BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER No. Order/VV/AK/2022-23/19848-19849

UNDER SECTION 15-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:

Noticee 1 **Shruti Vishal Vora** **(PAN - AKZPM7724N)**	**Noticee 2** **Shailendra Mehta** **(PAN: ALGPM2002F)**

*Noticee 1 and Noticee 2 collectively referred as Noticees.

In the matter of circulation of unpublished price sensitive information (UPSI) through WhatsApp messages with respect to Ultratech Cement Limited

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A. BACKGROUND

1. SEBI carried out an investigation in the matter of circulation of Unpublished Price Sensitive Information (**UPSI**) through WhatsApp messages with respect to Ultratech Cement Limited (hereinafter referred to as '**UCL/Company**') to ascertain any possible violation of the provisions of the SEBI Act, 1992 and SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as "**PIT Regulations, 2015**") during the period of April 01, 2017 to April 24, 2017 (hereinafter referred to as '**Investigation Period'** / '**IP'**).

2. It was observed that UCL made announcement on BSE and NSE on April 24, 2017 with respect to its financial results for quarter / year ended March 2017. Summary of the information is tabulated below:

<table>
<tr><th>S. N.</th><th>Date-Time</th><th>Announcement/News</th><th>Price Impact/Shares Traded</th></tr>
<tr><td>1.</td><td>24/04/2017
NSE@13:32
BSE@13:36</td><td>ULTRATECH CEMENT Limited has submitted to the Exchange, the financial results for the period ended March 31, 2017</td><td>On BSE:
<table>
<tr><th>Date</th><th>O</th><th>H</th><th>L</th><th>C</th><th>No. of shares traded</th></tr>
<tr><td>21-04-17</td><td>4029.70</td><td>4030.00</td><td>3960.35</td><td>3968.75</td><td>5335</td></tr>
</table></td></tr>
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<table>
<tr><th>S. N.</th><th>Date-Time</th><th>Announcement/News</th><th>Price Impact/Shares Traded</th></tr>
<tr><td></td><td></td><td></td><td>
<table>
<tr><td>24-04-17</td><td>3978.30</td><td>4206.80</td><td>3978.30</td><td>4144.35</td><td>54369</td></tr>
<tr><td>25-04-17</td><td>4146.05</td><td>4259.90</td><td>4110.80</td><td>4234.80</td><td>33146</td></tr>
</table>
On NSE:
<table>
<tr><th>Date</th><th>O</th><th>H</th><th>L</th><th>C</th><th>No. of shares traded</th></tr>
<tr><td>21-04-17</td><td>4024.90</td><td>4034.50</td><td>3963.65</td><td>3978.35</td><td>173540</td></tr>
<tr><td>24-04-17</td><td>3997.45</td><td>4209.00</td><td>3992.45</td><td>4141.55</td><td>694285</td></tr>
<tr><td>25-04-17</td><td>4165.00</td><td>4266.25</td><td>4108.15</td><td>4242.40</td><td>531152</td></tr>
</table>
</td></tr>
</table>

3. UCL, vide its letter dated August 13, 2018 and emails dated December 23, 2019 & January 08, 2020 has provided the chronology of events w.r.t. announcement of quarterly results on April 24, 2017 for the quarter / year ended March 2017 and the details of persons involved in the preparation of quarterly results / having access to financial information at various stages/ persons who attended the corresponding Board Meeting, details of trading window closure period, etc.

4. It is noted that the information relating to financial results of UCL for quarter / year ended March 2017 was a Price Sensitive Information (PSI). The trading window was closed from April 01, 2017 and therefore the UPSI was observed to have come into existence on April 01, 2017. The corporate announcement of financial results for the quarter / year ended March 2017 was made to the stock exchanges on April 24, 2017 (13:36 hours on BSE, 13:32 hours on NSE) by UCL. Hence, UCL had made the aforesaid price sensitive information public on April 24, 2017 at 13:36 hours on BSE and 13:32 hours on NSE.

5. The investigation revealed that the Noticee 2 communicated the UPSI related to Revenue and PAT of UCL for quarter / year ended March 2017 through WhatsApp messages. From the WhatsApp chats of the Shruti Vora (Noticee 1) (retrieved from her device – Apple iPhone 6s, IMEI: 355767073570777), the following chat was observed on April 24, 2017 - "*Hearing UTCEM Rev@7800+ pat@700+".* The timing of the said message as per extract chat from her device was 04:51:36. However, the expert agency hired for retrieval and backup of the data from the instruments/devices seized (Helik Advisory Ltd.), vide email dated

March 12, 2018, informed SEBI that their forensic tools generate zero G.M.T. timing by default, so add +5.30 hours as our Indian G.M.T in all the report generated'.

6. Further, WhatsApp vide email dated December 27, 2018, expressed its inability to search for given messages in its database citing reasons that WhatsApp users being protected with end-to-end encryption protocol, third parties and WhatsApp cannot read such messages or search for such messages. Further, WhatsApp also submitted that WhatsApp does not store information regarding the sender and recipient of a message.

7. The company submitted that none of the employee(s)/director(s)/promoter(s) of UCL are/were in any manner whatsoever associated/related/connected with SV / Shailendra Mehta and that the company had no adverse findings with regard to announcement pertaining to financial result of QE March 2017. Further, it was observed that none of the persons who were in possession of UPSI pertaining to financial results, as submitted by the company, traded in Equity and Equity derivatives segment of UCL during the trading window closure period i.e. April 01, 2017 to April 24, 2017. It was observed that none of the other suspected entities (i.e. Mr. Shailendra Mehta. SV and her immediate relatives, entities who received communication from SV and members of group 'Only Trades, No Bakwaas) traded in the Equity and Equity derivatives segment of UCL during the period when WhatsApp message was circulated till announcement of quarterly results on April 24, 2017. Pursuant to analysis of trading by these entities, no adverse inference has been drawn against them.

8. The details of communication of WhatsApp message related to UCL as observed from WhatsApp Chat retrieved from the Noticee 1 device are tabulated below:

Entity from whom Shruti Vora (SV) received the message		**Date and Time of receipt of message by SV (After adding 5.30 hours)**		**Entities to whom SV forwarded the message**		**Date and Time of forwarding of message by SV (After adding 5.30 hours)**	
Name	Tel. Number	Date	Time	Name	Tel. Number	Date	Time
Shailendra Mehta*	9820393691	24/04/2017	10:07:52	Sumit Hinduja	9819227915	24/04/2017	10:21:36
				Prateek Kumar	9819917763	24/04/2017	10:21:16
				Gajendra Devpura	8108105199	24/04/2017	10:21:46
				Navjeevan Khosla	+852-97006939	24/04/2017	10:24:57

** Shailendra Mehta (Noticee 2) sent the message on a group 'Only Trades No Bakwaas' where Noticee was a member*

9. It was observed from the WhatsApp chats retrieved from the Noticee 1 device that the aforesaid message was received by the Noticee 1 from Shailendra Mehta on April 24, 2017 at 10:07:52. The said WhatsApp message was forwarded by the Noticee 1 on April 24, 2017 as per time mentioned in above table to several other entities namely, Sumit Hinduja, Prateek Kumar, Gajendra Devpura and Navjeevan Khosla.

10. In the following table, financial figures circulated on WhatsApp pertaining to UCL are compared with actual figures disclosed subsequently on stock exchange to gauge the deviation between two sets of figures.

<u>Abbreviations format used</u>:

Figure1 in WhatsApp (F1W)   Figure1 in Actual (F1A)   Figure1 Deviation (F1Dev)

Figures in WhatsApp message	**Date and time of disclosure on Exchange**	**Actual figures disclosed on Exchange**	**F1W**	**F1A**	**F2W**	**F2A**	**%ge Deviations observed in Figures**	
							F1Dev	**F2Dev**
Rev@7800+ PAT@700+	24/04/2017 13:32	Rev 7924 PAT 726	7800+	7924	700+	726	1.59%	3.70%

11. From the above table, it was observed that the financial figures of UCL were communicated through WhatsApp prior to their announcement on stock exchanges. The financial figures of UCL (viz. Revenue and PAT) circulated through WhatsApp closely matched with those disclosed subsequently by UCL on Exchanges (deviation in financial figures was within a range of 1.59% to 3.07%). Hence, the aforesaid message related to UCL would fall under UPSI and such circulation of financial figures through WhatsApp is considered as communication of UPSI.

12. Noticees are considered as an insider as they were in possession of UPSI. Therefore, it is alleged that the Noticees being insider had communicated the UPSI relating to UCL to other person(s) through WhatsApp messages. Accordingly, it is alleged that the Noticees communicated the UPSI related to Revenue and PAT of UCL for quarter / year ended March 2017 through WhatsApp messages, which is prohibited and is in violation of the provisions of Section 12A(d) & 12A(e) of the SEBI Act, 1992 read with Regulation 3(1) PIT Regulations 2015.

B. APPOINTMENT OF ADJUDICATING OFFICER

13. Shri B J Dilip was appointed as the Adjudicating Officer (hereinafter referred as "erstwhile AO") by communiqué dated September 23, 2020 under section 19 read with section 15I(1) of the SEBI Act, 1992 (hereinafter referred to as "**SEBI Act**") and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as "**Adjudication Rules**") to conduct adjudication proceedings in the manner specified under Rule 4 of Adjudication Rules read with section 15I (1) and (2) of SEBI Act, and if satisfied that the Noticees are liable, impose such penalty deemed fit in terms of Rule 5 of Adjudication Rules read with Section 15G of SEBI Act. Pursuant to the transfer of erstwhile AO, vide communiqué dated December 31, 2020 the case has been transferred to undersigned. It has been advised that except for the change of the Adjudicating Officer the other terms and conditions of the original orders 'shall remain unchanged and shall be in full force and effect' and that the "*Adjudicating Officer shall proceed in accordance with the terms of reference made in the original orders*."

C. SHOW CAUSE NOTICE, REPLY AND HEARING

14. The Show Cause Notices dated February 16, 2021 were served upon the Noticees under rule 4(1) of the SEBI Adjudication Rules to show cause as to why an inquiry should not be held and penalty not be imposed against it under section 15G of the SEBI Act for the violation of 12A(d) and 12A(e) of SEBI Act read with Regulation 3(1) of PIT Regulations 2015. SCN was issued through SPAD and duly delivered to the Noticees in terms of Rule 7 of Adjudication

rules. Subsequently, Noticees filed their reply through various letters/email which are mentioned below paras. Details of the adjudication proceeding mentioned in the below table:

Noticee	**SCN dated**	**Inspection**	**Replies**	**Hearing Concluded**
Shruti Vishal Vora	February 16, 2021	July 07, 2022	September 16, 2022	September 20, 2022
Shailendra Mehta	February 16, 2021	July 11, 2022	February 27, 2021 & email dated July 18, 2022	July 20, 2022

15. The submissions made by the Noticees are summarised below:

a) <u>Shruti Vishal Vora (Noticee 1)</u>

i. *No Connection established between company and me or the sender of the message.*

ii. *Noticee 1 submitted that SEBI made observations in the IR that none of the persons from the Company or from its statutory auditor who were in possession from UPSI know me. Moreover, SEBI was unable to find the origin of the HOS being circulated on WhatsApp which is alleged to be UPSI. Whatsapp Inc. vide email dated 27.12.2018 informed SEBI that information on message (alleged UPSI) sought by SEBI could not be searched by WhatsApp. SEBI in the IR thus observed "In view of above and observations made in preceding paragraphs, unearthing the trail of messages to reach originator of the WhatsApp message could not be effectuated". Thus, no leak from the Company is established by SEBI.*

iii. *Noticee 1 submitted that My whatsapp chats contained several HOS ("Heard on Street") messages which did not closely match with the results.*

iv. *Noticee 1 submitted that HOS forwarded by me closely matching with the actual numbers does not make it UPSI. The SCN fails to consider numerous instances where estimates did not match.*

v. *Noticee 1 submitted that she merely forwarded the same to clients/market groups/acquaintances who actively track the securities market without application of mind. Had she has known the fact that the information been UPSI, she would not have widely circulated the same.*

vi. *Noticee 1 submitted that there has been no pattern / no arrangement established from my phone available with SEBI which suggests that any* *insider kept sharing any UPSI with her or that she was soliciting the same from any person.*

b) <u>Shailendra Mehta (Noticee 2)</u>

i. *Noticee 2 vide letter dated February 27, 2021 submitted that impugned information of the Company merely a news/estimates and generally available information.*

ii. *Noticee 2 submitted that he was never associated/connected in any matter whatsoever whether directly or indirectly with the Company or its promoter/director of the company.*

iii. *Noticee 2 submitted that he just forwarded the WhatsApp message with no specific intention.*

iv. *Noticee 2 placed reliance on SAT order dated March 22, 2021 and Supreme Court judgment in the matter of Balram Garg vs SEBI vide order dated April 19, 2022.*

D. <u>Relevant Provisions</u>

16. **SEBI Act**

12A. *No person shall directly and indirectly-*

……………………………………………………..

12A(d) *engage in insider trading**;***

12A(e) *deal in securities while in possession of material or non-public information or communicate such material or non-public information to any other person, in a manner which is in contravention of the provisions of this Act or the rules or the regulations made thereunder;*

17. **<u>PIT Regulations, 2015</u>**

2(1)(n) *"unpublished price sensitive information" means any information, relating to a company or its securities, directly or indirectly, that <u>is not generally available which upon becoming generally available</u>, is likely to materially affect the price of the securities and shall, ordinarily including but not restricted to, information relating to the following: –*

(i) *financial results;*

(ii) *dividends;*

(iii) *change in capital structure;*

(iv) *mergers, de-mergers, acquisitions, delistings, disposals and expansion of business and such other transactions;*

(v) *changes in key managerial personnel*

***Note**: It is intended that information relating to a company or securities, that is not generally available would be unpublished price sensitive information if it is likely to materially affect the price upon coming into the public domain. The types of matters that would ordinarily give rise to unpublished price sensitive information have been listed above to give illustrative guidance of unpublished price sensitive information.*

***2 (g)** "insider" means any person who is:*

i) a connected person; or

ii) in possession of or having access to unpublished price sensitive information;

***NOTE**: Since "generally available information" is defined, it is intended that anyone in possession of or having access to unpublished price sensitive information should be considered an "insider" regardless of how one came in possession of or had access to such information. Various circumstances are provided for such a person to demonstrate that he has not indulged in insider trading. Therefore, this definition is intended to bring within its reach any person who is in receipt of or has access to unpublished price sensitive information. The onus of showing that a certain person was in possession of or had access to unpublished price sensitive information at the time of trading would, therefore, be on the person levelling the charge after which the person who has traded when in possession of or having access to unpublished price sensitive information may demonstrate that he was not in such possession or that he has not traded or he could not access or that his trading when in possession of such information was squarely covered by the exonerating circumstances.*

2(n) *"unpublished price sensitive information" means any information, relating to a company or its securities, directly or indirectly, that is not generally available which upon becoming generally available, is likely to materially affect the price of the securities and shall, ordinarily including but not restricted to, information relating to the following: –*

(i) financial results;

(ii)dividends;

(iii)change in capital structure;

(iv)mergers, de-mergers, acquisitions, delistings, disposals and expansion of business and such other transactions;

(v)changes in key managerial personnel.

NOTE: *It is intended that information relating to a company or securities, that is not generally available would be unpublished price sensitive information if it is likely to materially affect the price upon coming into the public domain. The types of matters that would ordinarily give rise to unpublished price sensitive information have been listed above to give illustrative guidance of unpublished price sensitive information.*

3 (1) *No insider shall communicate, provide, or allow access to any unpublished price sensitive information, relating to a company or securities listed or proposed to be listed, to any person including other insiders except where such communication is in furtherance of legitimate purposes, performance of duties or discharge of legal obligations.*

E. CONSIDERATION

18. I have considered the allegations levelled in the SCN, the relevant material brought on record, and replies/submissions of the Noticees made during the instant proceedings before the undersigned. Before going into merits of the case, it would be appropriate to consider the order passed by the Hon'ble SAT dated March 22, 2021 (Appeal Nos. 308, 309, 310, 311, 312, 313, 341, 342, 343,

344 and 283 of 2020), in the matter which are similar in terms of facts and circumstances, as found in this case. In the aforesaid order Hon'ble SAT had *inter alia* held that –

"….

12. It is an admitted fact that despite great efforts by the respondent SEBI to find out the source of information or to find out leakage, if any, of the information from the side of financial team, legal team or the audit team of the respective companies, no information could be recovered…

13. It is to be noted that admittedly the respondent SEBI has mined hundreds of similar messages from the devices of the appellants. Out of those numerous messages only in the present six cases the messages matched with the exact figure of the financial results…

14. As regards the estimates of the broker which subsequently matched with the published result, the AO reasoned that it is not the appellant's claim that the impugned message had arisen from the market research like that of those brokerage houses. However, the learned AO failed to appreciate that the appellants were pleading that the WhatsApp messages might have been originated from the brokerage houses, or from the estimates found on the platform of Bloomberg which were floated and were in the public domain. The learned AO also failed to take into consideration that there were numerous other messages of similar nature received and forwarded by the appellant which did not at all match with the published financial results. Appellant Shruti Vora in the case of Wipro has specifically pointed out that along with the said message similar massage regarding Axis Bank had also reached her which she had also forwarded. The published results, in that case however, were widely different. The learned AO did not give any weightage to the same.

15. The above definitions of the "unpublished price sensitive information" and "insider" would show that a generally available information would not be an unpublished price sensitive information.

16. The information can be branded as an unpublished price sensitive information only when the person getting the information had a knowledge that it was unpublished price sensitive information. Though knowledge is a state of mind of a person, the same can *be proved on preponderance of probabilities on attendant circumstances. In the present case, there are no attendant circumstances at all except the possibilities as enumerated by the learned AO. Proximity of time, similarity between the information were the only two factors that weighed with the learned AO to brand the information as unpublished price sensitive information. In the case of Samir Arora vs. SEBI (2004) SCC Online SAT 90 this Tribunal had rejected the arguments of SEBI that there is no need for linkage between the potential source of the unpublished price sensitive information and the person allegedly in possession of the alleged unpublished price sensitive information.*

18………..in the facts of the case, in our view the respondents failed to prove any preponderance of probabilities that the impugned messages were unpublished price sensitive information, that the appellants knew that it was unpublished price sensitive information and with the said knowledge they or any of them had passed the said information to other parties."

By stating above, Hon'ble SAT had held that no violation has been committed under PIT Regulations, 2015.

19. Subsequently, an appeal filed by SEBI with reference to the aforesaid SAT order dated March 22, 2021 before Hon'ble Supreme Court. Hon'ble Supreme Court in the matter of *SEBI vs Shruti Vora & ors.* (Civil Appeal Nos. 2252-2262/2021 dated September 26, 2022), while declining to interfere with the aforesaid order of the Hon'ble SAT, had *inter alia* held that: -

"*3. After considering the factual aspects of the matter, including the statutory provisions, the Tribunal found that in the facts and circumstances of the case no liability could be fastened on said applicants before the Tribunal.*

4. Though, these are the statutory appeals, we see no reason to entertain these appeals."

20. In view of the aforesaid facts and circumstances and the factum of the aforementioned judgements of Hon'ble Apex court and Hon'ble SAT, I note that facts in the instant case are replica of the case that was decided by Hon'ble

SAT *vide* order dated March 22, 2021 & upheld by Hon'ble Supreme Court vide order dated September 26, 2022, with only difference that the circulation of WhatsApp messages pertain to different scrips.

21. Considering the similar nature of facts and circumstances and the aforesaid judgements of higher courts, I do not find any merit in adjudication of similar set of facts. Hence, as such, the SCN alleging the violation of section 12A(d) and (e) of SEBI Act read with Regulation 3(1) of PIT Regulations, 2015, as being disposed of without any consideration.

F. Order

22. In view of above, I find it appropriate to conclude the instant adjudication proceeding by disposing of the Show Cause Notice dated February 16, 2021 *qua* Noticees *i.e.* Shruti Vishal Vora and Shailendra Mehta, without imposition of any monetary penalty.

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

Date: September 29, 2022 **Vijayant Kumar Verma**

Place: Mumbai **Adjudicating Officer**