

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. Order/SM/AD/2023-24/27829-27830]

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

1. Mr. Suresh Kumar Reddy

[PAN: AOOPM8696J]

2. Vijay Kumar Kancharla HUF

[PAN: AAGHV3639E]

Karta of the HUF: Vijay Kumar Kancharla (ATNPK0320K)

In the matter of Brightcom Group Limited

FACTS OF THE CASE IN BRIEF

1. Brightcom Group Limited (hereinafter referred to as “**BGL/By Name**”) is a company whose shares are listed on both BSE and NSE (hereinafter collectively referred to as “**Exchanges**”). Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) had conducted an investigation to ascertain whether trading by certain entities in the scrip of Brightcom Group Limited (hereinafter referred to as “**BGL/By Name**”) during the period September 16, 2021 to February 28, 2022 (hereinafter referred to as the “**investigation period**”/“**IP**”) was undertaken while in possession of or having access to Unpublished Price Sensitive Information (hereinafter referred to as “**UPSI**”) related to appointment of forensic auditor by SEBI which was disclosed to Exchanges on February 28, 2022, post market hours.
2. Based on the findings of the investigation, SEBI observed that BGL had not met the minimum standards for Code of Conduct as prescribed under Schedule B of SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as “**PIT Regulations**”). As per Regulation

9(1) of PIT Regulations, chief executive officer (hereinafter referred to as “**CEO**”) or managing director (hereinafter referred to as “**MD**”) shall formulate code of conduct adopting the minimum standards set out in Schedule B of PIT Regulations. Therefore, SEBI initiated adjudication proceedings against Mr. Suresh Kumar Reddy, CEO and MD of BGL (hereinafter referred to as “**Noticee 1/By Name**”) for the aforementioned noncompliance of PIT Regulations by BGL.

3. Further, SEBI observed that Vijay Kumar Kancharla HUF (hereinafter referred to as “**Noticee 2/By Name**”) failed to make disclosures of its trades when the traded value exceeded INR 10 lakhs on multiple occasions during the IP and thereby had allegedly violated Regulation 7(2)(a) of PIT Regulations. (Noticee 1 and Noticee 2 are hereinafter collectively referred to as “**Noticees**”). It was also observed that Vijay Kumar Kancharla HUF had executed trades during trading window closure during IP and thereby had allegedly violated the provisions of Clause 4 of Code of Conduct as specified under Schedule B read with Regulation 9(1) of PIT Regulations. Therefore, adjudication proceedings were initiated by SEBI against Vijay Kumar Kancharla HUF.

APPOINTMENT OF ADJUDICATING OFFICER

4. Vide order dated February 22, 2023, SEBI appointed the undersigned as Adjudicating Officer under Section 15I of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “**SEBI Act**”) read with Section 19 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 inquire into and adjudge under:
 - a) Section 15HB of SEBI Act for the alleged violation of Regulation 9(1) read with Schedule B of PIT Regulations by Noticee 1.
 - b) Section 15A(b) of SEBI Act for the alleged violation of Regulation 7(2)(a) of PIT Regulations and Section 15HB of SEBI Act for the alleged violation of Clause 4(1) of Schedule B read with Regulation 9 (1) of PIT Regulations by Noticee 2.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

5. A common show-cause notice dated March 13, 2023 (hereinafter referred to as ‘**SCN dated March 13, 2023**’) was issued to Noticees under Rule 4 of the Adjudication Rules to show-cause as to why an inquiry should not be initiated against them and penalty, if any, not be imposed upon them for the aforesaid violations alleged to have been committed by them. The SCN was sent to Noticees through Speed Post Acknowledgment Due (hereinafter referred to as “**SPAD**”)

as well as through digitally signed email. The SCN sent through digitally signed email to Noticees returned undelivered. However, the SCN issued to Noticees were duly served on them through SPAD.

6. Later on, a Supplementary Show Cause Notice dated May 16, 2023 (hereinafter referred to as “SSCN”) was issued to Noticee 2. Vide the SSCN, it was clarified that for the alleged violation of Clause 4(1) of Schedule B read with Regulation 9(1) of PIT Regulations, Noticee 2 is being charged under Section 15HB of the SEBI Act instead of Section 15A(b) of SEBI Act which had been inadvertently mentioned in the SCN dated March 13, 2023. It was also informed to Noticee 2 that the contents of SSCN shall be read along with the SCN dated March 13, 2023. The SSCN was duly served on Noticee 2 through SPAD as well as through email. The SCN dated March 13, 2023 and SSCN are hereinafter collectively referred to as SCN.
7. The allegations levelled against Noticee in the SCN are summarized hereunder:
 - a) From the copy of code of conduct for Insider Trading applicable at BGL submitted by BGL during the investigation, SEBI observed that standards/clauses prescribed in Schedule B of PIT Regulations such as execution of trades during trading window closure, pre-clearance of trades when trading window is open, restrictions of contra trades, disclosure of trades to BGL etc. are not mentioned in Code of Conduct provided by BGL. Therefore, it has been alleged in the SCN that Noticee 1, CEO and Managing Director of BGL had failed to formulate code of conduct adopting the minimum standards set out in Schedule B of PIT Regulations and thereby, have violated Regulation 9(1) read with Schedule B of PIT Regulations.
 - b) Vijay Kumar Kancharla HUF was promoter/member of promoter group of BGL during IP. SEBI observed that on numerous occasions during IP, Vijay Kumar Kancharla HUF had traded in the scrip of BGL and traded value was in excess of INR. 10 lakhs. Vide email dated December 14, 2022, BGL had, *inter-alia*, submitted that as per the records available, BGL had not received any disclosures and no pre-clearance was sought by Vijay Kancharla (Karta of Vijay Kancharla HUF) for the trades carried out during the period September 16, 2021 to February 28, 2022. Vide email dated January 06, 2023 Vijay Kumar Kanchria submitted that he did not make any disclosures nor sought any pre-clearance from the company with respect to his trading in the scrip of BGL.

c) As per the submissions made by BGL to the Exchanges vide letters dated September 30, 2021 and December 31, 2021, trading window was closed during October 01, 2021 to November 15, 2021 and from January 01, 2022 to January 27, 2022, respectively, for declaration of Unaudited financial results of the Company for the quarter ended September 30, 2021 and December 31, 2021. It has been alleged in the SCN that Vijay Kumar Kancharla HUF had executed trades during the trading window closure period and hence violated the provisions of Clause 4 of Code of Conduct as specified under Schedule B read with Regulation 9(1) of PIT Regulations.

8. Thereafter, in the interest of natural justice, vide hearing notices dated April 24, 2023, Noticees were granted an opportunity of personal hearing before the undersigned on May 09, 2023. The aforesaid hearing notices were sent to Noticees through SPAD and also through digitally signed email on April 26, 2023 and were duly served upon Noticees.
9. Subsequently, vide emails dated May 08, 2023, Noticees submitted their reply to SCN, the relevant extracts of which are reproduced hereunder:

Reply of Noticee 1

“7. I submit that a separate proceeding vide Show Cause Notice No SEBI/EAD-6/AK/BS/589021/6/2022 dated November 23, 2022 (hereinafter referred to as “separate SCN”), has also been initiated against BGL. The said SCN inter-alia alleges that Code of Conduct formulated and adopted by Brightcom Group Limited does not meet the minimum standard as prescribed under the Regulation 9(1) read with Schedule B of PIT Regulations. It has also been alleged that Brightcom Group Limited has failed to comply with provisions of SEBI circular dated July 19,2019, and SEBI circular dated July 23, 2020 thereby attracting penalty under section 15HB of SEBI Act.

As regards alleged violation of Regulation 9(1) read with Schedule B of SEBI (PIT) Regulations, I submit as follows:

- a) *The Code of Conduct was approved by the Board of Directors in the meeting held on March 28,2019 which was implemented from April 1, 2019. The same was forwarded to the Stock Exchanges and the same was also uploaded on the website of the company.*

- b) *Till the date of receiving of separate SCN by BGL, none of the Stock Exchanges pointed out any discrepancy/deficiency in the Code of Conduct. In case any of the stock exchange would have intimated Brightcom Group Limited about the deficiencies at that time itself, Brightcom Group Limited could have amended the company's Code of Conduct as per the extant policies.*
- c) *I reiterate that pursuant to submissions of the said code of conduct before the Stock Exchanges, no queries were asked / reply was given asking Brightcom Group Limited to amend the Code of Conduct until separate SCN was issued.*
- d) *As regards Code of Conduct, Brightcom Group Limited had hired a Professional for drafting the Code of Conduct as per SEBI Regulations and Brightcom Group Limited has relied upon the expertise of the professional for the same. Whatever Code of Conduct was drafted by him and given to Brightcom Group Limited, it was then adopted by Brightcom Group Limited without any malafide intentions.*
- e) *As soon as BGL came to know through the Show Cause Notice dated November 23, 2022 that the Code of Conduct is not as per the latest instructions issued by SEBI, Brightcom Group Limited has started taking steps to amend the Code of Conduct. Subsequently, the Code of Conduct was amended in the Board Meeting held on February 3, 2023 and the same was sent to the Stock Exchanges and was uploaded on company's website.*
- f) *Therefore, I deny that, I as a CEO and MD of Brightcom Group Limited have failed to formulate Code of Conduct by not adopting the minimum standards prescribed under Schedule B read with Regulation 9 of PIT Regulation.*

In view of the same, I deny that I have failed to formulate code of conduct for adopting minimum standards as set out in Schedule B and further deny that I have violated Regulation 9(1) read with Schedule B of PIT Regulations.

10. As regards issue of two Show Cause Notices of same set of violation, I submit as under:

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a) I submit that two Show Cause Notices have been issued as follows:

*I. Show Cause Notice dated 23, November 2022 to Brightcom Group Limited and
II. Show Cause Notice to me dated March 13, 2023
for the alleged violation of the same Code of Conduct.*

b) I submit that this amounts to Double Jeopardy which is in violation of Article 20 (2) of the Constitution of India. The Article 20 (2) of the Constitution of India stipulates that "No person shall be prosecuted and punished for the same offence more than once"

c) The said issue of two Show cause Notices for same set of violation is also covered by the principle of "Res Judicata" which stipulate that in case the actual issue in both the process are identical it gives rise to issue of estoppel. I submit that this is clearly the case in the instant Show Cause Notice and also the Show Cause Notice dated November 23, 2022.

d) I would like to place reliance upon the decision of the Hon'ble Tribunal in the matter of Nirmal Kotecha v SEBI (Appeal No. 580 of 2021) dated June 08, 2021. The facts of the case are similar to the Appellant's case wherein an issue of fact was already decided by the Ld. AO and a different view of the Ld. WTM was squarely covered by the principles of constructive res judicata hence was disallowed, by the Hon'ble Tribunal.
.....

11. Without prejudice to the above, even if it is assumed that the aforesaid violations have been committed, I submit that aforesaid violations were merely technical in nature which neither resulted in any unfair advantage to me nor any loss has been caused to the investors. Further, the aforesaid submission also establishes that there was no malafide intention on my part. In view of the same, no penalty may be levied.

12. It is further submitted that I have always maintained transparency in my conduct and affairs and observed ethical behaviour in the BGL's operations as its CEO and MD. I have confirmed to the standards of transparency and ethical behaviour prescribed in the various regulations and statues.
.....

I further submit that I have never been penalized by any regulatory authority and have got clean track record till date. I further undertake that in future also I shall comply with all

Acts, rules, regulations etc., in letter and in spirit, and would not violate any of the provision of any Act, rules, regulations etc. of any regulatory authority.

.....

15. I submit that my violation, if any, is technical and venial in nature and same is unintentional, hence going by judicial precedents, no penalty may be levied.

16. I submit that I did not have any intention to violate any of the provision of PIT Regulations neither did I have any unfair gain or advantage nor any loss or harm was caused to the investors because of not updating the amended code of Conduct.

17. The alleged violation of Code of Conduct if any were never intentional, were technical & venial in nature, due to inadvertence, the same was only a procedural lapse and devoid of any malafide intention.

18. In view of the above circumstances, I submit as follows:

- a. That I have neither earned any disproportionate gain nor gained any unfair advantage;*
- b. That no harm has been caused to any investor nor any loss has occurred to any investor;*
- and*
- c. That the default, if any, is not repetitive.”*

Reply of Noticee 2

“ As regards alleged violation of Regulation 7(2)(a) of PIT Regulations, we submit as follows:

a. We submit that as per the shareholding pattern available on the website of the Stock Exchange for the quarter ending from September 2021 to March 2022, the details of shareholding in BGL are available in the category of promoter and promoter group.....

Hence, the details were available in the public domain, and this establishes that we did not have any intention to hide nor did we hide any information from general investors and as detailed above, neither did we have any unfair gain or advantage nor any loss or harm was caused to the investors.

b. As per Regulation 31(1)(b) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as “LODR Regulations”), the quarterly shareholding pattern has to be filed within 21 days from the end of each quarter. It is submitted that the quarterly shareholding pattern was filed regularly and there is no

violation in this regard.

.....
.....

c. The alleged non-disclosure is an inadvertent error and there is no malafide intention behind it. The same is also established by the fact that pursuant to our sale, the price of scrip shot up and had there been any malafide intention behind it, we would have sold the shares later or after the price has risen

.....

From the above instances, it can be established that in case we had any malafide intention, we would have sold the shares when the prices of shares were high, however, on the contrary as is evident from above the price of the scrip went up after we sold the shares. We submit that aforesaid establishes that we have neither gained any unfair advantage nor any loss has occurred to the retail investors.

d. We reiterate that the alleged non-disclosure, neither resulted in any loss to the retail investors nor any unfair advantage was gained by us and any other person. Moreover, there was no resultant adverse effect on the market or the investors at all on account of the alleged non-disclosure.

e. In view of the same, we deny that we have violated Regulation 7(2)(a) of the PIT Regulation.

As regards alleged violation of Clause 4 of Schedule B read with Regulation 9(1) of PIT Regulations, we submit as follows:

a. That we have carried out the trades as per the Code of Conduct policy formulated by Brightcom Group Limited. We did not have any intention to gain unfair advantage. we have always followed all the procedures stipulated in the Code of Conduct policy of the Company.

b. That there was no malafide intention in carrying out trades during the trading window closure period. The same is also established by the fact that pursuant to our sale, the price of scrip shot up and had there been any malafide intention behind it we would have sold the shares later or after the price has risen.

c. Further, neither BSE nor NSE raised any query regarding trading during trading window closure period. If BSE or NSE at that time had objected, we would not have carried out any trades during trading window closure period. Therefore, now to allege violation at the

belated stage and issuing SCN is unjustified and based on mere surmises and conjectures.

d. In view of the same, we deny that we have violated Clause 4 of Schedule B read with Regulation 9(1) of PIT Regulations.

7. As regards issue of two Show Cause Notices of same set of violation, we submit as under:-

a) We submit that two Show Cause Notices have been issued as follows:

I. Show Cause Notice dated November 23, 2022 to Brightcom Group Limited and

II. Show Cause Notice to us dated March 13, 2023

for the alleged violation of the same Code of Conduct and same period of violation of Regulation 7(2)(a) of PIT Regulations.

b) We submit that this amounts to Double Jeopardy which is in violation of Article 20 (2) of the Constitution of India. The Article 20 (2) of the Constitution of India stipulates that " No person shall be prosecuted and punished for the same offence more than once"

c) The said issue of two Show cause Notices for same set of violation is also covered by the principle of " Res Judicata" which stipulate that in case the actual issue in both the process are identical it gives rise to issue of estoppel. We submit that this is clearly the case in the instant Show Cause Notice and also the Show Cause Notice dated November 23, 2022.

d) We would like to place reliance upon the decision of the Hon'ble Tribunal in the matter of Nirmal Kotecha v SEBI (Appeal No. 580 of 2021) dated June 08, 2021. The facts of the case are similar to the Appellant's case wherein an issue of fact was already decided by the Ld. AO and a different view of the Ld. WTM was squarely covered by the principles of constructive res judicata hence was disallowed, by the Hon'ble Tribunal.

8. Without prejudice to the above, even if it is assumed that the aforesaid violations have been committed, we submit that aforesaid violations were merely technical in nature which neither resulted in any unfair advantage to me nor any loss has been caused to the investors. Further, the aforesaid submission also establishes that there was no malafide intention on my part. In view of the same, no penalty may be levied.

We would like to place reliance on the following:

a. Order of the Ld. Adjudicating Officer in respect of Anand Karbhari in the matter of Jindal Cotex Limited (Order dated May 11, 2017),

b. Order of the Hon'ble SAT in ICICI Bank vs SEBI (Appeal No. 583 of 2019 dated July 08, 2020), it was held as follows:

- *that the violation is un-intentional and not for consolidation*
- *that the violation is technical and venial in nature; and*
- *that there are clear mitigating circumstances in the form of subsequent amendments to the takeover regulations which further lessens the gravity of the violation”.*

10. On the scheduled date of hearing, authorized representatives of Noticees, Mr. Balveer Singh Choudhary and Ms. Dharshanadivya Subramanian (hereinafter referred to as “**ARs**”) appeared on behalf of Noticees and reiterated contents of Noticees’ earlier replies dated May 08, 2023. The hearing was conducted through videoconferencing.

11. Subsequent to the issuance of SSCN, Noticee 2 was given another opportunity of personal hearing before the undersigned on June 08, 2023 vide hearing notice dated June 02, 2023. The aforementioned hearing notice was duly served on Noticee 2 through SPAD as well as through digitally signed email. In response to the SSCN, Noticee 2 filed his amended reply to SCN vide email dated June 07, 2023. On June 08, 2023, ARs appeared on behalf of Noticee 2 and reiterated contents of the aforementioned amended reply.

CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS

12. I have carefully perused the charges levelled against Noticees, replies/submissions filed by Noticees and other documents/ evidence available on record. The issues that arise for consideration in the present case are:

Issue I: Whether:

- a. Noticee 1 has violated Regulation 9(1) read with Schedule B of PIT Regulations?
- b. Noticee 2 has violated Regulation 7(2)(a) of PIT Regulations and Clause 4(1) of Schedule B read with Regulation 9 (1) of PIT Regulations ?

Issue II: Do the violations, if any, attract monetary penalty under Section 15HB of SEBI Act on Noticees and under Section 15A(b) of SEBI Act on Noticee 2?

Issue III: If the answer to issue no. II is in affirmative, then what should be the quantum of monetary penalty?

13. Before moving forward, it is pertinent to refer to the relevant provision of the PIT Regulations which was in force at the time of impugned transactions, which are reproduced as under:

Relevant provisions of PIT Regulations:

Regulation 7(2)(a) of PIT Regulations, 2015: *“Every promoter, [member of the promoter group], [designated person] 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.*

Explanation. — It is clarified for the avoidance of doubts that the disclosure of the incremental transactions after any disclosure under this sub-regulation, shall be made when the transactions effected after the prior disclosure cross the threshold specified in clause (a) of sub-regulation (2)”

Regulation 9(1) of PIT Regulations: *“The board of directors of every listed company and [the board of directors or head(s) of the organization of every intermediary shall ensure that the chief executive officer or managing director] shall formulate a code of conduct [with their approval] to regulate, monitor and report trading by its [designated persons and immediate relatives of designated persons] towards achieving compliance with these regulations, adopting the minimum standards set out in Schedule B [(in case of a listed company) and Schedule C (in case of an intermediary)] to these regulations without diluting the provisions of these regulations in any manner”.*

Regulation 9(4) of Regulations: *“ For the purpose of sub regulation (1) and (2), the board of directors or such other analogous authority shall in consultation with the compliance officer specify the designated persons to be covered by the code of conduct on the basis of their role and function in the organization and the access that such role*

and function would provide to unpublished price sensitive information in addition to seniority and professional designation and shall include: -

- (i) Employees of such listed company, intermediary or fiduciary designated on the basis of their functional role or access to unpublished price sensitive information in the organization by their board of directors or analogous body;
- (ii) Employees of material subsidiaries of such listed companies designated on the basis of their functional role or access to unpublished price sensitive information in the organization by their board of directors;
- (iii) All promoters of listed companies and promoters who are individuals or investment companies for intermediaries or fiduciaries;
- (iv) Chief Executive Officer and employees up to two levels below Chief Executive Officer of such listed company, intermediary, fiduciary and its material subsidiaries irrespective of their functional role in the company or ability to have access to unpublished price sensitive information;
- (v) Any support staff of listed company, intermediary or fiduciary such as IT staff or secretarial staff who have access to unpublished price sensitive information.

Schedule B read with Regulation 9 of PIT Regulations

Minimum Standards for Code of Conduct for Listed Companies to Regulate, Monitor and Report Trading by Designated Persons.

Clause 4 (1) “Designated persons may execute trades subject to compliance with these regulations. Towards this end, a notional trading window shall be used as an instrument of monitoring trading by the designated persons. The trading window shall be closed when the compliance officer determines that a designated person or class of designated persons can reasonably be expected to have possession of unpublished price sensitive information. Such closure shall be imposed in relation to such securities to which such unpublished price sensitive information relates. Designated persons and their immediate relatives shall not trade in securities when the trading window is closed.”

14. Before proceeding into the merits of the case, I would like to address the preliminary objection raised by Noticees that the present adjudication proceedings initiated against them is barred by *res judicata* and double jeopardy, and also is in violation of Article 20(2) of the Constitution of India. In support of the aforementioned contention, Noticees have placed reliance on the decision of Hon'ble Securities Appellate Tribunal (hereinafter referred to as “SAT”) in Nirmal Kotecha v

SEBI (Appeal No. 580 of 2021) dated June 08, 2021. According to Noticees, two Show Cause Notices have been issued in the same matter with respect to them. The details of Show Cause Notices as mentioned by Noticees in their submissions, which they claim amounts to double jeopardy and *res judicata*, are given as under:

- a. Show Cause Notice dated November 23, 2022 issued by SEBI to BGL and Show Cause Notice dated March 13, 2023 issued by SEBI to Noticee 1 for the failure to adopt code of conduct adopting the minimum standards set out in the Schedule B of PIT Regulations by BGL.
- b. Show Cause Notice dated November 23, 2022 and Show Cause Notice dated March 13, 2023 issued to Noticee 2.

15. With regard to the aforementioned contention of Noticees, I note that it has become trite law that the principle of double jeopardy as provided under Article 20(2) of the Constitution of India is applicable only to criminal proceedings and not to quasi-judicial proceedings like that of the present adjudication proceedings. In this context, it is pertinent to note that Hon'ble Supreme Court of India, in its decision in **S.A. Venkataraman vs. Union of India, 1954 AIR 375** has stated as under:

“It has also been held by this court in Maqbool Hussain's case that the language of article 20 and the words actually used in it afford a clear indication that the proceedings in connection with the prosecution and punishment of a person must be in the nature of a criminal proceeding, before a court of law or judicial tribunal, and not before a tribunal which entertains a departmental or an administrative enquiry even though set up by a statute, but which is not required by law to try a matter judicially and on legal evidence. In that case the proceedings were taken under the Sea Customs Act before a Customs authority who ordered confiscation of goods. It was held that such proceedings were not "Prosecution", nor the order of confiscation a "punishment" within the meaning of article 20(2) inasmuch as the Customs authority was not a court or a judicial tribunal and merely exercised administrative powers vested in him for revenue purposes....”

In light of the aforementioned decision of Hon'ble Supreme Court, I find that contention of Noticees that the present adjudication proceedings are in violation of principle of double jeopardy as provided under Article 20(2) of the Constitution of India cannot be accepted.

16. The principle of *res judicata* as embodied in Section 11 of the Code of Civil Procedure, 1908 (CPC), states that “No Court shall try any suit or issue in which the matter directly and

substantially in issue has been directly and substantially in issue in a former suit between the same parties, or between parties under whom they or any of them claim, litigating under the same title, in a Court competent to try such subsequent suit or the suit in which such issue has been subsequently raised, and has been heard and finally decided by such Court .” Thus, Section 11 of CPC provides that a matter in issue which has also already been tried by a competent court could not be again redecided with respect to the same parties in respect to the same matter. I note that principle of *res judicata* has also been applied in securities market decisions by Hon’ble SAT in *Vital Communications Ltd v SEBI* (Appeal No. 318 of 2019) dated December 20, 2021, wherein Hon’ble SAT has held that “ 35. A perusal in the aforesaid provision indicates that Securities Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure. The said provision does not prohibit the Tribunal from adhering to the procedure laid down by the Code of Civil Procedure. In fact, the provision gives wide powers to the Tribunal to lay down such procedure which is not envisaged under the Code of Civil Procedure and that the Tribunal would be guided by the principles of natural justice. In our opinion, the principle of *res judicata* is fully applicable in the instant case.”

17. I note that a common show cause notice dated November 23, 2022, which is referred to by Noticees in their replies to SCN was issued to six entities namely, Vijay Kumar Kancharla HUF, Vijay Kumar Kancharla; Karta of HUF; M Suresh Kumar Reddy, S V Rajyalaxmi Reddy, Geeta Kancharla and Brightcom Group Limited by Learned Adjudicating Officer, SEBI, Mr. Amit Kapoor. I further note that adjudication proceedings initiated with respect to the aforementioned six entities by the aforementioned show cause notice has been concluded vide Adjudication Order bearing reference no. Order/AK/BS/2023-24/27388-27393 dated June 13, 2023 (hereinafter referred to as “**Adjudication Order dated June 13, 2023**”).

18. From the perusal of Adjudication Order dated June 13, 2023, I observe that the aforesaid proceedings, *inter alia*, dealt with the following issues with respect to Noticee 1 and Noticee 2:

- a. Violation of Regulation 7(2)(a) of PIT Regulations by Noticee 2 for the calendar quarters April-June 2020, July–September 2020, October- December 2020, January–March 2021, April-June 2021 and July–September 2021 and violation of Clause 4 of Schedule B read with Regulation 9(1) of PIT Regulations for the period April 01, 2020 to August 13, 2021 by Noticee 2.

- b. Violation of Regulation 7(2)(a) of PIT Regulations for the calendar quarters April-June 2020, July-September 2020, October-December 2020 and January-March 2021, violation of Clause 4 of Schedule B read with Regulation 9(1) of PIT Regulations for the period April 07, 2020 to August 15, 2021, and violation of clause 10 of Schedule B read with Regulation 9(1) of PIT Regulations by Noticee1.

19. I also observe from the Adjudication Order dated June 13, 2023 that BGL was charged for violation for Regulation 9 of PIT Regulations on the grounds that Code of Conduct formulated and adopted by BGL did not meet the minimum standards for “Code of Conduct” (for Listed Companies) to Regulate, Monitor and Report Trading by [Designated Persons] as prescribed under Schedule B read with Regulation 9 of PIT Regulations.

20. In the present adjudication proceedings initiated by SCN dated March 13, 2023, the allegation against Noticee 1 arises out of his liability, as the MD and CEO of BGL, for failure to formulate the code of conduct adopting the minimum standards as prescribed under Schedule B read with Regulation 9 of PIT Regulations. For a subsequent adjudication proceedings to be barred by the principle of *res judicata*, the said adjudication proceedings have to be with respect to the same matter and between the same parties as in the previous adjudication proceedings. As already noted, the previous adjudication proceedings concluded by Adjudication Order dated June 13, 2023, *inter alia*, were with respect to BGL for violation of Schedule B read with Regulation 9 of PIT Regulations and therefore, the parties to the adjudication are not the same. Therefore, I find that one of the essential ingredients for the application of principle of *res judicata*, which is adjudication with respect to same parties for the same violation, is not met in the instant case with respect to Noticee 1. In light of the aforesaid, I find that contention of Noticee 1 that instant adjudication proceedings is barred by the principle of *res judicata* is without any basis.

21. With respect to Noticee 2, I note that instant adjudication proceedings are initiated for his alleged violation of Regulation 7(2)(a) of PIT Regulations for the calendar quarter periods, July to September 2021, October to December 2021 and January - March, 2022 and for alleged violation of Clause 4(1) of Schedule B read with Regulation 9(1) of PIT Regulations for the period, October 01, 2021 to November 15, 2021 and January 01, 2022 to January 27, 2022. Except for the overlapping period of one calendar quarter, i.e., July to September 2021, the time period of the alleged violations of Regulation 7(2)(a) of PIT Regulations by Noticee 2 in the present proceeding

are different from the time period of the violations of Regulation 7(2)(a) of PIT Regulations by Noticee 2 in the previous Adjudication Order dated June 13, 2023. Therefore, except for the aforesaid calendar quarter, July to September 2021, I find that the facts of the present adjudication proceedings are distinct from the facts of the previous adjudication proceedings. Considering the same, I hold that the present adjudication proceedings with respect to Noticee 2 for alleged violation of Regulation 7(2)(a) of PIT Regulations for the calendar quarter July to September 2021 is barred by the principles of *res judicata*. However, for the remaining calendar quarter periods, i.e., October to December 2021 and January to March, 2022 for the alleged violation of Regulation 7(2)(a) of PIT Regulations and for alleged violation of Clause 4(1) of Schedule B read with Regulation 9(1) of PIT Regulations for the period October 01, 2021 to November 15, 2021 and January 01, 2022 to January 27, 2022 by Noticee 2, the present adjudication proceedings would not be barred by principle of *res judicata* as the same has not been the subject of adjudication proceedings in the Adjudication Order dated June 13, 2023.

22. Having dealt with the preliminary objections, I now proceed to deal with the issue on merits.

Issue No. I.a : Whether Noticee 1 has violated Regulation 9(1) read with Schedule B of PIT Regulations ?

23. I note that vide emails dated December 14, 2022 and December 15, 2022 to BGL, SEBI had sought a copy of Code of Conduct for Insider Trading of BGL. In response to the aforesaid query, BGL vide its emails dated December 14, 2022 and December 15, 2022, had submitted a copy of what it termed as its “Code of Conduct for Insider Trading” for the period September 16, 2021 to March 03, 2022 to SEBI. From the perusal of the aforementioned document submitted by BGL which is titled as “Code of Conduct & Ethics for Board of Directors & Senior Management, I note the following:

- a. The preface of the document stated that it was formulated as a “*guide to help Directors & Senior Management team of the Company to live up to Company's ethical standards and their own.*”
- b. BGL's code of conduct stated that it was applicable only to the Directors, both Executive and Non-Executive Directors, Senior Management team comprising of members of Management one level below the Executive Directors, including all functional heads.

- c. The aforementioned Code of Conduct stated that it had been laid down to prescribe standards regarding Honest & Ethical content, Conflict of Interest, Legal Compliance, Corporate Disclosure Policy, Competition and Fair Dealing, Compliance of Code of Conduct.
- d. There is not even a single mention of PIT Regulations or contents under Minimum Standards of Code of Conduct for Insider Trading prescribed under Schedule B of PIT Regulations in the BGL's Code of Conduct.

24. I observe from the above document, purported to be the "Code of Conduct" of BGL that it only states certain ethical standards to be followed by directors and discusses about outside employment, ethics, use of company assets etc. but does not cover the areas such execution of trades during trading window closure, pre-clearance of trades when trading window is open, restrictions of contra trades, disclosure of trades to BGL as stipulated in Schedule B of PIT Regulations. Therefore, I do not find the "Code of Conduct" presented by BGL to be in compliance with Regulation 9(1) of PIT Regulations as the same does not meet the minimum standards for Code of Conduct as prescribed under Schedule B of PIT Regulations.

25. I note that with respect to the allegations in the SCN, Noticee 1 has submitted that Code of Conduct of BGL was approved by the Board of Directors in the meeting held on March 28, 2019 and the same was implemented from April 1, 2019. Noticee 1 has also submitted that BGL had forwarded its Code of Conduct to the Stock Exchanges and the same was also uploaded on the website of the company. In his reply, Noticee 1 has contended that till the date of receipt of SCN dated November 23, 2022 by BGL, none of the Stock Exchanges had pointed out any discrepancy/deficiency in the Code of Conduct. Noticee 1 has further contended that in case any of the stock exchange would have intimated Brightcom Group Limited about the deficiencies at that time itself, BGL would have amended the company's Code of Conduct as per the extant policies. Noticee 1 has also submitted in its reply to the SCN that BGL had hired a Professional for drafting the Code of Conduct as per SEBI Regulations and whatever Code of Conduct was drafted by him and given to BGL, it was then adopted by BGL without any mala fide intentions.

26. Further, with regard to the contentions of Noticee 1 that Code of Conduct had been submitted to Stock Exchanges and none of the stock exchanges had pointed out the deficiency in their Code of Conduct, I note that the minimum standard to be adopted by a listed company their Code of Conduct has been clearly laid down in the Schedule B of PIT Regulations and thus, the same is

in public domain and all listed companies are mandatorily required to comply with the same. Therefore, Noticee 1, being the MD and CEO of BGL, cannot claim ignorance of the same. Listed companies operating in the Indian Securities market are bound by the regulatory framework laid down by SEBI. I am of the view that BGL, a listed company, cannot shift its onus of non-compliance with Code of Conduct standards as laid down in Schedule B of the PIT Regulations to the stock exchanges by stating that stock exchanges had not raised any issue/concerns with regard to the Code of Conduct drafted by it and that they would have changed it if the exchanges had raised any concerns with the same. Therefore, I find the aforementioned contention of Noticee 1 lacks merit.

27. At this juncture, I find it pertinent to note that Learned Adjudicating Officer, SEBI, vide Order dated June 13, 2023 has also held that Code of Conduct formulated by BGL had failed to meet the minimum standards for “Code of Conduct” prescribed under Schedule B read with Regulation 9 of PIT Regulations and thereby BGL has violated Regulation 9(1) of PIT Regulations.

28. As per Regulation 9(1) of PIT Regulations, the onus lies on the CEO or MD to formulate code of conduct adopting the minimum standards set out in Schedule B of PIT Regulations for a listed company. I find from records that Noticee 1 was the MD and CEO of BGL during the relevant time. The same has not been disputed by Noticee 1 in his reply to the SCN. Thus, I find that Noticee 1, being the MD and CEO of BGL at the relevant time, was responsible for formulating the code of conduct by adopting the minimum standards set out in Schedule B of PIT Regulations. Since it has already been established that BGL had not formulated the code of conduct in compliance with the provisions of PIT Regulations, I find that Noticee 1, being the MD and CEO of BGL, is responsible for the aforementioned violation committed by BGL. Therefore, I find that allegation in the SCN that Noticee 1 has violated Regulation 9(1) read with Schedule B of PIT Regulations stands established.

Issue I.b: Whether Noticee 2 has violated Regulation 7(2)(a) of PIT Regulations and Clause 4(1) of Schedule B read with Regulation 9 (1) of PIT Regulations?

29. As per Reg. 7(2)(a) of PIT Regulations :

“Every promoter, [member of the promoter group], [designated person] 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.

30. I note from the material available on the record that Vijay Kumar Kancharla HUF, i.e., Noticee 2 was the promoter/member of promoter group of BGL during the relevant period. I note from the perusal of trade log available on record that Noticee 2 had traded in excess of ten lakh rupees on several occasions in the quarters, October to December 2021 and January to March 2022. The summary of trades when the threshold was breached by Vijay Kumar Kancharla HUF in violation of Regulation 7(2)(a) of PIT Regulations during the IP is as under:

Name of Entity	Total Traded Value (BSE+NSE) (in INR crores)	Quarter	Number of occasions on which traded value exceeded INR. 10 lakhs and disclosures warranted not filed
Vijay Kumar Kancharla HUF	7.55	Oct to Dec 2021	30
	6.90	Jan to Mar 2022	25

31. The aforementioned trades have not been specifically disputed by Noticee 2 in its reply to the SCN. Further, Noticee has not produced any evidence to show the contrary.
32. I find that since the traded value of the trades done by Noticee 2 on multiple occasions during calendar quarters, October to December 2021 and January to March 2022 were in excess of Rupees 10 lakhs, Noticee 2 was under an obligation to make disclosure of its trades within two trading days to BGL as stipuletd under Regulation 7(2)(a) of PIT Regulations. However, I note that vide email dated December 14, 2022, BGL, *inter-alia*, informed SEBI that as per the records available, BGL had not received any disclosures from Noticee 2 for the trades carried out by it during the period September 16, 2021 to February 28, 2022. This was also confirmed by Noticee 2 in its email dated January 06, 2023 to SEBI during investigation. Therefore, it is clear that Noticee 2 failed to comply with the provisions of Regulation 7(2)(a) of PIT Regulations in respect of its aforesaid transactions. This is further reinforced by admittance Noticee 2 itself in its reply to SCN, where it has stated that “*the alleged non-disclosure is inadvertent error*”. Thus, I find that its non-compliance with Regulation 7(2)(a) of PIT Regulations has also been admitted to by Noticee 2.

33. In view of the foregoing, I find that allegation in the SCN that Noticee 2 has violated Regulation 7(2)(a) of PIT Regulations stands established.

34. As per Clause 4 (1) of Schedule B of PIT Regulations “.... *Designated persons and their immediate relatives shall not trade in securities when the trading window is closed...*”

35. As per clause 4(2) of Schedule B “.... *Trading restriction period [shall] be made applicable from the end of every quarter till 48 hours after the declaration of financial results...*”.

36. I note from the submissions made by BGL to the BSE/NSE vide letters dated September 30, 2021 and December 31, 2021, that the trading window of BGL was closed from October 01, 2021 to November 15, 2021 and from January 01, 2022 to January 27, 2022, for declaration of Unaudited financial results of the Company for the quarter ended September 30, 2021 and December 31, 2021, respectively.

37. From the trade log, I observe that Noticee 2 had traded in the scrip of BGL on numerous occasions during the trading window closure periods. The summary of the trades done by Noticee 2 during the trading window closure period of BGL is given hereunder:

Name of the Entity	Buy Qty	Sell Qty	Total Traded Value (BSE+NSE) (in INR crores)	Trading Window Closure period	No. of occasions of trading in window closure
Vijay Kumar Kancharla (HUF)	Nil	471375	3.8	October 01, 2021 to November 15 2021	16
	Nil	203000	3.5	January 01, 2022 to January 27 2022	3

38. I note that the aforementioned trades done has not been specifically disputed by Noticee 2 in its reply to the SCN and further, it has not produced any evidence to the contrary.

39. I note from the material available on the record that Noticee 2 was a promoter/member of promoter group of BGL during IP. As per clause 4 of Schedule B of PIT Regulations, which lays down the ‘*Minimum Standards for Code of Conduct for Listed Companies to Regulate, Monitor and Report Trading by Designated Persons*’, an obligation lies on board of directors in

consultation with the compliance officer to specify the designated persons to be covered by the code of conduct on the basis of their role and function in the organisation and the access that such role and function would provide to unpublished price sensitive information in addition to seniority and professional designation. Additionally, clause 4 of Schedule B of PIT Regulations states that designated persons shall, *inter alia*, include all promoters of listed companies and promoters who are individuals or investment companies for intermediaries or fiduciaries. Considering the role and function of Noticee 2 in the BGL, I find that Noticee 2 was a designated person of the BGL during the IP.

40. Thus, I find that the Noticee 2, being a designated person of BGL, was prohibited from trading in the scrip of the BGL during the trading window closure periods.

41. With regard to the allegations in the SCN, Noticee 2 has contended that there was no malafides involved in its trades and it had not gained any unfair advantage. I am of the view that the aforementioned factors could at the best only be considered as mitigating factors. Therefore, I am of the view that the aforementioned contention of Noticee 2 lacks merit. Further, Noticee 2 has contended that BSE or NSE has not raised any query regarding the trades during trading window closure period and Noticee 2 thus contended that to allege violation at a belated stage and issuing SCN is unjustified. With regard to aforementioned contention of Noticee 2, I am of view that onus lies on Noticee 2 under Clause 4(1) of Schedule B of PIT Regulations to refrain from trading during trading window closure period and Noticee 2 cannot shift its responsibility by stating that exchanges have not raised any query regarding its trades. In light of the above, I am not inclined to accept the aforementioned contention of Noticee 2.

42. Therefore, I find that Noticee 2 by trading in the scrip of BGL during the trading window closure period has violated Clause 4 of Schedule B read with Regulation 9 (1) of PIT Regulations. Thus, I conclude that allegation in the SCN that Noticee 2 has violated Clause 4 of Schedule B read with Regulation 9 (1) of PIT Regulations stands established.

Issue No. II- Does the violation attract monetary penalty under Section 15A (b) and Section 15HB of SEBI Act?

43. It has been established in the foregoing paragraphs that Noticee 1 has violated the provisions of Regulation 9(1) read with Schedule B of PIT Regulations and Noticee 2 has violated the

provisions of Clause 4 of Code of Conduct as specified under Schedule B read with Regulation 9(1) of PIT Regulations and Regulation 7(2)(a) of PIT Regulations.

44. In context of the above, I place reliance on the judgement of Hon'ble Supreme Court of India in the matter of SEBI v/s Shri Ram Mutual Fund [2006] 68 SCL 216(SC) 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....."*
45. Therefore, in view of the above judgment and considering the aforesaid violations committed by Noticees, I find that monetary penalty under Sections 15HB and Section 15A(b) of SEBI Act, would be attracted on Noticees. The text of Section 15A(b) and Section 15HB of the SEBI Act is reproduced below:

SEBI Act

Section 15A(b) of SEBI Act

Penalty for failure to furnish information, return, etc.

15A. *If any person, who is required under this Act or any rules or regulations made there under,—*

(b) to file any return or furnish any information, books or other documents within the time specified therefore in the regulations, fails to file return or furnish the same within the time specified therefore in the regulations, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees;

Section 15HB of SEBI Act

Penalty for contravention where no separate penalty has been provided

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

Issue No. III - What should be the quantum of monetary penalty?

46. While determining the quantum of penalty under Section 15A(b) and Section 15HB of the SEBI Act, it is important to consider the factors as stipulated in Section 15J of the SEBI Act, which reads as under:-

SEBI Act

Factors to be taken into account by the adjudicating officer.

Section 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.*

Explanation- For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.

47. In view of the charges established and the facts and circumstances of the case, the quantum of penalty would depend on the factors referred in Section 15-J of the SEBI Act, stated as above. In the instant case, it is not possible from the material on record to quantify the amount of disproportionate gain or unfair advantage resulting from the default of Noticees or the consequent loss caused to investors as a result of their default. Further, there is nothing on record to show that violation of Noticee 1 are repetitive in nature.

48. Further, I note that Hon'ble Supreme Court in its decision in Adjudicating Officer, SEBI vs. Bhavesh Pabari,(Decided on 28.02.2019) has held that Clauses (a) to (c) in Section 15-J of the SEBI Act are merely illustrative and are not the only grounds/factors which can be taken into consideration while determining the quantum of penalty. Placing reliance on aforementioned

judgement of Hon'ble Supreme Court, I find below mentioned factors also to be relevant while determining the quantum of penalty in the instant case:

- I note from the material available on record that vide Adjudication Order dated June 13, 2023, penalty of Rupees Three Lakhs was imposed on Noticee 2 for the violation of Regulation 7(2)(a) of PIT Regulations and penalty of Rupees Three Lakhs was imposed for violation of Clause 4 of Schedule B r/w Regulation 9(1) of PIT Regulations.
- I also note that vide Adjudication Order dated June 13, 2023, a penalty of Rupees Five Lakhs was imposed on BGL for violation of Regulation 9 of PIT Regulations as the Code of Conduct formulated by BGL failed to meet with the minimum standards for Code of Conduct prescribed under Schedule B read with PIT Regulations.
- Noticee 2 has traded on multiple occasions during the trading window closure period i.e. on 16 occasions during the trading window closure period "October 01 2021 to November 15 2021" and on 3 occasions during the trading window closure period "January 01, 2022 to January 27, 2022".
- Noticee 2 has traded in excess of Rupees 10 Lakhs on 30 occasions during the calendar quarter October to December, 2021 and on 25 occasions during calendar quarter "January to March 2022", without making requisite disclosures under Regulation 7(2)(a) of PIT Regulations.

ORDER

49. Having considered all the facts and circumstances of the case, the material available on record, the submissions made by Noticees and also the factors mentioned in Section 15J of the SEBI Act, as enumerated above, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, hereby impose monetary penalty on Noticees as enumerated below:

No.	Noticee Name	Provisions of Law Violated	Penalty levied under Section	Quantum of penalty
1.	Mr. Suresh Kumar Reddy	Regulation 9(1) read with Schedule B of PIT Regulations	Section 15HB of SEBI Act	Rs. 1,00,000/- (Rupees)

				One Lakh Only)
2	Vijay Kumar Kancharla HUF	Regulation 7(2)(a) of PIT Regulations.	Section 15A(b) of SEBI Act	Rs 2,00,000/- (Rupees Two Lakh Only)
		Clause 4 (1) Schedule B read with Regulation 9 (1) of PIT Regulations.	Section 15HB of SEBI Act.	Rs. 2,00,000/- (Rupees Two Lakh Only)

50. I am of the view that the said penalty is commensurate with the lapse/omission on the part of Noticees.

51. Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order 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. In case of any difficulties in payment of penalties, Noticees may contact the support at portalhelp@sebi.gov.in.

52. The said confirmation of e-payment made in the format as given in table below should be sent to "The Division Chief, EFD – DRA - V, Securities and Exchange Board of India, SEBI Bhavan, Plot no. C- 7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051" and also to e-mail id:- tad@sebi.gov.in.

1. Case Name:	
2. Name of payee:	
3. Date of payment:	
4. Amount paid:	
5. Transaction no.:	
6. Bank details in which payment is made:	

7. Payment is made for: (like penalties/ disgorgement/ recovery/ settlement amount and legal charges along with order details)	
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53. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated 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 of Noticees.

54. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to Noticees and also to SEBI.

Place: Mumbai

Date: June 28,2023

**SOMA MAJUMDER
ADJUDICATING OFFICER**