BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER: Order/MC/VS/2022-23/15935-15937]

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

In respect of –

1. **Subex Limited** (PAN: AABCS9255R) having address at Subex Limited, Pritech Park – SEZ, Block - 09, 4th floor, B wing, Survey. No. 51 to 64/4, Outer Ring Road, Bellandur Village, Varthur Hobli, Bengaluru-560 103.

2. **Mr. G.V. Krishnakanth** (PAN: AKSPM6451B) c/o Subex Limited, Pritech Park – SEZ, Block - 09, 4th floor, B wing, Survey. No. 51 to 64/4, Outer Ring Road, Bellandur Village, Varthur Hobli, Bengaluru-560 103

3. **Mr. Subash Menon** (PAN: AATPM5809J) having address at 86/1, Nandidurga Road, Benson Town, Bangalore 560046

In the matter of Subex Ltd.

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") initiated adjudication proceedings against Subex Limited ("**Noticee 1"**), G.V. Krishnakanth ("**Noticee 2**") and Subash Menon ("**Noticee 3**") hereinafter collectively referred to as 'Noticees' under Section 15HB of SEBI Act of the Securities and Exchange Board of India Act, 1992 ("**the SEBI Act**") for alleged violations of the SEBI (Prohibition of Insider Trading) Regulations, 2015 ("**2015 PIT Regulations**") and the SEBI Act, into trading in the scrip of Subex Limited

(hereinafter referred to as “**Subex/the Company**) during August 08, 2018 to October 01, 2018, (hereinafter referred to as the **investigation period/IP**).

APPOINTMENT OF ADJUDICATING OFFICER

2. Vide order dated March 24, 2021 the undersigned was appointed as Adjudicating Officer to inquire into and adjudge the alleged violations of the Noticees, under Section 15-I of the SEBI Act read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter be referred to as the “**Adjudication Rules**”). The appointment of the undersigned as AO was communicated vide order dated March 26, 2021.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. Show Cause Notice (“**SCN”**) No. EAD5/MC/VS/2021/10069/1-3 dated 07.05.2021 were issued to the Noticees, for the alleged violations of the PIT Regulations and the SEBI Act. The allegations levelled against the Noticees in the SCNs are summarized as follows:-

4. SEBI received a letter dated August 21, 2018 from Subex Limited (hereinafter referred to as “Subex/ the company/ Noticee 1”) regarding alleged violation of Regulation 7(2) of PIT Regulations by the promoters, Mr. Subash Menon and Kivar Holdings Private Limited (‘KHPL’) (promoter entities). Vide aforesaid letter, the company inter-alia informed that it had observed that shareholding of the promoter entities had changed by 5,00,000 shares each. The company forwarded its letters dated August 21, 2018, addressed to the promoter entities, wherein it stated that they had transacted in excess of the threshold limits as prescribed under the Code of Conduct for “Prevention of Insider Trading” of the Company without obtaining appropriate approvals/ disclosures prescribed thereunder.

5. Subex Limited i.e. Noticee 1 is a telecom analytics solutions provider. It is engaged in providing revenue assurance, fraud management, partner settlement, capacity management, consulting and advisory services. The scrip is listed on BSE and NSE. Registered address of the company is Pritech Park - SEZ, Block-09, 4th Floor, B Wing, Survey No. 51 to 64/4, Outer Ring Road, Bellandur Village,

Varthur Hobli, Bengaluru, Karnataka, 560103. There was reduction in share capital of the company w.e.f. October 22, 2020, as approved by the Hon'ble National Company Law Tribunal at Bengaluru. G.V. Krishnakanth, Noticee 2, was the Company Secretary at the relevant period of FY 2018-19.

6. The price of Subex during July 02, 2018 to October 31, 2018 was in the range of Rs. 5 – 6 and the scrip closed at Rs.5.67 and Rs.5.65 (FV Rs.10) on October 31, 2018 at BSE and NSE respectively.

7. Promoters (and designated persons) of Subex, Mr. Subash Menon/ Noticee 3 and Kivar Holdings Private Limited made an inter-se off market transfer on August 08, 2018, wherein 5,00,000 shares of Subex Limited were transferred from KHPL to Noticee 3. Value of the said transaction was Rs. 27,20,000 (at WAP of Rs. 5.44 on 08/08/2018 at BSE).

8. Noticee 3 sold 5,00,000 shares acquired by him through the off market inter-se transfer on August 08, 2018 in the market during September 25, 2018 to October 01, 2018 within 6 months. With regard to the said off market inter-se transaction between Noticee 3 and KHPL, Noticee 3 vide email dated August 22, 2018 to Subex, *inter alia* submitted, *"the said transaction is an off market, inter-se transfer between him and KHPL without any consideration, it was not an external sale".*

9. Clause 10 of Code of Conduct under Schedule B of Regulation 9(1) of SEBI (PIT) Regulations, 2015 states as follows,

   "The code of conduct shall specify the period, which in any event shall not be less than six months, within which a designated person who is permitted to trade shall not execute a contra trade. The compliance officer may be empowered to grant relaxation from strict application of such restriction for reasons to be recorded in writing provided that such relaxation does not violate these regulations. Should a contra trade be executed, inadvertently or otherwise, in violation of such a restriction, the profits from such trade shall be liable to be disgorged for remittance to the Board for credit to the Investor Protection and Education Fund administered by the Board under the Act."

10. Accordingly, in absence of nil consideration, as reported by Noticee 3, entire sale proceeds of Rs. 24,81,074 (i.e. profit earned from the trades) out of the transactions undertaken between September 25-October 01, 2018, was allegedly liable to be disgorged and remitted to the Investor Protection and Education Fund ("IPEF") in terms of Clause 10 of Code of Conduct under Schedule B of Regulation 9(1) and (2) of PIT Regulations, 2015.

11. Vide email dated August 26, 2020, SEBI advised the company i.e Noticee1 to disgorge the profit of Rs. 24,81,074/- earned by Noticee 3, through execution of contra trades, and remit the same to SEBI, for credit to the IPEF administered by the Board, within 10 days from the date of the email. However, the Noticee 1 did not remit the amount to IPEF.

12. Noticee 1 vide representation dated September 04, 2020, inter-alia submitted as follows;

"…we are not in a position to disgorge the amount as directed by you and remit the same to the SEBI for credit to Investor Protection and Education Fund. We would request you to proceed directly against Mr. Subash Menon in the manner you deem fit and appropriate"

13. Hence, **it was alleged that the Noticee 1 violated Clause 10 of Code of Conduct under Schedule B of Regulation 9(1) of SEBI (PIT) Regulations, 2015** by not disgorging the profit earned by Mr. Subash Menon/ Noticee 3, through execution of contra trades, and not remitting the same to SEBI, for credit to the Investor Protection and Education Fund (IPEF) administered by the Board, as advised by SEBI.

14. KHPL had submitted the disclosure titled, "SEBI (Prohibition of Insider Trading) Regulations, 2015 [Regulation 7(2) r/w Regulation 6(2) - Continual disclosure]" to the company on August 26, 2018, which was signed by Noticee 3, as an authorised signatory of KHPL. From the said disclosure, it was observed that value of transaction was mentioned as Rs. 5.30 per share and mode of acquisition/disposal was mentioned as inter-se transfer to Noticee 3, whereas

Noticee 3 vide email dated August 22, 2018 to Subex had mentioned that the said transaction was an off-market inter-se transfer between him and KHPL, without any consideration.

15. Company vide email dated March 21, 2019, inter- alia submitted as follows, "*the company has received response from Mr. Subash Menon through his e-mail dated August 22, 2018 informing the company that the transfer of 5,00,000 shares of the company undertaken between him and KHPL is an off-market, inter-se transfer in accordance with Clause 4(1)(i) of the SEBI (Prohibition of Insider Trading) Regulations, 2015 and hence not a violation of the Insider Trading Regulations and the Company's Code of Conduct. The company has not received response from KHPL pursuant to its letter dated August 21, 2018*."

16. In response to queries by SEBI, Company submitted reply vide email and letter dated January 06, 2021. Upon examining the reply received from the Company i.e. Noticee 1, following observations were made:

    a. Company stated that transfer of 5,00,000 shares from KHPL to Mr. Subash Menon is an off-market inter-se transfer without any consideration and there is no change in the shareholding pattern of the Promoter and Promoter Group. Both KHPL and Noticee 3 belong to Promoter and Promoter Group.
    b. Company granted relaxation granted to Noticee 3 based on an Undertaking provided by Noticee 3 that he is not in possession of any unpublished price sensitive information;
    c. Company placed reliance on interpretive letter No. ISD/OW/11628/2018 dated April 12, 2018 issued by SEBI under the Securities and Exchange Board of India (Informal Guidance) Scheme 2003; Para no. 7 of SEBI letter no. ISD/OW/11628/2018 dated April 12, 2018 (referred to by the company), reads as follows*, "The above position is based on the information furnished in your letter under reference. Different facts or conditions might lead to different result. Further, this letter does not express a decision of the Board on the question referred.*
    d. Company cited Point No. 10 of Schedule B SEBI (Prohibition of Insider Trading) Regulations, 2015"…….The Compliance Officer may be empowered

to grant relaxation from strict application of such restriction …..”; Clause 10 of Code of Conduct under Schedule B of Regulation 9(1) of SEBI (PIT) Regulations, 2015 inter-alia states as follows, *“…... The compliance officer may be empowered to grant relaxation from strict application of such restriction for reasons to be recorded in writing provided that such relaxation does not violate these regulations…….. .”*

17. Noticee1’s view that, the transfer of 5,00,000 shares undertaken by KHPL and Noticee 3 shall not be construed as trade, and hence the subsequent transactions undertaken by Noticee 3 during the period from September 24, 2018 to October 01, 2018 does not qualify to be viewed as contra trade, is factually incorrect as irrespective of mode of acquisition and consideration, transfer of shares between two promoter entities (Noticee 3 and KHPL) is a trade. Since Noticee 3 reversed his position within six months of the previous transaction, he executed contra trade. This matter has been adjudicated upon earlier and the aforesaid position was acknowledged by AO in her order no. Order/SR/AS/2020-21/9295-9296/139-140 dated September 29, 2020. Further, the reasons for grant of relaxation to Noticee 3 for executing the opposite transaction within six months of the previous transaction, which are required to be recorded in writing by the compliance officer, were not recorded and were not provided by the company along with its reply vide letter dated January 06, 2021, which was submitted to SEBI

18. Therefore, **it was alleged that the Noticee 2 violated Clause 10 of Code of Conduct under Schedule B of Regulation 9(1) of PIT) Regulations, 2015** by granting relaxation to Noticee 3 for executing the opposite transaction within six months of the previous transaction (i.e. contra trade), without recording in writing the reasons for grant of relaxation.

19. SEBI received a letter dated August 21, 2018 from Noticee 1, which was addressed to BSE and NSE, wherein the company has requested the promoter entities to furnish complete details of the transaction in prescribed format for onward submission to stock exchanges and the letter may be treated as

compliance with regard to disclosure requirement under Regulation 7(2) of SEBI (PIT) Regulations, 2015 on company's part.

20. Along with the abovementioned letter, Noticee 1 enclosed two other letters dated August 21, 2018, addressed to Noticee 3 and Board of Directors of KHPL. Vide the said letters, Noticee 1 asked the promoter entities to provide reasons for not obtaining pre-clearance for undertaking the said transaction and failing to disclose the transaction to the company in the prescribed format within 2 trading days from executing it. Notice 1 , inter alia stated that "*As mentioned in our dated March 21, 2019, the company has not received any response from KHPL against the letter sent by the Company on August 21, 2018.*"

21. KHPL had submitted the disclosure titled, "SEBI (Prohibition of Insider Trading) Regulations, 2015 [Regulation 7(2) r/w Regulation 6(2) - Continual disclosure]" to the company on August 26, 2018, which was signed by Noticee 3, as an authorised signatory of KHPL, pursuant to which Noticee 1 submitted the said disclosure to stock exchange on August 28, 2018.

22. Hence, KHPL submitted its disclosure dated August 26, 2018 to Subex in response to Subex's letter dated August 21, 2018 to the promoter entities. Therefore, the Noticee 1's submission that it has not received any response from KHPL pursuant to its letter dated August 21, 2018, is incorrect.

23. Noticee 1 vide letter dated March 21, 2019 inter alia stated that it has not received response from KHPL pursuant to its letter dated August 21, 2018. In view of the above, **it was alleged that the Noticee 2 violated Section 11 (2)(ia) r/w Section 11(C)(2) of SEBI Act, 1992** by not disclosing/ providing to SEBI the disclosure made by KHPL on August 26, 2018 as per Regulation 7(2)(a) of PIT Regulation, 2015.

24. Noticee 3 vide email dated July 08, 2020 submitted as follows,

"*Kindly note that the transaction between Kivar Holdings and me was off market and inter-se. What I meant in the email dated 22nd Aug is that the* *inter-se transfer is without any profit. The word "consideration" is an inadvertent error and should actually have been "profit". Please note that the cost of acquisition of Kivar Holdings is way above Rs. 5.30 which resulted in a huge loss."*

25. Further, on page no. 8 of AO order no. Order/SR/AS/2020-21/9295-9296/139-140 dated September 29, 2020 (placed as *Annexure 12 to SCN*), it is mentioned that, *"Noticee submitted that the first point of defence, he would like to state that the inter-se transaction under question was consummated without any consideration. Statements of the bank accounts of the two parties will establish this fact and they are willing to submit the same to, should SEBI seek those. In view of that fact, Regulation 7(2)(a) does not apply"*

26. Noticee 3 in his submission to company and AO, mentioned that the said transaction was without consideration, whereas in the Continual disclosure (Form C) provided to company (as an authorised signatory of KHPL) for onward submission to stock exchanges and his email to SEBI, Noticee 3 submitted that the value of said transaction was Rs. 5.30 per share.

27. From the above, it was observed that Noticee 3 submitted incorrect information, signed by him as an authorised signatory of KHPL, in Continual disclosure (Form C) provided to company for onward submission to stock exchanges, with regard to the value of the off-market inter-se transfer wherein he acquired 5,00,000 shares of Subex from KHPL on August 08, 2018. Therefore, **Noticee 3 was alleged to have violated Regulation 7(2)(a) of PIT Regulations.**

28. The aforesaid alleged violations, if established, make the Noticees 1-3 liable for monetary penalty under Section 15 HB of the SEBI Act.

29. The SCNs were served upon the concerned Noticees vide e-mails dated 07.05.2021 at their respective e-mail addresses obtained from CDSL and NSDL. Further, SCNs were delivered to the Noticees by SPAD on 19.05.2021, 19.05.2021 and 12.05.2021 respectively.

30. Vide e-mail dated 13.05.2021, Noticee 3 submitted the following:-
    (a) The transfer of the said shares to Noticee 3 was indeed without any profit or consideration being earned by Kivar Holdings Pvt. Ltd. (KHPL)
    (b) The very reason for such a transfer was that both KHPL and Noticee 3 were one and the same, despite being two separate entities. Noticee 3 was and is the beneficial owner of KHPL.
    (c) In the Continual Disclosure Form (Form C) provided to the Company, Noticee 3 had misunderstood the term “Value” as the value per share on the date of the transfer and not as “selling price”. This obviously was a mistake on his part. It can be verified that the share price of the Company on 09.08.2018 was Rs. 5.30. Hence the said amount.
    (d) Noticee 3 was happy to submit bank statements to establish that no consideration was paid.
    (e) Neither the public shareholders nor the Company was prejudiced by this wrong disclosure. Further, Noticee 3 did not gain anything either.
    (f) From the above, it is clear that it was only a mistake due to a misunderstanding of the term “Value” and that it was not a deliberate action on his part.
    (g) Noticee 3 has already been penalised under the same section and at that time itself, all these facts were known.

31. Vide letter dated 26.05.2021, Noticees 1 and 2 sought time upto 04.06.2021 to file a reply in the matter, which request was acceded to in the interest of natural justice.

32. Vide reply dated 02.06.2021, Noticees 1 and 2 submitted the following:-
    (a) Noticee 3, Mr. Subash Menon, resigned as the Managing Director and CEO of the Company with effect from September 27, 2012. Mr. Menon continued as a Non Executive and Non-Independent Director of the Company till May 14, 2015, when he ceased to be so. Though he was a Non-Executive and Non-Independent Director of the Company till May 14, 2015, he was not involved in the management of the day-to-day affairs of the Company either in an

executive or a management role. Despite his aforesaid resignation, Mr. Menon and Kivar Holding Private Limited (“KHPL”) (KHPL is a private limited company where Mr. Menon’s relatives hold substantial shareholding) remained associated with the Company and remained designated as Promoter and Promoter Group. Though Mr. Menon and KHPL continued to be associated with the Company as Promoter and Promoter Group, the Company does not have any other connection with them. As on date, the shareholding of KHPL and Mr. Menon in the Company is NIL.

(b) KHPL had transferred 5,00,000 shares (through off-market) to Mr. Menon on August 08, 2018 (“Transaction”) without pre-clearance from the Company. When the Company got to know of the Transaction, the Company vide its letter dated August 21, 2018 sought clarification from KHPL as well as Mr. Menon regarding the Transaction. The Company received an e-mail response from Mr. Menon on August 22, 2018 mentioning that the Transaction shall not be treated as a trade under the Code of Conduct of the Company and Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 for the reasons listed below:

I. the Transaction was an off-market inter-se transfer between the Promoters without any consideration;

II. both parties i.e., KHPL and Mr. Menon had made a conscious and informed trade decision and they were not in possession of any unpublished price sensitive market information

(c) Subsequently, Mr. Menon made applications to the Company for pre-clearance for the sale of these 5,00,000 shares during the period starting from September 24, 2018. The Company provided the pre-clearance to Mr. Menon recording and relying on the following grounds:

I. The Transaction is an off-market inter-se transfer without any consideration and there is no change in the shareholding pattern of the Promoter and Promoter Group; The Company also requested for submission of proof of the DIS slip in support of the off-market, inter-se transaction undertaken by Mr. Menon. The DIS slip was submitted to the

Company by Mr. Menon vide e-mail dated September 10, 2018. The Company thus acted with prudence and did necessary due diligence.

II. Both KHPL and Mr. Menon belong to Promoter and Promoter Group;

III. An Undertaking was provided by Mr. Menon on September 24, 2018 that he is not in possession of any unpublished price sensitive information;

IV. By placing reliance on the interpretive letter No. ISD/OW/11628/2018 dated April 12, 2018 issued by SEBI under the Securities and Exchange Board of India (Informal Guidance) Scheme 2003.

(d) Mr. Menon sold his entire shareholding in the Company by May 2019.

(e) In the circumstances set out above, the shareholding of KHPL and Mr. Menon in the Company is NIL since May 2019. Though Mr. Menon and KHPL do not hold any shares in the Company, since they belong to Promoter and Promoter Group of the Company, they continued to be classified as Promoter & Promoter Group in the shareholding pattern of the Company. Based on the application made inter alia by Mr. Menon and KHPL, the Board in its meeting held on February 1, 2021 passed appropriate resolutions for taking necessary steps to reclassify Mr. Menon and KHPL to Public category from Promoter and Promoter Group category of the Company.

(f) Regarding the Company letter dated August 21, 2018 received by SEBI informing SEBI of the inter-se transfer of shares amongst the Promoters of our Company, Mr. Menon and KHPL and the non-disclosure of the same under Regulation 7(2) of the PIT Regulations, 2015, Noticees 1 and 2 confirmed that it was the Company in the first instance which informed SEBI regarding the non-disclosure of the Transaction by the Promoters, as mandated by the SEBI PIT Regulations and Code of Conduct for prevention of Insider trading of the Company under Schedule B of Regulation 9(1) of the SEBI PIT Regulations.

(g) It is the Company who in the first instance made inquiries from Mr. Menon and also informed SEBI regarding the non-disclosure under the SEBI PIT Regulations. In response to the inquiry from the Company, Mr. Menon vide email response dated August 22, 2018 clarified to the Company that the Transaction was inter-se between KHPL and himself without any consideration. He has also provided further details of DIS vide email dated September 10, 2018.

(h) The Company would not like to comment on the sale made by Mr. Menon during September 25, 2018 to October 01, 2018.

(i) With regard to allegation in Paragraphs 16 and 17 of the SCN, it was submitted that since Mr. Menon was not associated with the Company in any capacity either as a director or an employee or any other position whatsoever, the Company was not in a position to disgorge any of the profits made by him by selling the shares. Disgorgement, which is fundamentally grounded in equity, has been introduced as a tool to remedy a wrong by wrongdoers by restitution of the profits so made. The Company has not benefitted in any manner whatsoever by the Transaction. The Company has been attempting to elucidate this repeatedly to the investigation department of SEBI through our previous correspondence. The Company also provided and clarified the same vide its response vide letter dated September 4, 2020 enumerating the reasons and its inability to disgorge the amounts as directed by Investigation Department and credit the same to the SEBI for credit of Investor Protection and Education Fund. Further as may be noted in Adjudicating Order No: SR/AS/2020-21/9295-9296/139 -140 dated September 29, 2020, the Adjudicating Officer has stated that Mr. Menon is technically not a promoter of the Company. The Company was unable to disgorge the profits as directed by SEBI from time to time.

(j) As per Regulation 7(2) of SEBI PIT Regulations and the Code of Conduct, any disclosure received under Regulation 7(2) had to be filed with the stock exchanges within 2 trading days of the receipt of the same. Accordingly, on receipt of the disclosure from KHPL on August 26, 2018 (which should have been received by August 3, 2018 and was thus delayed), Noticees 1 and 2 filed the disclosure without any delay by making an .xbrl filing and further sending the excel sheet to the BSE and NSE. Noticees 1 and 2 also filed with the stock exchanges the disclosure about inter-se transfer of 5,00,000 shares from KHPL to Mr. Menon, received from him on August 26, 2018, on August 28, 2018.

(k) Noticees 1 and 2 were only required to forward the disclosure, as received from the person making the disclosure, to the stock exchange as per Regulation 7(2)(b), which states that, "*Every company shall notify the particulars of such trading to the stock exchange on which the securities are listed within two trading days of receipt of the disclosure or from becoming aware of such information*". Though the value of the share is mentioned as Rs. 5.30 per share in the continual disclosure (Form C) received from Mr. Menon and KHPL on August 26, 2018, as the email received from Mr. Menon on August 22, 2018 and further the Form C dated August 26, 2018 submitted by him specify that the transaction is an off-market, inter-se transfer, the Company did not find reason to seek further clarification and thus has not sought any.

(l) Regarding the allegation in para. 23 of the SCN, Noticee 3 replied to the Company's query raised on 21.08.2018 vide e-mail dated 22.08.2018 stating that the transaction was an off-market inter se transfer of shares between him and KHPL without any consideration. The Company has not received any other reply from KHPL against the letter dated August 21, 2018 sent by the Company. The same has been informed by the Company vide email dated March 21, 2019 to SEBI.

(m)In response to the email dated March 20, 2019 from SEBI. The disclosure made by KHPL to the Company on August 26, 2018, without making any reference whatsoever to our Letter dated August 21, 2018 cannot be treated as a reply thereto. Further, such disclosure made by KHPL was disseminated to Stock Exchanges without any delay by the Company as per the SEBI PIT Regulations. Hence Form C provided by KHPL on August 26, 2018 has been treated as compliance of the Continual Disclosure requirements and not as a further reply to the Company Letter dated August 21, 2018.

(n) Noticees 1 and 2 had relied on the informal guidance given by SEBI in the matter of Star Cement Limited on April 12, 2018 and since one of the legs of the transaction was an off market inter-se transfer of shares amongst the promoters / promoter group, Noticees did not consider this is as a trade.

Hence the second leg for which necessary pre-clearance was sought was not construed as contra-trade.

(o) Company has never submitted that there was no trade between KHPL and Mr Menon, as this issue was in the first instance highlighted to SEBI by the Company itself. Noticees 1 and 2 submitted that this Transaction shall not be treated as a trade for the purpose of contra-trade as the same was an off market inter-se transfer of shares amongst two entities who are part of promoter group. The definition of promoter group is provided under SEBI (ICDR) Regulations, 2018 (hereinafter referred to as 'ICDR Regulations, 2018') wherein it is specified that a promoter group includes any body corporate in which the promoter holds ten per cent or more of the equity share capital or which holds ten per cent or more of the equity share capital of the promoter; In the present circumstances KHPL and Noticee 3 were covered within the ambit of this definition.

(p) After adequate due diligence, it was determined that the transfer between Mr. Menon and KHPL was an off market inter se transfer.

(q) Noticees 1 and 2 also considered and relied on the Informal Guidance given by SEBI as recently as April 2018 which clearly permitted that an off market inter-se transfer of shares would not be treated as a trade and hence the second leg of transaction would not be treated as a contra trade. Such Informal Guidance issued by SEBI from time to time, and displayed on the SEBI website are for the purpose of application. SEBI has also recently compiled all the Informal Guidance given under the SEBI PIT Regulations and made them available on the website of SEBI. SEBI (Informal Guidance) Scheme 2003, provides that informal guidance is given inter alia in the form of an interpretive letter in which a Department of SEBI provides an interpretation of a specific provision of any Act, Rules, Regulations, Guidelines, Circulars or other legal provision being administered by SEBI in the context of a proposed transaction in securities or a specific factual situation. Although the cases may not be applicable verbatim, in case of similar situations, such guidance is used by companies, and would be a mitigating factor. Further Company is of the view that even though the facts of each case are unique, this present matter does fall within the Informal Guidance provided by SEBI. Further the paragraph under reference for reply draws reference to another Informal Guidance given on November 04, 2019 taking a contrarian view. It is submitted that this is much after the date of Transaction, which occurred between September 25, 2018 and October 1, 2018, and Noticee cannot be expected to apply a view to be taken in November 2019 to a set of transactions which have been entered into in September 2018.

(r) Noticee 2 did not fail to exercise his power judiciously as alleged. He has in fact submitted to the Investigating Officer vide letter dated January 30, 2020 a detailed response clearly laying out grounds considered for providing the pre-clearance.

(s) Regarding the allegation in para. 27 of the SCN, it was submitted that the Adjudicating Officer in the said Order has adjudicated and levied penalty on Mr. Menon for not obtaining pre-clearance and not making disclosure for the inter-se transfer of shares by KHPL to Mr. Menon on August 08, 2018 and did not go into whether the trades executed by Mr Menon from September 25, 2018 to October 01, 2018 was in the nature of contra-trade as the same had been pre-cleared by the Compliance Officer.

(t) Page 16 of the said Order, which deals with this aspect is reproduced below:

> ""*For the said transactions, it is noted that Noticee 1 vide e-mail dated September 24, 2018, requested the company for pre-clearance and accordingly, on the same day the Compliance officer approved the request of the Noticee 1. In the said e-mail of the Compliance Officer, it is mentioned that the approval is valid for 7 trading days from Sept ember 25, 2018. As seen from the available record, the transactions of Noticee 1 is coming under the 7 trading days from September 25, 2018. As per the code of conduct of the Company, the designated persons shall not execute the contra trades, however the company approved his request of pre-clearance for the said transaction knowing that the Noticee made transaction on August 08, 2018 as seen from the e-mail dated August 22, 2018 and allowed to make the inter-se transfer. As the Noticee made the transactions within the period of the approval of the Company, the alleged violation of provision of clause*

10 of code of conduct under Schedule B under regulation 9(1) of PIT Regulations, 2015 does not stand established.

In view of the above, it is concluded that Noticees failed to take pre-clearance for the transactions made on August 8, 2018 and also failed to make disclosures to the Company for the said transactions made by the Noticees. Therefore, the alleged violations of regulation 7(2)(a) of PIT Regulations, 2015 and provisions of clause 6 of the code of the conduct under Schedule B of regulation 9(1) of PIT Regulations, 2015 against the Noticees stand established."

(u) The Adjudicating Officer in the said order levied a penalty for the non-disclosure under Regulation 7(2) of the SEBI PIT Regulations and for not obtaining pre-clearance for the transaction executed by Mr. Menon and KHPL on August 8, 2018. Adjudicating Officer in the said order has considered the fact that Mr Menon was technically a promoter who did not have access to UPSI as a mitigating factor and levied penalty accordingly.

(v) Noticees 1 and 2 complied with Regulation 7(2) of the SEBI (PIT) Regulations which requires companies to make a disclosure to the stock exchange on becoming aware of any change in shareholding, and applies even if disclosures are not received from them as in the present case.

(w) Noticees 1 and 2 received the continual disclosure as required under Regulation 7(2) of the SEBI (PIT) Regulations from KHPL after delay on August 26, 2018. Any disclosure received under Regulation 7(2) had to be filed with the stock exchanges within 2 trading days of the receipt of the same. Accordingly, on receipt of the disclosure with a delay from KHPL on August 26, 2018, Noticees 1 and 2 filed the disclosure without fail and without any delay by making an .xbrl filing and further sending the excel sheet to the BSE and NSE. Also, disclosure from Mr. Menon on August 26, 2018 about inter-se transfer of 5,00,000 shares from KHPL to him is also filed in .xbrl as well as online submission on August 28, 2018 with the Stock Exchanges.

(x) Noticee 1 received a response only from Mr. Subash Menon on August 22, 2018 confirming that it was an off market inter-se transaction amongst promoters, which was not a trade and did not require pre-clearance. The Company time and again informed SEBI about this in their earlier correspondences. Form C (continual disclosure) provided by KHPL on August 26, 2018 without making any reference whatsoever to our Letter dated August 21, 2018 cannot be treated as a reply and should be construed as Continual Disclosure and not as reply to the Company Letter dated August 21, 2018.

(y) Noticee 1 informed SEBI a disclosure as received from KHPL was submitted to the Stock Exchange by the Company, and had already provided the reply received from Mr. Menon vide his email dated August 22, 2018.

(z) Details of correspondence that have been exchanged with SEBI :-

Date of SEBI email	Date of our Reply
29.12.2020 – Summons	06.01.2021
26.08.2020	04.09.2020
10.02.2020	27.02.2020
28.01.2020	30.01.2020
20.03.2019	21.03.2019
15.03.2019	18.03.2019

(aa) Noticees 1 and 2 have always always co-operated with SEBI and it is incorrect to allege that Noticee 2 has not co-operated and charge him under Section 11C (2) of the SEBI Act, 1992. all the correspondence exchanged with SEBI has been placed as annexures to the show cause notice.

33. Vide hearing notices dated 17.11.2021 and 18.11.2021, opportunities of hearing by videoconferencing through WebEx were provided to the Noticees on 20.12.2021.

34. During the hearing conducted through videoconferencing by WebEx on 20.12.2021, the Authorised Representative of Noticees 1 and 2 reiterated the submissions made in reply dated June 2, 2021. Noticee 3 appeared in-person and submitted that the impugned transaction was a transfer without consideration, and that the alleged incorrect information signed by him as authorized signatory of KHPL in continual disclosure Form C provided to Subex

was made unintentionally and under a misunderstanding that he was required to give the value of the shares, which was Rs. 5.30 per share.

35. In the light of the allegations contained in the SCNs, the submissions of the Noticees in respect of the allegations made in the SCNs and relevant material available on record, I hereby proceed to decide the case on merits.

CONSIDERATION OF ISSUES AND FINDINGS

36. The issues arising for consideration in the instant proceedings are:-

I. Whether the following provisions were violated by the Noticees:-

a) Clause 10 of Code of Conduct under Schedule B of Regulation 9 (1) of the PIT Regulations 2015 by Noticee 1

b) Clause 10 of Code of Conduct under Schedule B of Regulation 9 (1) of the PIT Regulations 2015 and Section 11(2) (ia) read with 11C (2) of SEBI Act by Noticee 2

c) Regulation 7 (2) (a) of the PIT Regulations 2015 by Noticee 3

II. If yes, whether the Noticees 1-3 are liable for imposition of monetary penalty under Section 15 HB of the SEBI Act

III. If yes, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5 (2) of the Adjudication Rules?

I. Whether the following provisions were violated by the Noticees:-

a. Clause 10 of Code of Conduct under Schedule B of Regulation 9 (1) of the PIT Regulations 2015 by Noticee 1

b. Clause 10 of Code of Conduct under Schedule B of Regulation 9 (1) of the PIT Regulations 2015 and Section 11(2) (ia) read with 11C (2) of SEBI Act by Noticee 2

c. Regulation 7 (2) (a) of the PIT Regulations 2015 by Noticee 3

37. The facts leading to the allegations in the SCN are that Noticee 3 (promoter of Subex Ltd.) bought 5,00,000 shares of Subex Ltd. from KHPL (another promoter

of Subex and controlled by Noticee 3). Subsequently, Noticee 3 sold the aforesaid shares of Subex in on-market transactions between 24.09.2018 and 01.10.2018, after obtaining pre-clearance from Noticee 1 for the sale of shares during the period starting from 24.09.2018.

38. Noticee 1 e-mailed SEBI on 21.08.2018 regarding alleged violation of Regulation 7 (2) of the PIT Regulations by its promoters KHPL and Noticee 3 as their shareholding had changed by 5,00,000 shares each. Noticee 3 e-mailed Noticee 1 on 22.08.2018 informing the Company that the transaction was off-market, *inter se* transfer between Noticee 3 and KHPL without any consideration and was not an external sale. However, KHPL on 26.08.2018 submitted Continual Disclosure under Regulation 7 (2) read with Regulation 6 (2) of the PIT Regulations to Noticee 1 for the transaction made by KHPL through XBRL utility. The disclosure was signed by Noticee 3 as authorised signatory of KHPL. Noticee 1 forwarded the disclosure to BSE on 28.08.2018.

39. The legal provisions allegedly violated by the Noticees are reproduced below for reference: -

<u>PIT Regulations</u>

"Clause 10 of Code of Conduct under Schedule B of Regulation 9(1) of SEBI (PIT) Regulations, 2015 states as follows,

"The code of conduct shall specify the period, which in any event shall not be less than six months, within which a designated person who is permitted to trade shall not execute a contra trade. The compliance officer may be empowered to grant relaxation from strict application of such restriction for reasons to be recorded in writing provided that such relaxation does not violate these regulations. Should a contra trade be executed, inadvertently or otherwise, in violation of such a restriction, the profits from such trade shall be liable to be disgorged for remittance to the Board for credit to the Investor Protection and Education Fund administered by the Board under the Act."

40. Section 11(2)(ia) of SEBI Act, 1992 reads as follows;

"Without prejudice to the generality of the foregoing provisions, the measures referred to therein may provide for—

calling for information and records from any person including any bank or any other authority or board or corporation established or constituted by or under any Central or State Act which, in the opinion of the Board, shall be relevant to any investigation or inquiry by the Board in respect of any transaction in securities"

41. Section 11(C)(2) of SEBI Act, 1992 reads as follows;

"11C (2) Without prejudice to the provisions of sections 235 to 241 of the Companies Act, 1956 (1 of 1956), it shall be the duty of every manager, managing director, officer and other employee of the company and every intermediary referred to in section 12 or every person associated with the securities market to preserve and to produce to the Investigating Authority or any person authorised by it in this behalf, all the books, registers, other documents and record of, or relating to, the company or, as the case may be, of or relating to, the intermediary or such person, which are in their custody or power."

42. Regulation 7 (2) (a) of the PIT Regulations -

"*Every promoter and director of every company shall disclose to the company the number of such securities acquired or disposed of within two trading days of such transaction if the value of the securities traded, whether in one transaction or a series of transactions over any calendar quarter, aggregates to a traded value in excess of ten lakh rupees or such other value as may be specified*"

43. Clause 9(1) of SEBI (PIT) Regulations, 2015 reads as follows,

9. (1) The board of directors of every listed company and market intermediary shall formulate a code of conduct to regulate, monitor and report trading by its employees and other connected persons towards achieving compliance with these regulations, adopting the minimum standards set out in Schedule B to these regulations, without diluting the provisions of these regulations in any manner.

44. In respect of the allegation levelled against the Company (Noticee 1) that it failed to disgorge profit earned by Noticee 3 through execution of contra trades, I find that vide adjudication order no. Order/SR/AS/2020-21/9295-9296/139-140 dated 29.09.2020 in respect of the same facts and trades by Noticee 3, it has been held in para. 9. g) that as Noticee 3 had obtained pre-clearance from Noticee 1 on 24.09.2018 for the sale of 5,00,000 Subex shares and carried out the sale within the period approved by the Company, Noticee 3 did not execute contra trades in violation of Clause 10 of the code of conduct under Schedule B under regulation 9(1) of PIT Regulations, 2015. It has been observed in the said Order that the Company approved the request of pre-clearance made by Noticee 3 for the said transaction knowing that the Noticee made transaction on August 08, 2018 as seen from the e-mail dated August 22, 2018 and allowed to make the inter-se transfer. In deference to the well-established legal principle of *res judicata* which states that a matter which has been adjudged on a cause of action may not be re-litigated on the same cause of action between the same parties, and of *Nemo bis debet punire pro uno delicto* i.e. no one ought to be twice punished for one offence or the same cause, I find it is not permissible to once again adjudicate the issue of whether Noticee 3 had carried out contra trades. The issue of contra trades was held in favour of Noticee 3 in the adjudication order dated 29.09.2020. Consequently, the question of disgorgement of profit by Noticee 1 on account of contra trades by Noticee 3 does not arise. Therefore, the allegation that Noticee 1 violated Clause 10 of Code of Conduct under Schedule B of Regulation 9(1) of SEBI (PIT) Regulations, 2015 does not stand established.

45. I further note that in the said Order dated 29.09.2020, Noticee 3 was held liable for not obtaining pre-clearance for purchase of shares from KHPL on 08.08.2018

and failing to disclose the said transaction in terms of Regulation 7 (2) (a) within two days even when its trade value exceeded ten lakh rupees. Further, a penalty of Rs. 2,00,000/- was imposed on Noticee 3 for the aforesaid violation. From the above, it is implicit that Noticee 3 has already been penalised for failure to disclose to the Company that he had purchased 5,00,000 shares which aggregated to a traded value of more than ten lakh rupees. Therefore, on account of applicability of the principle of *res judicata*, it is not open to me to re-adjudicate or re-examine the issue of whether Noticee 3 violated Regulation 7 (2) (a) of the PIT Regulations by mis-stating the value of securities traded in its belated disclosure dated 26.08.2018. I also note that Regulation 7 (2) (a) pertains to disclosure of number of securities acquired or disposed. Traded value of securities traded over a calendar quarter exceeding ten lakh rupees is the triggering criterion for the disclosure. Since Noticee 3 has already been penalised for non-disclosure of number of securities traded in terms of Regulation 7 (2) (a) of the PIT Regulations, I find that the question of his having mis-stated the value of securities traded where such mis-statement is not shown to have impacted his obligation to disclose, is irrelevant to the provision allegedly violated. Further, on perusal of a copy of disclosure dated 26.08.2018 made by Noticee 3 to the Company, I find that the value of the share has been stated to be “Rs. 5.30 per share” and the number of securities acquired has been stated to be 5,00,000, neither of which disclosures has been alleged to be incorrect. Therefore, I find that the allegation that Noticee 3 violated Regulation 7 (2) (a) of the PIT Regulations does not stand established.

46. Noticee 2 is alleged to have violated Clause 10 of Code of Conduct under Schedule B of Regulation 9(1) of PIT Regulations 2015 due to failure to record in writing reasons for grant of relaxation to Noticee 3 and KHPL for executing a contra trade. Noticee 2 vide letter dated 06.01.2021 to SEBI in response to summons explained why it had provided pre-clearance to Noticee 3 for its sale of 5,00,000 shares. On perusal of the records placed before me, I find that the record pertaining to grant of pre-clearance on 24.09.2018 by Noticee 2 is not available. Allegation of not recording reasons in writing is made even though this pre-clearance is not on record in the form of a specific written record. In the

absence of such record, I am unable to conclude whether reasons for grant of pre-clearance were recorded in writing. Hence, I find that allegation of violation of Clause 10 of Code of Conduct under Schedule B of Regulation 9(1) of SEBI (PIT) Regulations, 2015 by Noticee 2 is not established.

47. It has also been alleged that when asked through SEBI's e-mail dated 20.03.2019, Noticee 2 submitted reply dated 21.03.2019 informing SEBI that it had not received response from KHPL to its letter dated 21.08.2018, and that he did not provide to SEBI a copy of the delayed disclosure submitted by KHPL on 26.08.2018 in terms of Regulation 7 (2) (a) of the PIT Regulations. I further note that vide summons dated 29.09.2020 SEBI sought explanation from Noticee 2 for the non-provision of KHPL's disclosure dated 26.08.2018. The reply of Noticees 1 and 2 to the summons is on record as letter dated 06.01.2021.

48. From e-mail dated 20.03.2019 written by SEBI to Noticee 2, it is seen that SEBI had *inter alia* sought from Noticees 1 and 2 a copy of reply received from KHPL pursuant to letter dated 21.08.2018 of Noticee 1 and 2. Vide e-mail dated 21.03.2019, Noticee 2 had submitted a copy of letter dated 21.03.2019 stating that Noticee 1 had received response from Noticee 3 through his e-mail dated 22.08.218 informing Noticee 1 that transfer of 5,00,000 shares between him and KHPL was off market, inter se transfer in accordance with Clause 4 (1) (i) of the PIT Regulations. Letter dated 21.03.2019 also stated that Noticee 1 had not received response from KHPL pursuant to letter dated 21.08.2018.

49. On perusal of a copy of the said letter 21.08.2018 written by Noticee 1 and signed by Noticee 2, it is seen that Noticee 2 had sought explanation from KHPL regarding reasons for (1) not obtaining pre-clearance from Noticee 1 for undertaking the transaction dated 08.08.2018 and (2) for failing to disclose the transaction to Noticee 1 in the prescribed format within 2 days from the date of undertaking the transaction. No reply to this letter is available on record. I find that the delayed disclosure of shares held by KHPL in Form C under Regulation 7 (2) (a) of the PIT Regulations for the sale it made to Noticee 3 on 08.08.2018 cannot be considered an explanation as sought by Noticees 1 and 2 from KHPL

in letter dated 21.08.2018. Further, I note that Noticee 1 duly disclosed this information to the BSE as mandated by Regulation 7 (2) (b) of the PIT Regulations. SEBI's e-mail dated 20.03.2019 did not expressly seek a copy of disclosures made by KHPL but a reply to Noticee 1 and 2's letter dated 21.08.2018. Noticees 1 or 2 were not mandated to disclose the above said Form C to SEBI under Section 11 (2) (ia) read with Section 11C (2) of the SEBI Act. It is also not the case that an explanation as sought by Noticees 1 and 2 was indeed offered by KHPL and the said explanation or reply was not disclosed to SEBI when asked for. Accordingly, I find that as there was no obligation on Noticee 2 to provide copy of disclosure filed by Noticee 3 on 26.08.2018 to SEBI, the allegation of violation of Section 11 (2)(ia) r/w Section 11(C)(2) of SEBI Act, 1992 by Noticee 2 is not established.

50. As the alleged violations by the Noticees are not established, Issues II and III do not merit consideration.

ORDER

51. In the light of the findings noted hereinabove, the adjudication proceedings initiated against the Noticees vide SCN dated 07.05.2021 are disposed of.

52. Copies of this Adjudication Order are being sent to the Noticees and also to SEBI in terms of Rule 6 of the Adjudication Rules.

MANINDER CHEEMA

Digitally signed by MANINDER CHEEMA
Date: 2022.04.11 15:45:22 +05'30'

DATE: APRIL 11, 2022 **MANINDER CHEEMA**

PLACE: MUMBAI **ADJUDICATING OFFICER**