BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/DS/SD/2022-23/18327-18328]

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 No.	**Name of the Entities**	**PAN No. of the Entities**
1.	Mr. Dhruv Agrawal	ACKPA1653M
2.	Ms. Nishi Agrawal	BRMPA0935Q

In the matter of Manpasand Beverages Limited:

(The aforesaid entities are hereinafter individually referred to by their respective names/ Noticee number, and collectively referred to as "Noticees", unless the context specifies otherwise)

BACKGROUND:

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") conducted an investigation in the scrip of Manpasand Beverages Limited (hereinafter referred to as "**the Company**" or "**MBL**"), for the period commencing from April 2, 2018 to June 29, 2018 (hereinafter referred to as "**investigation period**"). During investigation period, it was observed that there were alleged violations of Section 12A (d) and (e) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **"SEBI Act"**) and the provisions of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as "**SEBI PIT Regulations, 2015**") by the Noticees.

2. In view of the above, SEBI initiated adjudication proceedings against the Noticees under the provisions of Section 15I read with Section 15G of the SEBI Act for the aforementioned alleged violations.

APPOINTMENT OF ADJUDICATING OFFICER

3. Vide Order dated August 23, 2021, the undersigned was appointed as the Adjudicating Officer (**"AO"**) under Section 19 read with Section 15-I of the SEBI Act and Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties Rules, 1995 (hereinafter referred to as "**Adjudication Rules**"), to enquire into and adjudge the aforesaid alleged violations by the Noticees of the provisions of Section 12A (d) and (e) read with Section 15G of the SEBI Act.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

4. Show Cause Notice no. SEBI/HO/LAD2/LAD2/P/OW/2021/34998/1 dated November 30, 2021 (hereinafter referred to as "**SCN**") was issued by the undersigned to the Noticees via Speed Post Acknowledgement Due (SPAD) under the provisions of Rule 4(1) of the Adjudication Rules read with section 15-I of the SEBI Act, calling upon the Noticees to show cause as to why inquiry should not be conducted and if deemed fit why penalty should not be imposed against them under Section 15G of the SEBI Act for the aforesaid alleged violations.

5. The main observations and allegations against the Noticees raised in the SCN are as under:

   (a) As per Deloitte Haskins & Sells (hereinafter referred to as **"DHS"** or **"statutory auditor"**), erstwhile statutory auditor of the Company, the audit team has started the audit for FY 2017-18 on March 15, 2018. On March 16, 2018, DHS had sent the requirement list to the Company. However, even after several reminders, many items required by the statutory auditor were not provided to it by the Company. Further, as per the audit plan of audit team, the deadline for interim reporting was decided as April 16, 2018 and deadline for final reporting was set as May 10, 2018. However, as the necessary information was still not provided by the Company to the statutory auditor, the statutory auditor could not complete the audit assignment as per the plan. On May 23, 2018, the Company informed to the stock exchanges that a meeting of Board of Directors is scheduled to be held on May 30, 2018 to consider and approve the Audited Financial Results for the quarter and FY 2017-18. Since the statutory auditor was not informed of the same and had itself noted it from BSE's website, a meeting of the DHS officials was held with the officials of the Company (including Noticee no. 1 being member of the Audit Committee of the Company). Thereafter, DHS has submitted its resignation as statutory auditor and sent letter dated May 26, 2018 to the company. Subsequently, on May 27, 2018, the company/MBL made the announcement of resignation by statutory auditor to the stock exchanges.

(b) DHS and the company officials were aware of the deadline for final reporting (May 10, 2018) and as the requisite information could not be provided by the company to statutory auditor by the said date, this lead to ultimate failure on the part of statutory auditor to submit audit reports within the pre-decided timeline. Further, the statutory auditor tendered its resignation to the company on May 26, 2018.

(c) Thus, the company/MBL's failure to provide necessary information to the statutory auditor within the fixed deadline (May 10, 2018), non-completion of audit within the planned period and subsequent resignation by statutory auditor of MBL is considered as unpublished price sensitive information (UPSI) in terms of Regulation 2(1)(n) of the SEBI (PIT) Regulations, 2015 i.e. information relating to financial results. Further, the UPSI period was considered from the day when the company breach the timeline for final reporting of information to the statutory auditor i.e. May 10, 2018, till the day when the announcement of resignation of DHS as statutory auditor was made by MBL and disseminated on the NSE's website on May 27, 2018, 3:27 PM (hereinafter referred to as "**UPSI period**").

(d) In order to ascertain if any of the insiders to the said UPSI had traded during the UPSI period, details were sought from MBL with respect to all persons including promoters/directors/employees and/or any other persons (whether connected to MBL or not) who were having access to, and/or in possession of UPSI. As per the information submitted by MBL to SEBI vide its letter dated August 19, 2019, Noticee No. 1 was the Non-Executive Director of MBL and also a member of the Audit Committee during the UPSI period. Therefore, Noticee no. 1 being an insider in terms of Regulations 2(1)(g) of SEBI (PIT) Regulations, 2015, was considered to be privy to the aforesaid UPSI.

(e) Further, since Noticee No. 2 was the immediate relative of Noticee No. 1 and as per Noticee no. 1's own statement in his letter dated January 30, 2020 that Noticee no. 2 is connected to him, Noticee no. 2 was considered as a connected person and deemed insider under Regulation 2(1)(d) read with Regulation 2(1)(f) of the SEBI(PIT) Regulations, 2015.

(f) Considering the aforesaid background, it was observed that Noticee No. 2 had joint demat account with Noticee no. 1 wherein the Noticee no. 1 was the second holder. Noticee no. 2 had carried out sell trades in the scrip of MBL only during the UPSI period on May 18, 2018 and no trades were carried out by her in the pre-UPSI period and post UPSI period. Thus, it was observed that the UPSI had been communicated by the Noticee No. 1 to Noticee No. 2 and Noticee no. 2 had thereafter traded on the basis of the said UPSI and unlawfully avoided losses.

(g) In view of the above, Noticee no.1 and Noticee no. 2 were alleged to have violated Section 12A (d) and (e) of the SEBI Act, 1992, and Regulation 3(1) and 4(1) of the SEBI (PIT) Regulations, 2015.

6. The Noticees, vide undated letter (received by SEBI on December 27, 2021) signed by Noticee no. 1, made submissions in reply to the SCN dated November 30, 2021. The summary of relevant submissions of Noticees is given below:

a. Although DHS tendered their resignation on May 26, 2018, Notice no. 1 was not privy to this information on May 26, 2018 and became aware of it only on May 27, 2018 when an emergency Audit Committee Meeting was called to discuss the state of affairs post the resignation of Deloitte. The new auditors were appointed to fill the casual vacancy, and also to postpone the Board Meeting scheduled for May 30, 2018 by which results should have been audited.
b. Noticees did not consider the audit plan or the submission of information or the resignation of the statutory auditors as UPSI, as audit plan is drawn up every year and information is submitted every year to the statutory auditor by the Finance and the Secretarial Department of the Company.
c. Admitted that Notice no. 1 was an insider as he was the Non-Executive Director and member of the Audit Committee, and privy to the information that DHS had submitted their resignation and the Board Meeting scheduled for May 30, 2018 has been postponed.
d. Admitted that Noticee No. 2 has been considered as a connected person because she is an immediate relative of Noticee No. 1.
e. Even though Noticee No. 2 is niece of Noticee No. 1, but she is MBA qualified and stays along with her father at Bhavnagar and has her independent source of Income. It was further submitted that Noticee No. 2 has sold the shares of MBL held by her from October-2017 to May 18, 2018, much before MBL intimated BSE and NSE regarding the date of the Board Meeting to consider Financial Results.
f. There was no whisper of the statutory auditors' resigning on May 18, 2018 and hence by no stretch of imagination could Noticee no. 1 had any idea about the statutory auditors resigning in the coming weeks and further communicate the same to Noticee no. 2, who in turn would sold the shares on the basis of such information. This is an allegation without any basis or proof and a figment of imagination. It was also submitted that Noticee no. 2 sold the shares on May 18, 2018 when the price was Rs. 432 and the closing price increased to Rs. 449.95 on May 25, 2018 and the share price had been continuously increasing

from May 05, 2018. This trade pattern clearly indicates that Noticee no. 2 sold the shares only to make profit as every investor prefers to do and not with any malafide intention.

g. Since there was no UPSI at all, there was no question of communicating any information by Noticee no. 1 to Noticee no. 2, as was alleged in the SCN, hence Noticee no. 1 has not violated the provisions of Section 12A(d) and (e) of the SEBI Act, 1992 and Regulations 3(1) and 4(1) of the SEBI (PIT) Regulations, 2015.

h. Noticee no. 2 was not in possession of any UPSI and hence could not have traded while being in possession of UPSI. Therefore, Noticee no. 2 has not violated the provisions of Section 12A(d) and (e) of the SEBI Act, 1992 and Regulations 3(1) and 4(1) of the SEBI (PIT) Regulations, 2015.

7. Vide the aforesaid undated letter (received by SEBI on December 27, 2021), Noticees have requested for personal hearing in the matter. In view of this, vide hearing notice dated February 11, 2022, an opportunity of hearing was given to the Noticees on March 08, 2022. However, vide email dated March 05, 2022, the Noticees sought adjournment of fifteen days for the personal hearing. Consequently, vide email dated March 09, 2022, personal hearing in the matter was rescheduled to March 23, 2022. On the scheduled date of the hearing viz. March 23, 2022, the authorized representative of the Noticees appeared before the undersigned and reiterated the submissions made in their undated letter (received by SEBI on December 27,2021) of the Noticees.

<u>CONSIDERATION OF ISSUES AND FINDINGS</u>

8. I have taken into consideration the facts and circumstances of the case and the material on record. I have also carefully perused the investigation report, the violations alleged against the Noticees in the SCN, and also the submission of the Noticees in this regard.

9. The issues that arise for consideration and determination in the present matter are as under:-

   (a) Whether the Noticees are "insiders" as per the provisions of the SEBI PIT Regulations, 2015?
   (b) Whether there was an UPSI in existence during the investigation period? If yes, whether Noticee no. 1 communicated, provided or allowed access to UPSI to Noticee no. 2, and thus violated the provisions of Section 12A (d) and (e) of the SEBI Act read with Regulation 3(1) of the SEBI PIT Regulations, 2015?
   (c) Whether Noticee no. 2 sold the shares of the Company while in possession of UPSI, and thus violated the provisions of Section 12A (d) and (e) of the SEBI Act read with Regulation 4(1) of the SEBI PIT Regulations, 2015?
   (d) Does the violations, if any, on the part of the Noticees attract monetary penalty under Section 15G of the SEBI Act? If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of the SEBI Act?

FINDINGS

10. Before moving forward, it will be appropriate to refer to the relevant provision of the SEBI Act and the SEBI PIT Regulations, 2015, allegedly violated by the Noticees, which read as under:

SEBI Act

- ***12A. No person shall directly or indirectly—***
  [……]
  (d) engage in insider trading;
  (e) deal in securities while in possession of material or non-public information or communicate such material or non-public information to any other person, in a manner which is in contravention of the provisions of this Act or the rules or the regulations made thereunder;

- ***Section 15G of the SEBI Act-Penalty for insider trading-If any insider who,—***
  - *(i)* *either on his own behalf or on behalf of any other person, deals in securities of a body corporate listed on any stock exchange on the basis of any unpublished price-sensitive information; or*
  - *(ii)* *communicates any unpublished price-sensitive information to any person, with or without his request for such information except as required in the ordinary course of business or under any law; or*
  - *(iii)* *counsels, or procures for any other person to deal in any securities of anybody corporate on the basis of unpublished price-sensitive information,*

  shall be liable to a penalty which shall not be less than ten lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher.

<u>SEBI PIT Regulations, 2015</u>

- ***Communication or procurement 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…
  NOTE: *This provision is intended to cast an obligation on all insiders who are essentially persons in possession of unpublished price sensitive information to handle such information with care and to deal with the information with them when transacting their business strictly on a need-to-know basis. It is also intended to lead to organisations developing practices based on need-to-know principles for treatment of information in their possession.*

- ***Trading when in possession of unpublished price sensitive information***
  4. (1) No insider shall trade in securities that are listed or proposed to be listed on a stock exchange when in possession of unpublished price sensitive information:
  Explanation –When a person who has traded in securities has been in possession of unpublished price sensitive information, his trades would be presumed to have been motivated by the knowledge and awareness of such information in his possession.

Issue (a): Whether the Noticees are "insiders" as per the provisions of the SEBI PIT Regulations, 2015?

11. I note that violation of Regulation 3(1) and Regulation 4(1) of the SEBI PIT Regulations, 2015 can only be committed by an insider. Regulation 2(1)(g) of the SEBI PIT Regulations, 2015 defines insider and reads as under:

> *"insider" means any person who is:*
> *(i) a connected person; or*
> *(ii) in possession of or having access to unpublished price sensitive information;"*

12. Regulation 2(1) (d) of SEBI PIT Regulations, 2015 defines connected person. Relevant part of the said provision is reproduced below:

> *"connected person" means-*
>
> *(i) any person who is or has during the six months prior to the concerned act been associated with a company, directly or indirectly, in any capacity including by reason of frequent communication with its officers or by being in any contractual, fiduciary or employment relationship or by <u>being a director, officer or an employee of the company</u> or holds any position including a professional or business relationship between himself and the company whether temporary or permanent<u>, that allows such person, directly or indirectly, access to unpublished price sensitive information or is reasonably expected to allow such access</u>.*
>
> *(ii) Without prejudice to the generality of the foregoing, the persons falling within the following categories shall be <u>deemed to be connected persons unless the contrary is established</u>, -*
> *(a) an <u>immediate relative</u> of connected persons specified in clause (i); ….]"*

13. I note that the information was sought by SEBI from MBL with respect to details of all persons including promoters, directors, employees and/or any other persons (whether connected to MBL or not) who were having access to and/or in possession of the information pertaining to the resignation of the statutory auditor of the Company. As per the information submitted by MBL vide its letter dated August 19, 2019, Noticee No. 1, was the non-executive director of the Company and member of the Audit Committee. Therefore, Noticee no. 1 was having access to the information pertaining to the fixation of dates of audit, its commencement and completion, date of submission of audit report to the Company, fixation of dates for adopting statutory auditor's report, the Company's failure to submit requisite information to the statutory auditors,

information relating to non-completion of audit by May 10, 2018 etc. and about consequent resignation of statutory auditor of the Company. I note that non-executive director is covered within the definition of connected person under Regulation 2(1) (d) of SEBI PIT Regulations, 2015. Further, the Noticee no. 1 was also a member of Audit Committee. Moreover, the Noticees vide their undated letter (received by SEBI on December 27, 2021), have admitted that Notice no. 1 was an insider as he was the Non-Executive Director and member of the Audit Committee.

14. In view of foregoing, in terms of Regulations 2(1) (g) and Regulation 2(1) (d) of the SEBI PIT Regulations, 2015, I note that Noticee No. 1 was an insider for the UPSI period.

15. I note that in terms of definition of ‘connected person’ given under Regulation 2(1) (d) of SEBI PIT Regulations, 2015, an ‘immediate relative’ of the connected person is deemed to be connected persons unless the contrary is established. The term ‘immediate relative’ is defined under Regulation 2(1)(f) of the SEBI PIT Regulations, 2015, which reads as under:

> *“immediate relative” means a spouse of a person, and includes parent, sibling, and child of such person or of the spouse, any of whom is either dependent financially on such person, or consults such person in taking decisions relating to trading in securities;”*

16. I note that vide letter dated Jan 30, 2020 to SEBI, the Noticee No. 1 had informed that Noticee No. 2 is his niece and connected to him. Further, as per Regulation 2(1) (f) of the SEBI PIT Regulations, 2015, child of sibling of a person, which will include niece, would be an immediate relative of such person. Noticee no. 2 is an immediate relative of Noticee no. 1, and shares the common address with the Noticee no. 1. Moreover, in the demat account of Noticee no. 2, Noticee no. 1 was the second holder. In view of the said facts, Noticee no. 2 would be considered as an insider in terms of Regulations 2(1) (g), Regulation 2(1) (d) and Regulation 2(1) (f) of the SEBI PIT Regulations, 2015.

Issue (b): Whether there was an UPSI in existence during the investigation period? If yes, whether Noticee No. 1 communicated, provided or allowed access to UPSI to Noticee No. 2, and thus violated the provisions of Section 12A (d) and (e) of the SEBI Act read with Regulation 3(1) of the SEBI PIT Regulations, 2015?

17. The term UPSI has been defined under Regulation 2(1)(n) of the SEBI (PIT) Regulations, 2015, and reads as under:

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

18. I note that the definition of UPSI is broad enough to cover within its ambit any information which if published is likely to materially affect the price of securities of a company. In this regard, what is relevant to be seen is that: (i) whether the information directly or indirectly related to the company, and (ii) whether the information, if published, is likely to materially affect the price of securities of a company. If the answers to these two questions are in affirmative, then the information has to be construed as price sensitive information irrespective of actual price witnessed post disclosure of the information.

19. I note that the audit team of statutory auditor DHS started the audit for FY 2017-18 on March 15, 2018 and on March 16, 2018, they had sent the requirement list to the Company. As per the audit plan, interim reporting was to be completed by April 16, 2018 and final reporting by May 10, 2018. However, the Company did not provide many items of the information sought by the statutory auditors despite several reminders. As the necessary information was not furnished by the Company to the

statutory auditor, the statutory auditor could not complete the audit assignment as per the audit plan.

20. I note that on May 23, 2018, the Company unilaterally without taking into consideration that the required information was not provided to the statutory auditor and therefore interim and final reports were not submitted by the statutory auditor, informed to the stock exchanges that a meeting of Board of Directors was scheduled to be held on May 30, 2018 to consider and approve the Audited Financial Results for the quarter and FY 2017-18. However, the statutory auditor was not informed of the same and after becoming aware of the same from the BSE's website, a meeting was held on May 26, 2022 between statutory auditor and the officials of the Company including the Noticee no. 1. In the said meeting, since statutory auditor was unable to complete the audit in time because of the non-cooperation by the Company, the statutory auditor conveyed its decision to resign from the post of statutory auditor. Subsequently, on May 27, 2018, the company/MBL made the announcement of resignation by statutory auditor to the stock exchanges.

21. In the instant case, Board Meeting of MBL was scheduled to be held on May 30, 2018 to consider and adopt Audited Financial Results for the financial year ending on 31st March, 2018 and to declare final dividend was cancelled after resignation of the statutory auditors. Financial results of the company is an UPSI under the Regulation 2(1) (n) of the SEBI (PIT) Regulations, 2015. Declaration of financial results have large impact on the expectations of the investors and if such declaration is delayed, it has negative impact on the investors' sentiments. Further, the information regarding resignation of the statutory auditors for non-furnishing of key information by the Company can certainly said to have adverse impact on the sentiments of investors.

22. Thus, the MBL's failure to provide requisite key financial information to the statutory auditor, non-completion of audit within the planned timelines, subsequent resignation by statutory auditors of MBL leading to delay in declaration of financial results of MBL are in the nature of information that are likely to materially affect the price of the

securities of the Company, and thus would be considered as UPSI in terms of Regulation 2(1) (n) of the SEBI PIT Regulations, 2015.

23. Sub-regulation (1) of Regulation (3) of the SEBI PIT Regulations, 2015 prohibits communication of UPSI and reads as under:

> *"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."*

24. As per the information provided by the exchanges, the trades attributed to the Noticee no. 2 on NSE during UPSI period, pre and post UPSI period are as follows:-

Date	Buy Qty	Wt. Avg. Buy Price(in Rs.)	Sell Qty	Wt. Avg Sell Price(in Rs.)
Prior to UPSI period(April, 02, 2018 - May, 09, 2018)				
No trades observed related to MBL				
During UPSI Period(May, 10, 2018 - May, 27, 2018)				
18 May 2018	0	0	1591	426.03
Post UPSI Period(May, 28, 2018 - June, 29, 2018)				
No trades observed related to MBL				

25. From the above, it is observed that Noticee no. 2 had carried out sell trades in the scrip of MBL only on May 18, 2018 i.e. during the UPSI period, and no trades were carried out by her in the pre-UPSI period and post UPSI period in the scrip of MBL.

26. I note that the Noticee no. 2 is having common address with Noticee no. 1. Further, I also note that Noticee no. 1 was the second account holder in the demat account held by Noticee no. 2 from which the shares were traded during the relevant period. Noticee

no. 2 is the niece of Noticee no. 1 and falls within the meaning of insider under the SEBI PIT Regulation, 2015.

27. The Hon'ble Supreme Court, in the case of **Securities and Exchange Board of India v. Kishore R. Ajmera [(2016) 6 SCC 368]** while dealing with the standard of proof required in civil matters, observed the following:

> *"It is a fundamental principle of law that proof of an allegation levelled against a person may be in the form of direct substantive evidence or, as in many cases, such proof may have to be inferred by a logical process of reasoning from the totality of the attending facts and circumstances surrounding the allegations/charges made and levelled. While direct evidence is a more certain basis to come to a conclusion, yet, in the absence thereof the Courts cannot be helpless. It is the judicial duty to take note of the immediate and proximate facts and circumstances surrounding the events on which the charges/allegations are founded and to reach what would appear to the Court to be a reasonable conclusion therefrom. The test would always be that what inferential process that a reasonable/prudent man would adopt to arrive at a conclusion..... <u>The test, in our considered view, is one of preponderance of probabilities so far as adjudication of civil liability arising out of violation of the Act or the provisions of the Regulations framed thereunder is concerned.</u> Prosecution under Section 24 of the Act for violation of the provisions of any of the Regulations, of course, has to be on the basis of proof beyond reasonable doubt..."(emphasis supplied)*

28. Even otherwise, I also take note of the following observations of the Hon'ble Supreme Court in the case of **Balram Garg vs. SEBI [Civil Appeal No. 7054 of 2021]** in the order dated April 19, 2022:

> *"We are also of the opinion that in the absence of any material available on record to show frequent communication between the parties, there could not have been a presumption of communication of UPSI by the appellant Balram Garg. The trading pattern of the appellants in C.A. No.7590 of 2021 cannot be the circumstantial evidence to prove the communication of UPSI by the appellant Balram Garg to the other appellants…."*

29. I note that the ratio of the Hon'ble Supreme Court in the above case is not applicable in the instant case as the facts of both the cases are different from each other for the following reasons:

(a) In the above cited case, the impugned orders below noted that the appellants were neither “connected persons” within the meaning of Regulation 2(1)(d) nor “immediate relatives” within the meaning of Regulation 2(1)(f) of the SEBI PIT Regulation, 2015. However, in the instant case, for the reasons given in above paras, the Noticee no. 2 is immediate relative of Noticee no.1 and thus connected person within the ambit of Regulation 2(1) (d) the SEBI PIT Regulation, 2015.

(b) In the instant case, not only the Noticee no.1 and Noticee no. 2 were residing in the same address/house, but they have the joint demat account which has been used to execute sell trades in question. Therefore, there is strong presumption of communication of UPSI, and thus Noticee no. 2 was aware of the UPSI at the time of execution of sell trades.

(c) In the case cited above, the appellants have established through documentary evidence that they had family disputes resulting into family partition. However, in the instant case, even though the Noticees contended that Noticee no. 2 resides with her father at Ahemdabad, no material has been furnished establishing the same or that both Noticee no. 1 and Noticee no. 2 are not in good relationship and there were no chance or occasion for Noticee no. 1 to discuss the UPSI with Noticee no. 2 etc.

(d) In the instant case, trading in the scrip of MBL was not only done by the Noticee no. 2 but also done by the wife of the Noticee no. 1 i.e. Ms. Bhargavi Agrawal on May 22, 2018 i.e. within the UPSI period.

(e) SEBI has filed review petition bearing Diary no. 16210 of 2022 dated May 19, 2022 in the Hon’ble Supreme Court against the above cited order and the same is pending before the Hon’ble Court.

(f) I also note that Noticee no. 1 vide undated letter (received by SEBI on December 27, 2021) and signed by him has filed common reply for the Noticees in response to SEBI SCN dated November 30, 2021. It also shows the proximity and close relationship of Noticee no. 2 with Noticee no. 1, as against the facts of the above cited order of the Hon'ble Supreme Court.

30. Therefore, in my view, since the facts and circumstances of the instant case are different from the case cited above, the observations of the Hon'ble Supreme Court are not be applicable to the facts and circumstances of the present case.

31. Thus, on the basis of sufficient material and circumstantial evidences on record, it can be logically and reasonably inferred that the UPSI had been communicated to Noticee no. 2 by Noticee no. 1 and that Noticee no. 2 carried out the aforesaid sell trades through the joint demat account held by the Noticee no.1 and Noticee no.2 during the UPSI period while being in the possession of UPSI, and such trades would be deemed to have been motivated by the knowledge and awareness of the UPSI. Further, the said trades appears to have been executed to avoid loss after the UPSI was made public and in fact the price of the shares of MBL decreased to about 20 % in a single day(on May 28, 2018) from the previous day close (May 27, 2018) after UPSI was made public. Apart from this, Ms. Bhargavi Agrawal, wife of Noticee no. 1, had also executed sell trades in the shares of MBL on May 22, 2018 i.e. during the UPSI period, and the shares were used from the joint demat account held by Ms. Bhargavi Agrawal and the Noticee no.1 himself. In the said trades also, unlawfull loss of Rs. 94,785.60 was avoided by Ms. Bhargavi Agrawal i.e. wife of Noticee no. 1, for which SEBI has issued warning letter dated July 27, 2021.

32. In view of the aforesaid facts and circumstances, I found that Noticee no. 1 has violated Section 12A(d) and (e) of the SEBI Act read with Regulation 3(1) of the SEBI PIT Regulations, 2015 by communicating UPSI and allowing selling of shares of MBL from the joint demat account held by the Noticees.

Issue (c): Whether Noticee No. 2 sold shares of the company while in possession of such UPSI and violated the provisions of Section 12A (d) and (e) of the SEBI Act read with Regulation 4(1) of the SEBI PIT Regulations, 2015?

33. For the reasons given while deciding the other issues as above, it can be concluded that Noticee no. 2 was an insider during the UPSI period.

34. From the details of trades executed by Noticee no. 2 in the scrip of the Company during the UPSI period, as mentioned above and not being reproduced here for the sake of brevity, I note that Noticee no. 2 had carried out sell trades in the scrip of the Company from the joint demat account held by the Noticees during the UPSI period while Noticees being an insider as per the provisions of the SEBI PIT Regulations, 2015.

35. In this regard, I also note that Hon'ble SAT, in the case of **Rajiv B Gandhi & Ors vs. SEBI [Appeal No.50 of 2007]**, vide order dated May 9, 2008, *inter-alia*, held the following :

> *"We are of the considered opinion that if an insider trades or deals in securities of a listed company, it would be presumed that he traded on the basis of the unpublished price sensitive information in his possession unless he establishes to the contrary. Facts necessary to establish the contrary being especially within the knowledge of the insider, the burden of proving those facts is upon him. The presumption that arises is rebuttable and the onus would be on the insider to show that he did not trade on the basis of the unpublished price sensitive information and that he traded on some other basis. He shall have to furnish some reasonable or plausible explanation of the basis on which he traded. If he can do that, the onus shall stand discharged or else the charge shall stand established."*

36. I note that as per Explanation to Regulation 4(1) of the SEBI PIT Regulations, 2015, when a person who has traded in securities has been in possession of UPSI, his trades would be presumed to have been motivated by the knowledge and awareness of such UPSI unless he proves his innocence by demonstrating the circumstances mentioned in the said Explanation, and which are reproduced below:

> *"(i) the transaction is an off-market inter-se transfer between insiders who were in possession of the same unpublished price sensitive information*

without being in breach of regulation 3 and both parties had made a conscious and informed trade decision.
Provided that such unpublished price sensitive information was not obtained under sub-regulation (3) of regulation 3 of these regulations.
Provided further that such off-market trades shall be reported by the insiders to the company within two working days. Every company shall notify the particulars of such trades to the stock exchange on which the securities are listed within two trading days from receipt of the disclosure or from becoming aware of such information.;

(ii) the transaction was carried out through the block deal window mechanism between persons who were in possession of the unpublished price sensitive information without being in breach of regulation 3 and both parties had made a conscious and informed trade decision;
Provided that such unpublished price sensitive information was not obtained by either person under sub-regulation (3) of regulation 3 of these regulations.

(iii) the transaction in question was carried out pursuant to a statutory or regulatory obligation to carry out a bona fide transaction.

(iv) the transaction in question was undertaken pursuant to the exercise of stock options in respect of which the exercise price was pre-determined in compliance with applicable regulations.

(v) in the case of non-individual insiders: –
(a) the individuals who were in possession of such unpublished price sensitive information were different from the individuals taking trading decisions and such decision-making individuals were not in possession of such unpublished price sensitive information when they took the decision to trade; and

(b) appropriate and adequate arrangements were in place to ensure that these regulations are not violated and no unpublished price sensitive information was communicated by the individuals possessing the information to the individuals taking trading decisions and there is no evidence of such arrangements having been breached;

(vi) the trades were pursuant to a trading plan set up in accordance with regulation 5."

37. The Noticees have failed to prove any of the circumstances establishing that Noticee no. 2 had her independent source of income and she had been doing trade in securities even prior to UPSI period. Further, these contentions do not fall under any of the circumstances given under Explanation to Regulation 4(1) of the SEBI PIT

Regulations, 2015 and does not discharge the burden of proof of Noticee no. 2 as per the said Explanation. In addition to that, the fact remains that the demat account used for executing sell trades belongs to both Noticee no.1 and Noticee no. 2 jointly.

38. In view of above, I found that Noticee no. 2 in connivance with Noticee no.1 sold shares during the UPSI period and thereby violated Section 12A(d) and (e) of the SEBI Act read with Regulation 4(1) of the SEBI PIT Regulations, 2015.

Issue (d) Does the violations, if any, on the part of the Noticees attract monetary penalty under Section 15G of the SEBI Act? If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of the SEBI Act?

39. As per the information provided by the exchanges, the trades attributed to Noticee no. 2 on NSE during UPSI period, pre and post UPSI period are as follows:-

Date	Buy Qty	Wt. Avg. Buy Price(in Rs.)	Sell Qty	Wt. Avg Sell Price(in Rs.)
Prior to UPSI period(April, 02, 2018 - May, 09, 2018)				
No trades observed related to MBL				
During UPSI Period(May, 10, 2018 - May, 27, 2018)				
18 May 2018	0	0	1591	426.03
Post UPSI Period(May, 28, 2018 - June, 29, 2018)				
No trades observed related to MBL				

40. It may not be out of place to mention here that as per the information provided by the exchanges, the trades attributed to Ms. Bhargavi Agrawal, wife of Noticee no. 1, on NSE during UPSI period, pre and post UPSI period are as follows:-

Date	Buy Qty	Wt. Avg. Buy Price(in Rs.)	Sell Qty	Wt. Avg Sell Price(in Rs.)
Prior to UPSI period(April, 02, 2018 - May, 09, 2018)				
No trades observed related to MBL				
During UPSI Period(May, 10, 2018 - May, 27, 2018)				
22 May 2018	0	0	910	448.36
Post UPSI Period(May, 28, 2018 - June, 29, 2018)				
No trades observed related to MBL				

41. The unlawful loss avoided by Noticee no. 2 and Ms. Bhargavi Agrawal by trading in the shares of MBL during the UPSI period is calculated below:-

Name	No of shares sold		WAPP(weighted average Sell price)	Total Sell value (in Rs.)	Notional sale value as on May 28, 2018# based on closing price (in Rs)*	Unlawful loss avoided (in Rs.)
		A	B	C	D = A*344.2 (NSE) & *344.8 (BSE)	E=C-D
Nishi Agrawal	NSE	1591	426.03	6,77,813.73	5,47,622.20	1,30,191.53
Bhargavi Agrawal	NSE	910	448.36	4,08,007.60	3,13,222.00	94,785.60

(# - Closing price of May 28, 2018 was considered for calculation of losses).

Unlawful loss avoided = {No. of shares sold while in possession of UPSI X weighted average sell price } – {No. of shares sold while in possession of UPSI X Closing price on the day UPSI becoming public or the closing price on the following trading day, depending upon the timing of notification of UPSI to stock exchange}.

42. From the material available on record, by trading in the scrip of MBL while being in possession of USPI during the UPSI period, Noticee no. 2 avoided unlawful loss of Rs. 1,30,191.53 (rupees one lakh thirty thousand one hundred and ninety-one only) while Ms. Bhargavi Agrawal, wife of the Noticee no.1, avoided unlawful loss of Rs. 94,785.60 (ninety four thousand seven hundred and eighty-five only).

43. I note that the Noticee no.1, by communicating UPSI to Noticee no.2 and to his wife Ms. Bhargavi Agrawal, has violated provisions of Section 12A(d) and (e) of the SEBI Act read with Regulation 3(1) of the SEBI PIT Regulations, 2015. Further, Noticee No. 2 had carried out trades in the scrip of the Company during the UPSI period while being an insider, and thus violated Section 12A(d) and (e) of the SEBI Act read with Regulation 4(1) of the SEBI PIT Regulations, 2015. In view of the foregoing, I am convinced that it is a fit case to impose monetary penalty on the Noticees under the provisions of section 15G of the SEBI Act.

44. I note that once violation under Section 15G of the SEBI Act is established, then monetary penalty shall be levied which shall not be less than ten lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher

45. I further note that, the Hon'ble Supreme Court of India in the matter of **Chairman, SEBI vs. Shriram Mutual Fund {[2006]5 SCC 361}** has held that:

> *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant.............."*

46. In view of the foregoing, I am convinced that the Noticees are liable for monetary penalty under Section 15G of the SEBI Act, 1992. While determining the quantum of penalty, it is important to consider the factors stipulated in Section 15J of SEBI Act, which have been incorporated verbatim in Rule 5(2) of the Adjudication Rules, 1995. Section 15J of the SEBI Act is reproduced below:

> ***"15J** While adjudging quantum of penalty under Section 15-I, 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."*

47. From the material available on record, by trading in the scrip of MBL while being in possession of USPI during the UPSI period, Noticee no. 2 avoided loss of Rs. 1,30,191.53 (rupees one lakh thirty thousand one hundred and ninety-one only). Further, the material available on record shows that due to communication of UPSI by Noticee no. 1, the wife of Noticee no. 1 also avoided loss of Rs. 94,785.60 (ninety four thousand seven hundred and eighty-five only).

48. I note that in the instant case, the demat account which was used to do the trading was jointly held by Noticee no. 1 and Noticee no.2. Therefore, they can be held jointly and severally liable for the violation of insider trading under Section 15G of the SEBI Act. Therefore, I consider it fit and proper to impose minimum penalty, jointly and severally, on the Noticee no. 1 and Noticee no. 2 for the aforesaid violations.

49. Therefore, taking into consideration the facts / circumstance of the case, I am of the view that it would be appropriate to impose the minimum monetary penalty of Rs 10,00,000/- (Rupees ten lakhs only) on the Noticee no. 1 and Noticee no. 2, jointly and severally, for violating the provisions of Section 15G of the SEBI Act read with Regulation 3(1) and Regulation 4(1) of the SEBI PIT Regulations, 2015.

ORDER

50. Accordingly, in exercise of powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, 1995, I hereby impose following penalty payable jointly and severally on the Noticees, under Section 15G of the SEBI Act:

S. No.	Name of the Noticee	Violation and penalty provisions	Penalty (Rs)
1.	Mr. Dhruv Agrawal PAN: ACKPA1653M	Section 15G of the SEBI Act read with Regulation 3(1) and Regulation 4(1) of the SEBI PIT Regulations, 2015	Rs 10,00,000/- (Rs. Ten lakh only)
2.	Ms. Nishi Agrawal PAN: BRMPA0935Q		

51. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in 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

52. The aforesaid Noticees shall forward said Demand Draft or the details / confirmation of penalty so paid to "The Division Chief (Enforcement Department - DRA-1), 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:
    a) Name and PAN of the Noticee
    b) Name of the case / matter
    c) Purpose of Payment – Payment of penalty under AO proceedings
    d) Bank Name and Account Number
    e) Transaction Number

53. 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 for realization of the said amount of penalty along with interest thereon, *inter alia*, by attachment and sale of movable and immovable properties.

54. In terms of Rule 6 of the Adjudication Rules, 1995, copy of this order is sent to the Noticees and also to the Securities and Exchange Board of India.

S/d

Date: August 18, 2022

Place: Mumbai

D. V. SEKHAR

ADJUDICATING OFFICER &

CHIEF GENERAL MANAGER