BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

(ADJUDICATION ORDER NO. VG/JD/2022-23/25281-25282)

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

In respect of:

Sr. No.	Name of the Noticee	Permanent Account Number
1.	Mr. Jayeshbhai Chandubhai Patel	ABXPP2978G
2.	Mr. Mukesh N. Patel	AOTPP3669P

IN THE MATTER OF VIMAL OIL AND FOODS LIMITED

BACKGROUND:

1. The Securities and Exchange Board of India (hereinafter referred to as SEBI) conducted an investigation in the scrip of Vimal Oil and Foods Limited (hereinafter referred to as the Company), which was listed on the National Stock Exchange of India Limited (hereinafter referred to as NSE) and BSE Limited (hereinafter referred to as BSE), to ascertain whether certain persons or entities had traded in the scrip of the Company during the period from July 1, 2015 to August 27, 2015 (hereinafter referred to as the Investigation Period) on the basis of the unpublished price sensitive information (hereinafter referred to as UPSI), in contravention of the provisions of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the SEBI Act) and the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as the PIT Regulations).

2. The investigation conducted by SEBI *inter alia* revealed that the Company was incurring financial losses during the year 2015 compared to the previous years and on August 27, 2015, it had announced the financial results for the quarter ended June 30, 2015. From the said financial results, it was observed that the standalone Net Profit after Tax of the Company had decreased from ₹16.51 lakhs in quarter ended March 31, 2015 to a net loss of ₹6205.20 lakhs in the quarter ended June 30, 2015 (Q-o-Q decrease of 37684%) and from a net profit of ₹572.24 lakhs in the quarter ended June 30, 2014 to a net loss of ₹6205.20 lakhs in the quarter ended June 30, 2015 (Y-o-Y decrease of 1184%). It was further observed that price of the scrip had fallen from opening price of ₹136.55 on July 1, 2015 to a close price of ₹80.65 on August 27, 2015.

3. It. was observed from the annual report of the Company for the financial year 2015-16 that it had defaulted in the re-payment of loans to the tune of ₹47,853.74 lakhs from four banks viz. Bank of Baroda, Bank of India, Dena Bank and Andhra Bank. As informed by the Company (vide email dated September 26, 2018), its statutory auditors (vide letters dated July 10, 2019 and July 11, 2019), its accountant (vide letter dated July 26, 2019), the date of initiation of the preparation of accounts for the quarter ended June 30, 2015 started from August 1, 2015.

4. The deteriorating financial position of the Company as stated above, *prima-facie*, was considered as UPSI and the period from July 1, 2015 (the date on which the clear signs of sickness were visible to the management of the Company) to August 27, 2015 (date of publishing of financial results for quarter ended June 30, 2015 wherein the poor financial condition of the Company was reflected) was considered as the period of UPSI 1. Further, the financial results for quarter ending June 30, 2015 were considered as UPSI 2 and the period from August 1, 2015 (date of initiation of preparation of accounts for quarter ended June 30, 2015) to August 27, 2015 (date of publishing of financial results for quarter ended June 30, 2015) was considered as the period of UPSI 2.

5. Mr. Jayeshbhai Chandubhai Patel (hereinafter referred to as the Noticee No. 1) was the Chairman and Managing Director of the Company. For this reason, *prima-facie*, the Noticee No. 1 was in possession of UPSI and thus, allegedly was an

insider. Additionally, the Noticee No. 1 was also a director and part of the promoter group of Vimal Dairy Ltd. (hereinafter referred to as VDL) along with Ms. Kantaben Chandubhai Patel, who was also a promoter of the Company. It was observed from the Know Your Client (KYC) details that the Noticee No. 1 is the son of Ms. Kantaben Chandubhai Patel.

6. It was further observed that Ms. Jyotiben Kantilal Patel had traded in the shares of the Company during the Investigation Period. From an analysis of the trading history of Ms. Jyotiben Kantilal Patel across the market, it was observed that she had not traded in any other scrip other than the Company during the period April 1, 2015 to November 27, 2015, viz. covering three months prior to and post the Investigation Period. From the bank account of Ms. Jyotiben Kantilal Patel (A/c no. 00011001003379) maintained at the Mehsana Urban Co-Operative Bank Ltd (hereinafter referred to as MUCB), it was observed that out of the aforesaid sale proceeds, she had immediately transferred a substantial amount to Ms. Kantaben Chandubhai Patel (promoter of the Company and the mother of Noticee No. 1), on July 7, 2015, July 10,2015 and July 30, 2015. This *prima-facie* indicates that the Noticee No.1 had communicated UPSI to Ms. Jyotiben Kantilal Patel through his mother, Ms. Kantaben Chandubhai Patel who was also the promoter of the Company.

7. With respect to Mukesh N. Patel (hereinafter referred to as the Noticee No.2), it was observed from the annual report of the Company for the financial year 2015-16 that he was an independent director of the Company and was also the Chairman of its Audit Committee. Two of the terms of reference of the audit committee as per the said annual report was *"Scrutiny of inter-corporate loans and investments"* and "*To look into the reasons for substantial defaults, if any, in the payment to depositors…and creditors"*. It was observed that the Noticee No. 2 attended the audit committee meeting held on May 30, 2015. Considering that by May 30, 2015, the issue relating to the delayed payment of interest and frequent devolvement of LC had considerably progressed (as can be seen from frequent communication between the banks and the Noticee No. 1), it appears that *firstly,* the Noticees were privy to the deteriorating financial position of the Company; and *secondly,* during the aforementioned audit committee meeting, there was an information flow between the Noticees with respect to the weak financial condition of the Company.

8. It was observed that Mr. Narayanbhai M. Patel, the father of Noticee No. 2 had traded in the scrip of the Company during the Investigation Period. It was observed from the trading history of Mr. Narayanbhai M. Patel across the market, that he had not traded in any other scrip other than the Company during the period April 1, 2015 to November 27, 2015. On the basis of the same, it was alleged that the Noticee No. 2 had communicated the UPSI i.e., deteriorating financial position of the company to his father, Mr. Narayanbhai M. Patel, who had traded on the basis of the same during the Investigation Period. From the bank account of Mr. Narayanbhai M Patel (A/c no. 00011001009016) at the MUCB, it was observed that the sale proceeds were transferred to Ms. Kantaben Chandulal Patel immediately upon receipt of funds. Mr. Narayanbhai M Patel also had certain other transactions with the Company and Vimal Marketing during the Investigation Period.

9. Since the Noticee No. 1 was privy to UPSI, he is a connected person as per regulation 2(1)(d)(i) of the PIT Regulations and is also an insider as per regulation 2(1)(g)(i) and regulation 2(1)(g)(ii) of the PIT Regulations. Noticee No. 2 was also in possession of UPSI and is a connected person as per regulation 2(1)(d)(i) and also an insider as per regulation 2(1)(g)(i) and regulation 2(1)(g)(ii) of the PIT Regulations.

10. In the light of the above, it was alleged that Noticee No. 1, communicated the UPSI to Ms. Jyotiben Kantilal Patel (through his mother Ms. Kantaben Chandubhai Patel), who had traded on the basis of the said UPSI during the Investigation Period. Further, the Noticee No. 2 allegedly communicated the UPSI to his father, Mr. Narayanbhai M Patel, who also had traded on the basis of said UPSI during the Investigation Period. Noticee No. 1 and Noticee No. 2 are hereinafter collectively referred to as the Noticees. Accordingly, Noticees were alleged to have violated sections 12A (d) and section 12A (e) of the SEBI Act read with regulation 3(1) of the PIT Regulations.

APPOINTMENT OF THE ADJUDICATING OFFICER

11. Based on the findings of the investigation, SEBI, in exercise of the powers conferred upon it under sections 15I(1) and 19 of SEBI Act read with rule 3 of the

Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as the Penalty Rules), vide order dated July 22, 2021 appointed the undersigned as the adjudicating officer to inquire into and adjudge the violation of Sections 12A(d) and 12A(e) of the SEBI Act read with regulation 3(1) of the PIT Regulations. The appointment of the undersigned as the Adjudicating Officer was communicated vide communique dated July 30, 2021.

SHOW CAUSE NOTICE, REPLY AND HEARING

12. A Show Cause Notice (hereinafter referred to as the SCN) dated September 30, 2021 was issued to the Noticees to show cause as to why an inquiry should not be initiated against the Noticees and why penalty should not be imposed upon them under Section 15G(ii) of the SEBI Act read with Penalty Rules for the alleged violations committed by them.

13. The SCN was duly delivered to the Noticee No. 1 on October 6, 2021. The SCN issued to the Noticee No. 2 was returned undelivered. However, the Noticee No. 2, vide e-mail dated November 29, 2021 informed that he was appraised of the SCN and provided the latest address. Accordingly, the SCN was once again sent to the Noticee No.2 at the address provided by him. Further, an e-mail was also sent to the Noticee No. 2 on November 30, 2021 to file the reply to the SCN by December 21, 2021. In the meanwhile, the Noticee No. 1, vide e-mail dated October 19, 2021 *inter alia* requested for additional time for filing the reply. Accordingly, the Noticee No. 1 was given time upto November 30, 2021, vide e-mail dated October 26, 2021. Subsequently, the Noticee No. 1, vide e-mail dated November 29, 2021 while informing the difficulty in filing the reply by November 30, 2021 stated that he might consider filing an application for settling the proceedings and requested for additional time to brief the advocate.

14. Taking into the request made by the Noticee No. 1, the time to file the reply was extended upto December 15, 2021. Thereafter, vide letter dated November 30, 2021 (received on December 7, 2021) M/s Joby Mathew & Associates, on behalf the Noticees, *inter alia* requested for four weeks' time to file the reply and also informed that the Noticees are considering to file the settlement application.

Considering the same, the time for filing the reply was extended upto January 10, 2022, vide letter dated December 17, 2021. It was also informed that no further time would be granted to the Noticees to file the reply and in its absence, the proceedings would be disposed of on the basis of the material available on record. Since no reply was received from the Noticees, an opportunity of hearing was granted to them on February 2, 2022. M/s Joby Mathew & Associates, on behalf the Noticees, vide e- mail dated informed that the Noticees have filed the application for settlement and further requested to keep the proceedings in abeyance. Considering that the filing of the application for settlement shall not affect the continuance of the proceedings, the Noticees were granted a final opportunity of hearing on March 8, 2022, vide letter dated February 18, 2022. M/s Joby Mathew & Associates vide letter dated March 2, 2022 submitted the reply to the SCN on behalf of Noticee No. 1. The submissions made in the said reply on behalf of the Noticee No. 1 are set out below.

15. SEBI is duty bound to provide the copy of the investigation report and other material relevant to the proceedings to the Noticees to ensure fair and transparent proceedings. It was also stated that substantial time has elapsed from the impugned transactions which happened in the year 2015 and the issuance of the SCN. The delay in issuing the SCN and the events which took place during the said period has severely prejudiced and limited their ability to defend themselves against the allegations made in the SCN and accordingly, the present proceedings ought to be terminated on the basis of the delay and laches. It was further stated that the Company had gone under liquidation in December 2017 and has been sold in December 2020 to a third party under the said liquidation process. As a result, the Noticee No. 1 has no access to the documents and records of the Company. The Noticee No. 1 further stated that Ms. Jyotiben Kantilal Patel is not a part of the present proceedings although she is a necessary party and thus, the present proceedings are vitiated by non-joinder of necessary party. It was also stated that the SCN does not set out the exact penalty that is proposed to be imposed for the alleged violations mentioned therein and thus, the SCN does not fulfil the requirements of the principles of natural justice.

16. It was also stated that the Company had availed of credit facilities from banks and financial institutions, both fund based and non-fund based. Until 2015, the

Company was regular in repaying its loans and meeting other obligations to banks and other financial institutions. However, an increasing liquidity crunch and other factors adversely affected the Company's finances and it defaulted in loan repayments in July 2015. The Company's accounts were classified as Non-Productive Assets (hereinafter referred to as NPA) by the banks in September 2015 and thereafter, Corporate Insolvency Resolution Process (hereinafter referred to as CIRP) was initiated on December 19, 2017. Upon initiation of CIRP, the Board of Directors of the Company was suspended and the Interim Resolution Professional (hereinafter referred to as IRP) took possession of the Company. On December 19, 2019, the National Company Law Tribunal (hereinafter referred to as NCLT), Ahmedabad Bench ordered the liquidation of the Company and appointed a liquidator. The Company has been sold through a public e-auction and the process of handing over to the successful bidder was on at present.

17. It was also stated that the Company had two subsidiaries, VDL and Brinda Exports Limited. VDL became a subsidiary of the Company on February 26, 2013 when the Company acquired 52% shares. However, on June 26, 2015, the Company sold its entire shareholding in VDL to various persons including Ms. Jyotiben Kantilal Patel, one of the shareholders of VDL at a profit of around ₹10/- per share; the Company had received ₹1.26 Crores from Ms. Jyotiben Kantilal Patel towards the said sale.

18. The contents with respect to the movement in the price of the scrip of the Company, the decreased profits for the quarter ended June 2015 and the chronology of events regarding the preparation and publication of the quarterly financial statements for the quarter ended June 2015 are not disputed by the Noticee No. 1. It was contended that the fact that the Noticee No. 1 was the Chairman of the Company and that he was aware of and privy to the financial situation of the Company in the course of preparing the financial statements and disclosures for the quarter ended June 2015 does not lead to a presumption that he had shared UPSI to Ms. Jyotiben Kantilal Patel and that she had traded in the shares of the Company on the basis of the UPSI shared by the Noticee No. 1.

19. At the relevant time i.e., July 1, 2015 to August 27, 2015, VDL was a subsidiary of the Company and not its promoter. Ms. Jyotiben Kantilal Patel, prior to her purchase of 2,52,000 shares from the Company on June 25, 2015, held only 10,000 shares in VDL and therefore, the insinuation that she was among the top 10 shareholders of VDL in 2014-2015 was erroneous. The Company sold its entire shareholding in VDL to Ms. Jyotiben Kantilal Patel and others at a profit of around ₹10/- per share on June 26, 2015 and that the said sale of 52% shareholding in VDL fetched more than ₹15.60 Crores (including the sum of ₹1.26 Cr from Ms. Jyotiben Kantilal Patel) which was much needed to tide over the liquidity crisis being faced by the Company and the said sale consideration was transferred to banks. However, the said sale cannot be the basis for an inference that the Noticee No. 1 had passed on the UPSI to her.

20. It was stated that the Noticee No. 1 was not aware of the sale of shares of the Company by Ms. Jyotiben Kantilal Patel during the period July 2, 2015 to August 28, 2015 until the same was brought to his notice vide the SCN. Noticee No. 1 had no knowledge or information regarding the trading history of Ms. Jyotiben Kantilal Patel prior to or after the relevant period. Further, Noticee No. 1 had no connection or relation with Ms. Jyotiben Kantilal Patel except for being a co-shareholder of the Company and VDL. Smt. Kantaben Chandubai Patel, mother of the Noticee No. 1 and also the promoter of the Company received a sum of ₹73,35,000/- from Smt. Jyotiben Patel towards the part payment of consideration for purchase of land. Noticee No.1, however, stated that the said part payment cannot be the basis to allege that the trades of Ms. Jyotiben Kantilal Patel were based on UPSI and/or that he had had communicated any UPSI to Ms. Jyotiben Kantilal Patel.

21. Noticee No. 1 stated that he was not privy to the summons issued to Ms. Jyotiben Kantilal Patel and Ms. Kantaben Chandubhai Patel or their replies thereof. Noticee No. 1 stated that it was not unusual that land transactions take time to conclude and accordingly, the same cannot be the basis to infer that he had communicated UPSI to the purchaser of the land and that she had traded on the basis of such UPSI. Further, according to the Noticee No. 1, merely because he was connected or associated with Vimal Marketing except to the extent of a land transaction in 2014-15 cannot be the basis to infer a connection between him and

Ms. Jyotiben Kantilal Patel. Noticee No. 1 also stated that the association of Ms. Jyotiben Kantilal Patel with the Company and with VDL and part payment of consideration for purchase of land to Ms. Kantaben Chandubhai Patel cannot be the basis to allege that he had communicated UPSI to Ms. Jyotiben Kantilal Patel.

22. According to the Noticee No. 1, there is no record to indicate that he had communicated UPSI to Ms. Jyotiben Kantilal Patel either directly to through his mother Ms. Kantaben Chandubhai Patel as alleged and that he was not aware of the basis on which Ms. Jyotiben Kantilal Patel had traded in the shares of the Company during the relevant period.

23. On the date of hearing Mr. Joby Mathew, Advocate appeared before me through webex platform and made submissions on behalf of the Noticees. Thereafter, vide letter dated March 31, 2022, M/s Joby Mathew & Associates, filed written submissions on behalf of the Noticee No. 2. The submissions made by the Noticee No.2 are similar to the submissions made by the Noticee No.1. Further, the Noticee No.2 submitted that:

(i) He was an Independent and Non-Executive Director of the Company from January 16, 2003 and the Chairman of its Audit Committee from May 27, 2014 to December 19, 2017 and that he was removed from the said position due to initiation of the CIRP;

(ii) It is erroneous to conclude that Mr. Narayanbhai Patel, his father had sold the shares on the basis of the UPSI communicated to him, as alleged;

(iii) He became privy to the financial condition of the Company during the Audit Committee meeting held on May 30, 2015, whereas Mr. Nayanbhai Patel had sold shares of the Company only on July 2, 2015. Therefore, the said sale cannot be said to have been based on the UPSI; and

(iv) There is no record to indicate that the UPSI was communicated by the Noticee No. 2 to Mr. Narayanbhai Patel.

24. In view of the pendency of the settlement applications filed by the Noticees, the passing of the order was kept in abeyance. However, after the rejection of the settlement application, another opportunity of hearing was granted to the Noticees on December 22, 2022, vide letter dated December 13, 2022. The copy of the letter was also sent to the learned counsel through an e-mail dated December 13, 2022. The learned counsel, vide e- mail dated December 13, 2022 sought another date of hearing as he was busy in relation to certain pre-occupied matters. Accordingly, another opportunity was given on January 6, 2023 and the learned counsel appeared before me and made submissions. As requested by the learned counsel, the copy of the investigation report in the matter was provided to him, vide e-mail dated January 20, 2023. The Noticees were also advised to file the written submissions, if any, by January 27, 2023. However, no written submission was received on behalf of the Noticees as advised.

CONSIDERATION OF ISSUES AND FINDINGS

25. I have perused the allegations made against the Noticees in the SCN, the reply and the written submission filed on behalf of the Noticees, submissions made by the learned counsel on behalf of the Noticees during the hearing and other material available on record, and the same are dealt with in the subsequent paragraphs.

26. On the basis of the allegations, reply and submissions, the following issues are framed for consideration:

(i) Whether the Noticees are insiders and communicated the UPSI in violation of the regulation 3(1) of the PIT Regulations read with Sections 12A(d) and 12A (e) of the SEBI Act?

(ii) Whether the violations, if any, attract monetary penalty under Section 15G(ii) of the SEBI Act?

(iii) If so, what would be the quantum of monetary penalty that can be imposed on the Noticee after taking into consideration the factors enumerated in Section 15J of the SEBI Act?

27. Before proceeding further, it would be appropriate to refer to some of the expressions, such as "unpublished price sensitive information", "connected person" and "insider", as defined in the PIT Regulations and reproduced below:

> *"2. (1) In these regulations, unless the context otherwise requires, the following words, expressions and derivations therefrom shall have the meanings assigned to them as under: –*
>
> ….
>
> *(d) "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 being a director, officer or an employee of the company or holds any position including a professional or business relationship between himself and the company whether temporary or permanent, that allows such person, directly or indirectly, access to unpublished price sensitive information or is reasonably expected to allow such access.*
>
> *(ii) Without prejudice to the generality of the foregoing, the persons falling within the following categories shall be deemed to be connected persons unless the contrary is established, -*
>
> *(a). an immediate relative of connected persons specified in clause (i); or*
>
> *(b). a holding company or associate company or subsidiary company; or*
>
> *(c). an intermediary as specified in section 12 of the Act or an employee or director thereof; or*

(d). an investment company, trustee company, asset management company or an employee or director thereof; or

(e).an official of a stock exchange or of clearing house or corporation; or

(f). a member of board of trustees of a mutual fund or a member of the board of directors of the asset management company of a mutual fund or is an employee thereof; or

(g). a member of the board of directors or an employee, of a public financial institution as defined in section 2 (72) of the Companies Act,2013; or

(h). an official or an employee of a self-regulatory organization recognised or authorized by the Board; or

(i). a banker of the company; or

(j). a concern, firm, trust, Hindu undivided family, company or association of persons wherein a director of a company or his immediate relative or banker of the company, has more than ten per cent. of the holding or interest;

NOTE*: It is intended that a connected person is one who has a connection with the company that is expected to put him in possession of unpublished price sensitive information. Immediate relatives and other categories of persons specified above are also presumed to be connected persons but such a presumption is a deeming legal fiction and is rebuttable. This definition is also intended to bring into its ambit persons who may not seemingly occupy any position in a company but are in regular touch with the company and its officers and are involved in the know of the company's operations. It is intended to bring within its ambit those who would have access to or could access unpublished price sensitive information about any company or class of companies by virtue of any connection that would put them in possession of unpublished price sensitive information.*

....

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

(i) a connected person; or

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

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

...

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

(i) financial results;

(ii) dividends;

(iii) change in capital structure;

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

(v) changes in key managerial personnel.

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

28. The fact that the Noticees are insiders is undisputed. This is evident from the following factual matrix:

(i) From the financial results of the Company for the quarter ended June 30, 2015, which was announced after the market hours on August 27, 2015, it was observed that the standalone net profit after tax of the Company had decreased from ₹16.51 Lakhs in the quarter ended March 31, 2015 to a net loss of ₹ 6,205.20 Lakhs in the quarter ended June 30, 2015 (i.e. Q-o-Q decrease of 37684%) and from a net profit of ₹ 572.24 Lakhs in the quarter ended June 30, 2014 to a net loss of ₹ 6,205.20 Lakhs in the quarter ended June 30, 2015 (i.e. Y-o-Y decrease of 1184%).

(ii) It is not in dispute that the Noticee No. 1 was the Chairman of the Company and that he was aware of and privy to the financial situation of the Company in the course of preparing the financial statements and disclosures especially for the quarter ended June 2015. Further, it was also admitted that the Noticee No. 1 was aware of the facts relating to certain Letter of Credit (LCs) having devolved, delays in payment of interests to certain banks and default in loan repayments. From various e-mails received in this regard from the aforesaid banks from November 26, 2020 to December 9, 2020, it was observed that although the earliest default by the Company was to Dena Bank which started from July 11, 2015, the financial position of the Company had started deteriorating during April 2015 to June 2015 (i.e., much earlier than the date of initiation of preparation of Company’s accounts for the quarter ended June 30, 2015).

(iii) From the correspondences provided by the banks, as aforesaid, it was observed that they (banks) were in frequent communication (in relation to the frequent devolvement of LC, delaying payment of interest and subsequent default in payment by the Company, after which the account of the Company was declared SMA-II by the banks) with the Noticee No. 1 who was the Chairman and the Managing Director of the Company and who handled the day to day affairs of the Company and that the same would indicate that the Noticee No. 1 was aware of the financial condition of the Company.

(iv) Noticee No.2 also admitted that he was privy to the financial condition of the Company during the Audit Committee meeting held on May 30, 2015.

29. Taking into account the submissions made by the Noticees and the aforesaid provisions, I do not have any hesitation to hold that the Noticees are insiders within the ambit of the PIT Regulations.

30. After establishing that the Noticees are insiders, it is to be examined whether the Noticees have communicated the UPSI to Ms. Jyotiben Kantilal Patel or to Mr. Narayanbhai Patel, as the case may be. The submission of the Noticees was that they have not communicated UPSI either to Ms. Jyothiben Kantilal Patel or to Mr. Narayanbhai Patel.

31. In this regard, I note the following facts:

(i) From the investigation report, I note that the Company had registered a net profit of ₹18.25 crores and ₹19.35 crores for the years ended March 2014 and March 2015 respectively. I also note that the profit of the Company reduced to ₹6.15 cores (during the quarterly financial report ended in December 31, 2014) and to ₹0.17 crores (during the quarter ended in March 2015).

(ii) The investigation report also observed on the basis of the analysis of the replies received from the Banks, that the financial position of the Company had started deteriorating much earlier than August 2015, which is the date of initiation of preparation of the Company’s account for the quarter ended June 2015. It was also observed that the earliest date of default to Dena bank started from July 11, 2015.

(iii) Further, even though the initial sickness of the Company has started as early on April 2015, its financial position had been progressively deteriorating; and hence, by the end of June 2015, the top management of the Company was aware of the final financial condition of the Company on account of the frequent devolvement of LC, delayed payment of interest during the period April 2015 to June 2015 etc.

(iv) The trades executed were executed by Ms. Jyotiben Kantilal Patel and Mr. Narayanbhai Patel during the existence of UPSI periods; and the proceeds from the sale of shares were shared by the traders with Ms. Kantaben Patel, the mother of Noticee No.1.

32. The allegation against the Noticee No. 1 is that he had communicated UPSI to Ms. Jyotiben Kantilal Patel, who in turn traded in the shares of the Company on the basis of the UPSI from July 2, 2015. The details of the trades undertaken by Ms. Jyotiben Kantilal Patel in the scrip of the Company during the Investigation Period, are as under:

BSE

Date	Buy Qty	Wt. Avg Buy Price (in ₹)	Sell Qty	Wt. Avg Sell Price (in ₹)
02/07/2015	-	-	2007	127.98
03/07/2015	-	-	7802	127.28
06/07/2015	-	-	1336	127.29
07/07/2015	-	-	2590	130.23
08/07/2015	-	-	2849	122.98
09/07/2015	-	-	6378	113.75

Date	Buy Qty	Wt. Avg Buy Price (in ₹)	Sell Qty	Wt. Avg Sell Price (in ₹)
10/07/2015	-	-	3237	108.78
11/08/2015	-	-	3675	116.19
17/08/2015	-	-	606	100.02
18/08/2015	-	-	800	98.00
19/08/2015	-	-	3176	96.03
20/08/2015	-	-	1000	91.86
21/08/2015	-	-	2037	83.94
24/08/2015	-	-	3720	74.38
27/08/2015			400	80.80
Total	**0**	**0**	**41,613**	**106.63**

NSE

Date	Buy Qty	Wt. Avg Buy Price (in ₹)	Sell Qty	Wt. Avg Sell Price(in ₹)
02/07/2015	-	-	7,619	127.97
03/07/2015	-	-	12,948	127.62
06/07/2015	-	-	1,707	127.09
07/07/2015	-	-	7,410	129.48
08/07/2015	-	-	11,961	121.89
09/07/2015	-	-	17,370	114.73

Date	Buy Qty	Wt. Avg Buy Price (in ₹)	Sell Qty	Wt. Avg Sell Price(in ₹)
10/07/2015	-	-	9,197	108.03
11/08/2015	-	-	7,595	116.62
17/08/2015	-	-	493	100.00
19/08/2015	-	-	3,824	95.36
20/08/2015	-	-	1,326	91.99
21/08/2015	-	-	2,963	83.18
24/08/2015	-	-	1,500	72.70
27/08/2015	-	-	900	80.65
Total	**0**	**0**	**86,813**	**106.95**

33. In the context of the allegation, the submission of the Noticee No. 1 is that since the financial condition of the Company started deteriorating long before the Investigation Period, he had no reason to wait for July 2015 to facilitate such offloading of their shares. The submission of the Noticee No. 1 was that being the Managing Director and the Chairman of the audit committee, he was aware of the deteriorating financial condition of the Company and that if his intention was to avert the losses, it is likely that he would have facilitated such trades, the moment he became aware of the financial weakness of the Company and not waited till July 2015.

34. I also note the submission of the Noticee No. 1 that the sale of shares of VDL was much needed to tide over the liquidity crisis being faced by the Company and the said sale consideration was transferred to the banks. Apart from this sale, the investigation report draws a link between the Noticee No.1 and Ms. Jyotiben Kantilal Patel on the basis that they were both shareholders of the Company and VDL. However, solely on the basis of this alleged connection between the parties, I find it

difficult to conclude that the Noticee No.1 did in fact communicate the UPSI to Ms. Jyotiben Kantilal Patel in the instant case, on the basis of which she traded in the scrip of the Company. Therefore, as against the allegation made, I find merit in the submission of the Noticee No. 1 that the said sale and the mere fact that they are both shareholders of same companies, cannot be the sole basis for an inference that he had communicated the UPSI.

35. The Noticee No.2, as per the submissions, was an independent and non-executive director of the company from January 16, 2003 and the Chairman of the Audit Committee from May 27, 2014 to December 19, 2017 till he was removed from the said position due to the initiation of CIRP. The contention of the Noticee No. 2 was that according to SEBI, the Audit Committee was held on May 30, 2015 and that Mr. Narayanbhai Patel sold the shares of the Company only on July 2, 2015. The details of the trades undertaken by Mr. Narayanbhai M. Patel in the scrip of the Company during the Investigation Period, are as under:

BSE

Date	**Buy Qty**	**Wt. Avg Buy Price (in ₹)**	**Sell Qty**	**Wt. Avg Sell Price (in ₹)**
02/07/2015	-	-	6555	129.56

NSE

Date	**Buy Qty**	**Wt. Avg Buy Price(in ₹)**	**Sell Qty**	**Wt. Avg Sell Price(in ₹)**
02/07/2015	-	-	7445	130.81

36. In brief, according to the Noticees, there was no co-relation between the UPSI and the trade executed by the persons who have allegedly executed such trades on the basis of the UPSI. The Noticees have also submitted that there was no evidence to indicate that they have communicated the UPSI to the people who have allegedly executed trades on the basis of UPSI. In this regard, the Noticees have placed reliance on the judgment of the Hon'ble Supreme Court of India in the case of ***Balram***

Garg vs. SEBI (Civil Appeal numbered 7054 of 2021 with 7590 of 2021) wherein, the Hon'ble Court held as follows:

> "*32……. the onus was actually on SEBI to prove that the appellants were in possession of or having access to UPSI. The legislative note to Regulation 2(1)(g) makes the above position of law explicitly clear. It states that: ... The onus of showing that a certain person was in possession of or had access to unpublished price sensitive information at the time of trading would, therefore, be on the person leveling the charge after which the person who has traded when in possession of or having access to unpublished price sensitive information may demonstrate that he was not in such possession or that he has not traded or he could not access or that his trading when in possession of such information was squarely covered by the exonerating circumstances.*
>
> *40. 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 in C.A.No.7590 of 2021. It would also be pertinent to note here that Regulation 3 of the PIT Regulations, which deals with communication of UPSI, does not create a deeming fiction in law. Hence, it is only through producing cogent materials (letters, emails, witnesses etc.) that the said communication of UPSI could be proved and not by deeming the communication to have happened owing to the alleged proximity between the parties.*"

37. The court in this case viz. ***Balram Garg*** (supra) also relied on its decision in the case of ***Chintalapati Srinivasa Raju vs. Securities and Exchange Board of India*** [(2018) 7 SCC 443] wherein it was held that a reasonable expectation to be in the know of things can only be based on reasonable inference drawn from foundational facts and merely because a person was related to the connected person cannot by itself be a foundational fact to draw an inference. Though, the Noticees are indeed insiders

in terms of the PIT Regulations and had access to the UPSI in relation to the Company but there is no evidence on record to suggest that UPSI has in fact been communicated by the Noticees to the respective traders.

38. The Hon'ble Supreme Court of India in the above case has also held that the trading pattern alone cannot be the ground for drawing an inference that the trading took place on the basis of the UPSI. In this case, given that there is nothing on record to show the communication of UPSI from the Noticees to the traders, I am also prevented from solely placing reliance on the trading pattern of Ms. Jyotiben Kantilal Patel and Mr. Narayanbhai M. Patel to draw the inference that they had actually traded on the basis of UPSI received from the Noticees.

39. In this regard, I also note that SEBI had initiated proceedings against Ms. Jyotibhen Kantilal Patel, Mr. Narayanbhai M Patel and Ms. Kantaben Chandubhai Patel in relation to their dealings in the shares of the Company. In the said proceedings, vide order dated March 24, 2023, it was *inter alia* observed as under:

> *"53. Having examined the facts of the instant case and the provision of the PIT Regulations, I find that there does not appear to be enough evidence to conclude that the Noticees were in possession of the UPSI which motivated them to execute the trades they did during the relevant period.*
>
> *57………..Thus, based on the material available on record and the observations of the Hon'ble Supreme Court in the case of Balram Garg (Supra), I am constrained to conclude that Noticee Nos. 1 and 2 cannot be said to be in violation of Regulation 4(1) of the PIT Regulations read with Section 12A(d) and (e) of the SEBI Act, 1992 and Noticee No. 3 cannot be said to be in violation of Regulation 3(1) of the PIT Regulations read with Section 12A(d) and (e) of the SEBI Act, 1992"*

40. Accordingly, the proceedings initiated against Ms. Jyotibhen Kantilal Patel, Mr. Narayanbhai M Patel and Ms. Kantaben Chandubhai Patel were disposed of without any direction.

41. Taking into account, the factors as discussed above and the ruling of the Hon'ble Supreme Court of India in the case of ***Balram Garg*** (*supra)*, I consider that there is no cogent material on record to prove the violation of section 12A(d) and section 12A (e) of the SEBI Act read with regulation 3(1) of the PIT Regulations by the Noticees. Accordingly, I do not find the present proceedings to be a fit case to impose penalty against the Noticees

ORDER:

42. In view of the above, the Show Cause Notice dated September 30, 2021 issued to Mr. Jayeshbhai Chandubhai Patel and Mr. Mukesh N. Patel in the matter of Vimal Oil and Foods Limited is disposed of without imposing any penalty.

43. A copy of the order is given to Mr. Jayeshbhai Chandubhai Patel, Mr. Mukesh N. Patel and also to the Securities and Exchange Board of India.

Sd/-

VIJAYAKRISHNAN G

ADJUDICATING OFFICER

Date: March 31, 2023

Place: Mumbai