. When the trading window is open, designated person may trade subject to receiving pre-clearance from the Compliance Officer who may seek declaration that the designated person is not in possession of any UPSI. As Noticee 2 had given the pre-clearance following the provisions of law, the allegation of violation of clause 8 of the Code of Conduct of Mercator does not stand established.

24. As already discussed in paragraph 19, Noticee 1 was not in possession of UPSI. Further, there is no allegation with respect to the submission/ non-submission of trading plan regarding transactions to be undertaken by any insider. Hence the alleged violation of clause 4.1 and 6 of the Code of Conduct of Mercator does not apply.

Noticee 3

25. It is alleged that Noticee 3 delayed in publishing information on website of credit rating agency which is allegedly in violation of regulation 8 of PIT Regulations and Clause 3 and 12 of regulation 13 and regulation 15 (2) of CRA Regulations. From the material available on record, it is observed that Noticee 3 is a listed company which is the second largest credit rating agency in India in terms of income from rating. It had approved the credit rating downgrade of Mercator on September 28, 2016 and communicated the same to Mercator on September 29, 2016. Subsequently, Mercator announced said rating to stock exchanges on October 07, 2016 (after market hours). As per Noticee 3, the rating was revised largely due to deterioration in the capital structure due to losses and onetime impairment/provision on account underperformance and sale of the dry bulk subsidiary Mercator Lines (Singapore) Limited.

26. It is alleged in the SCN that Noticee 3 failed to promptly publish the downgrading of rating on its website upon informing the same to avoid misuse of information as it was a price sensitive information and by not doing so have violated regulation 8 of PIT Regulations and Clause 3 and 12 of regulation 13 and regulation 15 (2) of CRA Regulations. Regulation 8 of PIT Regulations states that the board of directors of listed company shall formulate and publish on its official website, a code of practices and procedures for fair disclosure of UPSI. I observe from the website of Noticee 3 that it has in place a code of practices and procedures for fair disclosure of UPSI. It cannot be expected that Noticee 3 shall publish on its official website the code of practices and procedures for fair disclosure of UPSI that ought to be followed by its client which is a listed entity. Therefore, I find that the allegation of violation of regulation 8 of PIT regulations by Noticee 3 does not stand established.

27. In regard to delay in publishing the downgrading of rating, I note that Noticee 3 had acted as per the internal manual formulated by it. As per the said manual the following timelines are prescribed:

Intimation of rating	T day
Invoice sent	(T + 1) day (fee sheet to be submitted

	to accounts)
Rationale	(T+5) day
Draft Press Release	(T+10) day [subject to acceptance of rating]
Press Release	(T+15) day or post confirmation from the company whichever is earlier
Care view	(T+30) day

28. It is observed that Noticee 3 had intimated the company about the downgrading of the credit rating on September 29, 2016 and subsequently gave the rationale on October 5, 2016. The company disclosed about the downgrading of the credit rating to the stock exchanges on October 7, 2016 and subsequently, Noticee 3 published the news on its website on October 14, 2016. CRA regulations prescribe that every credit rating agency shall disseminate information regarding new ratings promptly through press releases and websites. However, I note that no specific timeline is mentioned in the CRA Regulations for dissemination of information through press release and websites. Black's Law Dictionary defines prompt as "*ready and quick to act as occasion demands*". It further states "*to do something "promptly" is to do it without delay and with reasonable speed*".

29. In the instant matter, Noticee 3 submitted that it had abided by its internal manual. On perusal of the internal manual it is observed that press release of the rating is to be done on *"(T+15) day or post confirmation from the company <u>whichever is earlier</u>*". The information of credit rating downgrade was shared with Mercator on September 29, 2016. It is observed that Mercator confirmed the rating and made disclosure to the stock exchanges on October 7, 2016. Further, vide email dated October 10, 2016, Mercator made some changes in the rationale provided by Noticee 3. October 11, 2016 was a declared holiday on account of Dussehra. Accordingly, Noticee 3 was required to immediately make the press release i.e. on October 12, 2016. However, the press release was made on October 14, 2016. The chronology of the events is given in the following table:

Date	Event
28.09.2016	CARE decided to downgrade the credit rating of Mercator
29.09.2016	The letter informing downgrade in rating was sent to Mercator
03.10.2016	During telephonic conversation Mercator informed Noticee 3 that it is not agreeable with the downgrade of rating and asked for detailed rationale
05.10.2016	Detailed rationale was sent to Mercator seeking their feedback
07.10.2016	Meeting between senior officials of Mercator and Noticee 3 took place where Mercator expressed its desire to file for appeal. However, Mercator changed its mind and informed BSE and NSE about the credit rating downgrade.
08.10.2016 – 09.10.2016	SATURDAY and SUNDAY
10.10.2016	Mercator sent its feedback on the rationale
11.10.2016	DUSSEHRA HOLIDAY
14.10.2016	Press release published by Noticee 3

30. From the above table it is observed that Mercator had informed BSE and NSE about the credit rating downgrade on October 7, 2016 and given the feedback on the rationale provided by Noticee 3 vide its email dated October 10, 2016. Following the internal manual and the CRA Regulations, Noticee 3 was required to make the press release promptly post the confirmation on October 10, 2016 i.e. on October 12, 2016. However, the press release was done after 2 working days. Therefore, in my view Noticee 3 made the press release after delay. By publishing the news of downgrading of credit rating with a delay, Noticee 3 had suppressed

material fact. In view of the above, I find that Noticee 3 is in violation of clause 3 and 12 of regulation 13 and regulation 15(2) of CRA Regulations.

31. From the foregoing paragraphs it is concluded that Noticee 2 has violated clause 4 of Schedule B of sub-regulation (1) and sub-regulation (2) of regulation 9 of PIT Regulations and clause 7 of the Code of Conduct of Mercator and Noticee has violated clause 3 and 12 of regulation 13 and regulation 15(2) of CRA Regulations.

Issue II: Do the violations, if any, on the part of the Noticees attract monetary penalty under section 15HB of SEBI Act?

32. In view of the violation as established above in respect to Noticee 2 and Noticee 3, I refer to the order of the Hon'ble Supreme Court of India in the matter of SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) which 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 and hence the intention of the parties committing such violation becomes wholly irrelevant…".*

33. In view of the above, I am convinced that it is a fit case for imposition of monetary penalty on Noticee 2 and Noticee 3 under the provisions of section 15HB of the SEBI Act, which reads as under:

<u>SEBI Act</u>

"Penalty for contravention where no separate penalty has been provided.
15HB. Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees."

34. While determining the quantum of penalty under section 15HB of the SEBI Act, it is important to consider the relevant factors as stipulated in the section 15J of the SEBI Act which reads as under:-

Factors to be taken into account while adjudging quantum of penalty.

15J. While adjudging quantum of penalty under 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.

35. I note that the available records do not quantify the amount of profits made by Noticee 2 and Noticee 3 or losses suffered by the investors due to violations by Noticee 2 and Noticee 3 in the instant case. However, I cannot ignore the seriousness of violation involved in the matter. Noticee 2 in possession of UPSI ought to have closed the trading window to prohibit the designated persons from taking advantage of UPSI. In regard to Noticee 3, I find that being a registered intermediary, it is required to comply with the various Circulars and Rules and Regulations as laid down by the Regulator. The very purpose of the said provisions is to deter wrong doing and promote ethical conduct in the securities market.

Issue III: If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors mentioned in section 15J of the SEBI Act?

<u>ORDER</u>

36. Having considered all the facts and circumstances of the case, the material available on record, the submissions made by the Noticees and also the factors mentioned in section 15J of the SEBI Act and in exercise of the powers conferred upon me under section 15-I of the SEBI Act read with Rule 5 of the AO Rules, I hereby impose a penalty of Rs. 2,00,000/- (Rupees Two Lakh only) on Noticee 2 and a penalty of Rs. 2,00,000/- (Rupees Two Lakh only) on Noticee 3 under the provisions of section 15HB of the SEBI Act. I am of the view that the said penalty is commensurate with the lapse/omission on the part of Noticee 2 and Noticee 3.

37. Noticee 2 and Noticee 3 shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through online

payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT → Orders → Orders of AO → PAY NOW

38. The aforesaid Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to "The Division Chief (Enforcement Department 1 DRA-4), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051." The Noticee shall also provide the following details while forwarding DD / payment information:
    - Name and PAN of the Noticee
    - Name of the case / matter
    - Purpose of Payment – Payment of penalty under AO proceedings
    - Bank Name and Account Number
    - Transaction Number

39. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.

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

Date: October 31, 2022	**BARNALI MUKHERJEE**
Place: Mumbai	**ADJUDICATING OFFICER**