BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER: Order/NH/VS/2022-23/20979]

UNDER SECTION 15-I OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1956 READ WITH RULE 5 OF THE SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995

In respect of –

Ishita Guha (PAN AXMPG0842P) having address at H No. 14 B Street Mohalla Rampura Dehat Part Post Office Udham Singh Nagar, Uttarakhand -263153

In the matter of Trading activities of certain entities in the scrip of Bharat Financial Inclusion Ltd. and IndusInd Bank Limited

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BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") initiated adjudication proceedings against Ms. Ishita Guha ("**Noticee"**) under Section 15-I of Securities And Exchange Board of India Act, 1956 **("SEBI Act")** read with Rule 5 of the SEBI (Procedure For Holding Inquiry And Imposing Penalties) Rules, 1995, for adjudication under Section 15 HA of the SEBI Act for alleged violation of Regulations 3 (d), 4 (1), 4 (2) (f) and 4 (2) (r) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to the Securities Market) Regulations, 2003 ("**PFUTP Regulations**") read with Regulation 2 (1) (c) (5) of the PFUTP Regulations.

APPOINTMENT OF ADJUDICATING OFFICER

2. Mr. Suresh B. Menon was appointed as Adjudicating Officer in the matter vide order dated January 21, 2021 to inquire into and adjudge under Section 15-I of the SEBI Act read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter be referred to as the "**Adjudication Rules**") the aforesaid alleged violations by the Noticee. Subsequently, the undersigned was appointed as Adjudicating Officer ("**AO**") vide order dated June 6, 2022. The appointment of the undersigned as AO was communicated vide communique dated June 7, 2022.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. Show Cause Notice ("**SCN"**) No. A&E/EAD-1/SBM-ASR/2497/M/2021 dated March 24, 2021 was issued to the Noticee. The allegations levelled against the Noticee in the SCN are summarized as follows:-

   - SEBI received a letter dated May 02, 2019 from National Company Law Tribunal (hereinafter referred to as '**NCLT'**) stating that Mr. Hayagreeva Ravikumar Puranam, Non-Executive Chairperson of Bharat Financial Inclusion Ltd (hereinafter referred to as '**BFIL' / 'Company'**), had given an interview to the TV Channel "ET NOW" at 04:32 PM on April 24, 2019 confirming the merger of BFIL with IndusInd Bank Ltd (hereinafter referred to as '**IBL'**). NCLT further stated in its letter that the matter with respect to Scheme of Arrangement among BFIL (amalgamating company), IBL (amalgamating company) and IndusInd Financial Inclusion Ltd. ("IBIL"/ transferee company) was heard on April 23, 2019 and was reserved for orders. It was seen from the video of the interview on ET NOW available at (https://economictimes.indiatimes.com/industry/banking/finance/banking/nclt-nod-for-indusind-bank-bharat-financial-inclusion merger/videoshow/69009700.cms), that the said interview was telecast for the first time on April 23, 2019 from 04:32 PM onwards.

- Ms. Ishita Guha, who was working as a journalist with ET Now at the relevant point of time was reportedly the source of information to an ET Now anchor who interviewed Mr. Hayagreeva Ravikumar Puranam on April 24, 2019. Mr. Ravikumar, Non-Executive Independent Director and chairperson of Bharat Financial Inclusion Ltd (hereinafter referred to as '**BFIL' / 'Company'**) allegedly made misleading statement while giving an interview to the TV Channel 'ET Now' on April 24, 2019 about the amalgamation of BFIL with IndusInd Bank Ltd (hereinafter referred to as '**IBL'**).

- Ms. Ishita Guha, in her submissions to SEBI during investigation cited lawyers as her source of the aforesaid information and denied providing their names, citing that neither could she recall the names nor was she constrained to share the same with SEBI, due to her immunity as a journalist. However, ET Now, vide its email dated October 16, 2020 informed SEBI, *inter alia*, that "*Ms Ishita Guha, who was at the relevant time working with ET Now as a reporter, was present in court on April 23, 2019*." Further, along with the aforesaid email, ET Now had attached copy of email by Ms. Ishita Guha to email ID storyslug@etnow.tv having the subject line as "…*NCLT Mumbai approves IndusInd Bank, Bharat Financial Inclusion merger*".

- BFIL (formerly known as SKS Microfinance Limited), was founded in 1997 as a non-banking finance company, licensed by the Reserve Bank of India. The Company stated its mission was to provide financial services to the poor under the premise that providing financial services to poor borrowers helps to alleviate poverty. In 2013, the company operated across 17 Indian states. The shares of BFIL were listed on Bombay Stock Exchange (BSE) and National Stock Exchange (NSE). With effect from July 04, 2019, BFIL amalgamated with IBL.

- During the investigation period, the directors of BFIL were as follows:

S. No.	Name of the Director	Designation	Appointment Date
1	Puranam Hayagreeva Ravikumar	Non-Executive - Independent Director-Chairperson	11/03/2016
2	Ashish Damani	Chief Financial Officer	22/03/2006
3	Geoffrey Tanner Woolley	Non-Executive - Non Independent Director	06/05/2009
4	Tarun Khanna	Non-Executive - Independent Director	01/02/2008
5	BalaChandran Srinivasan	Non-Executive - Independent Director	24/07/2014
6	Ashish Lakhanpal	Executive Director	24/05/2017
7	Sanjay Jain	Non-Executive - Independent Director	26/07/2018
8	Ramachandra Rao Madapati	Non-Executive - Independent Director	20/07/2011
9	Punita Kumar Sinha	Non-Executive - Nominee Director	23/03/2015
10	Rajendra Patil	Compliance Officer & Company Secretary	18/04/2019

- SEBI vide its emails dated September 03, 2019 and March 03, 2020 asked certain queries to Mr. Ravikumar regarding his interview to ET NOW on April 23, 2019. Mr. Ravikumar vide his letter dated September 6, 2019 (Annexure 2 to the SCN) and March 03, 2020**,** inter-alia, stated that,

  "*I would like to submit that on April 23,2019, I received a call from ET Now wherein ET Now stated that the National Company Law Tribunal ("HON'BLE Tribunal") has approved the merger between erstwhile Bharat Financial Inclusion Limited ("Erstwhile BFIL") and IndusInd Bank Limited (IBL).*

  Thereafter, I was interviewed by ET Now on April 23, 2019. During the interview, in response to a prompt from the TV Anchor of the said news channel stating that the merger has been approved, I being unaware about the status of arguments before the Hon'ble Tribunal, clearly stated that I have not seen the order and whether there existed any riders. I did not make any statement that the merger has been approved by the Hon'ble Tribunal.

Therefore, I would like to state that the media misread and misstated the statement made by the Hon'ble Tribunal that the matter was reserved for order and therefore, erroneously stated that the merger has been approved by the Hon'ble Tribunal.

……..

It is further submitted that post the aforementioned interview, Erstwhile BFIL, with constant consultation and guidance from the Stock Exchanges, issued emails/ letters to ET Now and the Economic Times on [May 24, 2019], asking them to issue suitable clarifications in the form of a corrigendum in their newspaper. Representatives of Erstwhile BFIL also met the representatives of ET Now and the Economic Times on [May 27, 2019] for this purpose.

In response of Erstwhile BFIL's e-mails/ letters, ET Now flashed clarifications on May 29, 2019 and the same are reproduced below.

"INDUSIND-BHARAT FIN MERGER- On April 23, NCLT had reserved the matter for passing orders in case of merger".

BHARAT FIN- On April 23, NCLT had reserved the matter for passing orders in case of merger".

Attached herewith as Annexure III are the screenshots of the said clarifications from ET Now news channel on May 29, 2019 as well as email received on June 04, 2019 having trail of communication between BFIL and ET Now.

…….

It is respectfully submitted that neither me nor any of my immediate relative, connected persons have done trading in the scrip of Indusind Bank Ltd / Erstwhile BFIL during the period April 08, 2019 – May 03, 2019. It may be noted that the Trading Window of Erstwhile BFIL was closed from April 1, 2019 till May 23, 2019.

…

It is respectfully submitted that post my interview Erstwhile BFIL apprised its Board Members about the proceedings of hearing held before Hon'ble Tribunal on April 23, 2019... Erstwhile BFIL informed that the Hon'ble Tribunal reserved the matter for passing the order. A copy of e-mail is attached hereto as Annexure IV.

…

On April 23, 2020 -~ 4:30 p.m., a lady (I am unable to recall her name) of the television channel 'ET Now' called up on my cell and mentioned to *me that the Hon'ble National Company Law Tribunal had approved the merger of IndusInd Bank and Bharat Financial Inclusion Limited. Being, unaware about the status, I have clearly stated to her that I have not been briefed by the Company team and also that I have not seen the order. She replied that they have confirmation of NCLT's approval. The tele-interview was telecasted live. ……*

…..

The lady from the television channel ET NOW called up directly on my cell. She did not specify the subject of interview in advance before the interview."

- The interview with headlines "*NCLT nod for IndusInd bank, Bharat financial inclusion merger*" was aired by ET Now on April 23, 2019 at 05:41 PM. This interview (in video format) was available at following URL:

  <https://economictimes.indiatimes.com/industry/banking/finance/banking/nclt-nod-for-indusind-bank-bharat-financial-inclusion merger/videoshow/69009700.cms.>

- The transcript of the interview was enclosed as Annexure 3 to the SCN. The relevant excerpts from the same are given below:

  "Interviewer: "Mr. Ravikumar thank you so much for joining here. Mr Ravikumar, my first question to you is that now the approval is in place what can we expect? How long is the integration really going to take place? You know, Ramesh Sobti had told ET Now not very long back that new financial year is going to be new clean state with a lot that can happen with Bharat Financial. Can you tell briefly about what it is we can expect immediately? When will the integration be completed?"

  Shri Ravikumar: "I have yet to see the court order in which whether there will be any rider. So I am presuming, on the presumption that it'll be a clean approval, it should take another two to four weeks for completing the remaining process which are not lengthy. These are only meetings of both the boards adopting the record date on which share swaps will take place and the merger will have to be filed with the appropriate authorities under the Companies Act. So these processes should take anywhere between two to four weeks and the merger will be complete with that……….."

- SEBI vide email dated August 30, 2019 and March 03, 2020 asked BFIL and IBL to provide their clarifications with respect to the interview given by

Mr. Ravikumar. Since erstwhile BFIL merged with IBL w.e.f July 04, 2019, IBL provided responses to SEBI's queries for both (erstwhile BFIL and IBL) vide letter dated September 11, 2019 (Annexure 4 to SCN) and March 04, 2020, *inter-alia*, stating the following -

"*(f) The news reports which had been published by inter alia ET Now were made without verification, either from the Hon'ble Tribunal or from the Petitioner Companies, and were not based on any communication, disclosure or press release made by the Petitioner Companies.*

(g)……. No specific confirmation or affirmative statement was made by Mr. P H Ravikumar that the merger has been approved by the Hon'ble Tribunal, as he was responding to a query posed to him.

(h)…….:ET Now: Mr. Ravikumar thanks you so much for joining us here. Mr Ravikumar, my first question to you is that now the approval is in place what can we expect? How long is integration really going to take place?... Can you tell us briefly about what it is that we can except immediately? By when will the integration be completed?

Mr. P H. Ravikumar: I Have yet to see the court order in which whether there will be any riders…" (emphasis supplied)

(a)…Post the interview of Mr. P. H. Ravikumar and the erroneous reporting, Erstwhile BFIL was taking appropriate steps to rectify the same and kept IBL and its management updated all the times.

6. Separately, the trading window of both IBL and Erstwhile BFIL had been closed during the below period:

IBL: March 26, 2019 to May 25, 2019

Erstwhile BFIL: April 1, 2019 to May 24, 2019…"

…..

10. The scheme was eventually approved by the Hon'ble Tribunal on June 10, 2019 and the same was disclosed to the Stock Exchanges by IBL and BFIL on June 11, 2019 and June 10, 2019 respectively.

……

The company Petition for merger of IndusInd Bank and Erstwhile Bharat Financial Inclusion Limited ("Erstwhile BFIL") came up for hearing before the Hon'ble National Company Law Tribunal ("Hon'ble Tribunal") during the second half on April 23, 2019 around 4:00 p.m. and the hearing in the matter was concluded around 4:20 p.m.

……..

Erstwhile BFIL did not receive any formal communication from ET NOW before ET NOW had approached Mr. P H Ravikumar for the interview. Post completion of the hearing and before the interview of Mr. P H Ravikumar by ET NOW, the Erstwhile BFIL officials tried to reach out to Mr. P H Ravikumar, however the Erstwhile BFIL officials could not brief him about the status of case/hearing, because ET NOW had already reached out to Mr. P H Ravikumar over the phone for the interview.

……….

It seems that the journalist/media representatives were present during the hearing."

- As regards the official communication for the aforesaid NCLT hearing outcome to senior management, IBL has submitted that official communication briefing about the outcome of the NCLT hearing to senior management was sent through email dated April 23, 2019 at 22:52 hours.

- It was alleged that a strong positive statement made by Mr. Ravikumar, a chairperson of listed company to the media on price sensitive information such as merger may have had the effect of inducing persons to deal in the securities. On April 24, 2019, the scrip of BFIL scrip opened higher than the closing price on April 23, 2019 on both Exchanges BSE and NSE by 1.67% and 1.07 %, respectively. Further, it was observed that the closing price of the scrip of BFIL on April 24, 2019 was higher by 3.61% and 3.32% on BSE and NSE, respectively, as compared to April 23, 2019.

- Vide email dated February 18, 2020 SEBI advised ET NOW to furnish the reason and source for the information of News Anchor who interviewed

Mr. Ravikumar. ET NOW, vide email dated February 28, 2020 (Annexure 5 to SCN), *inter alia*, submitted the following:

“(1)...Mr. P H Ravikumar, Non-Executive Chairman of Bharat Financial Inclusion Limited, was spoken to by the channel representatives on April 23, 2019.

(2) While seeking his views and response to the said merger, an inadvertent mention was made of NCLT granting approval to the merger.........

(3) As regards the source of information, we wish to clarify that the channel was updated of this development in the NCLT on April 23, 2019 by one of our reporters who inadvertently misunderstood the outcome of the hearings and confirmed the news on the merger as being formally approved by the NCLT. The said reporter is no longer engaged with ET NOW...”

- Vide email dated March 06, 2020, ET NOW provided the name and contact details of the said reporter as Ms. Ishita Guha (Annexure 5 to SCN). Thereafter, vide email dated July 13, 2020, ET Now was advised to confirm whether any reporter or employee of ET NOW was present in the NCLT court during hearing of the said matter and the reason for delay in issuing clarification regarding the said interview after more than one month. ET Now, vide email dated July 20, 2020 (Annexure 5 to SCN), *inter alia*, submitted the following:

“1*….. we have already confirmed on behalf of ET Now channel that one of our reporter was present in Court on April 23, 2019. Vide email dated March 13, 2020 we have also furnished the contact details of the said reporter who is no longer working for or associated with ET Now.”*

2. As regards the on-clarification carried by ET Now on May 29, 2019 on this story, we wish to once again submit that the news broadcast on the NCLT decision on the Bharat Financial Inclusion Limited (BFIL) and IndusInd Bank Limited (IBL) merger on April 23, 2019, had inadvertently referred to the NCLT decision as final nod to the said merger. We humbly reiterate that this was due to the inadvertent misunderstanding of the NCLT decision by the concerned reporter on April 23, 2019. However, the *overall coverage on the merger did clarify that the written orders were yet to be issued by the NCLT and that the process of completion of the merger could take few more months. The channel had also subsequently clarified this position with BFIL which had raised similar concerns, following which the on-air clarification was put out on May 29, 2019 confirming that the NCLT had on April 23, 2019 reserved its orders on the merger.*"

- Meanwhile, a reply was also received from Ms. Ishita Guha that her source of information which she passed to ET Now was lawyers present during the hearing of the said matter. Therefore, vide SEBI email dated October 09, 2020, ET Now was once again advised to confirm whether Ms. Ishita Guha was present during the hearing at NCLT and what is the standard procedure that is followed during such reporting i.e. can a reporter appoint/send another person on behalf on her/him for coverage of the assigned task.

- Vide its email dated October 16, 2020 (Annexure 5), ET Now, inter alia, submitted the following:

  " *a. We confirm once again, to the best of our knowledge and information, that Ms Ishita Guha, who was at the relevant time working with ET Now as a reporter, was present in court on April 23, 2019.*

  b. As a practice only a Bureau Head of the channel can assign another reporter to cover an event. So, in this case, the reporter could not have assigned the coverage to another reporter or send someone else on her behalf to the Court to cover the story, as she had no authority to do so.

  c. …….The channel had covered this newsbreak only after receiving this update from her. Ms. Ishita Guha was on the said day communicating with the Assignment Head of the Channel Mr. Adesh Verma (email – adesh.verma@timesgroup.com) regarding her assignment and had also clarified to him that IndusInd counsel had appeared and made submissions and she expected the Court to pass orders after lunch. She has also confirmed that she did not require any cameraman for the coverage."

- Thus, ET Now once again verified that Ms. Ishita Guha was present in the court during hearing in the said matter. Copy of the email whereby Ms.

Ishita Guha had communicated the said information about merger to her assignment head was at Annexure 5 to the SCN. Thus, the ET Now anchor who made the statement about the merger of BFIL and IBL had relied upon the information provided by the assigned reporter Ms. Ishita Guha who was present in the court during the hearing.

- SEBI, vide email dated March 07, 2020 advised Ms. Ishita Guha to explain the reason and source of her information regarding NCLT hearing on April 23, 2019. Ms. Ishita Guha vide email dated March 13, 2020 (Annexure 6 to SCN), *inter alia* submitted the following:

  "*This is with regards to the story – NCLT approves merger of Bharat Financial Inclusion Ltd (BFIL) with IndusInd Bank Ltd- that I did on April 23, 2019. I shared the same information with business news channel ET NOW.*
  The source of my information were the lawyers present during the court proceedings at NCLT. Neither I can recall the names of the lawyers who shared the above information nor I am obliged to share the details of my sources as a journalist…"

- Thus, Ms. Ishita Guha admitted that she provided the said information about the approval of merger of BFIL and IBL by NCLT, to ET Now. Ms. Ishita Guha also submitted that she received the aforesaid information from the lawyers who were present in the court but did not provide further clarification on whether she herself was present in the court during the course of hearing. ET Now vide email dated October 16, 2020 confirmed that Ms. Ishita Guha was present in the court during hearing in the said matter and also confirmed that she did not have authority to assign any other person on her behalf to report on the matter.

- Vide emails dated October 26, 2020, November 03, 2020 and November 19, 2020, SEBI advised Ms. Ishita Guha to clarify the differences in submissions of her and ET Now about her presence during the NCLT hearing.

- The Noticee vide email dated November 23, 2020 (Annexure 6 to SCN), *inter alia*, submitted the following:

  "*As I have stated before, the lawyers who were present during the court proceedings were the source of my information. As per ET NOW's direction, I was present at NCLT on April 23, 2019, but I waited for the court proceedings to end and got the information (NCLT Mumbai approves IndusInd Bank, Bharat Financial Inclusion merger) from the lawyers after the hearing concluded*."

- Therefore, on the basis of the reply of ET Now (Annexure 5 to SCN) and submissions of Ms. Ishita Guha it was observed that she was present in the court during hearing of the said matter and was the source of information to ET Now anchor who interviewed Mr. Ravikumar. As the information regarding the approval of amalgamation of BFIL and IBL was price sensitive information, it was the responsibility of Ms. Ishita Guha to provide true and correct status of the hearing held in NCLT as she was assigned to report the particular event by ET Now. Therefore, it was alleged that the Noticee was, *prima facie*, trying to shift the responsibility of the misleading interpretation of the hearing held in NCLT on April 23, 2019 on the lawyers, despite herself being present at NCLT at that point of time. Therefore, it was alleged that Ms. Ishita Guha acted in a reckless and careless manner by providing false/misleading information about an unpublished price sensitive information regarding the order of NCLT in the matter of the merger of BFIL and IBL, which caused price/volume impact in the scrip of both IBL and BFIL.

- The above discussed behaviour of Ms. Ishita Guha allegedly fell under the definition of "*fraud*" as defined under Regulation 2(1)(c)(5) of the PFUTP Regulations which states that "*fraud includes...(5) a representation made in reckless and careless manner whether it be true or false*". Therefore, it was alleged that Ms. Ishita Guha has violated the provisions of

Regulations 3(d) and 4(1) and 4 (2) (f) and (r) of the PFUTP Regulations read with Regulation 2(1)(c)(5) of the PFUTP Regulations.

4. The SCN was attempted to be served upon the Noticee by Speed Post Acknowledgment Due, but the same returned undelivered. Subsequently the SCN was attempted to be delivered to the Noticee by affixture at her address on June 19, 2021, but the affixture was unsuccessful due to the reason "non-availability of entity" and that "no such address/premises exist" as mentioned in the Affixture Report. The SCN was served upon the Noticee by e-mail delivered to the Noticee on July 7, 2022 which also informed the Noticee regarding appointment of the AO vide order dated June 6, 2022.

5. Subsequently, vide e-mail dated July 8, 2022 Mr. Arjun Natarajan, Advocate and Authorised Representative of the Noticee, submitted on behalf of the Noticee that the Noticee had received the SCN dated March 24, 2021 for the first time only on July 7, 2022 and seeking time to respond to the SCN. The request of the Noticee for extension of time for filing her reply was acceded to in the interest of natural justice and she was granted time till July 22, 2022 to file her reply in the matter.

6. Subsequently, vide e-mail dated July 18, 2022 Mr. Arjun Natarajan on behalf of the Noticee stated the following –
   a. *One of the serious concerns that the SCN raised was the intervention by securities regulatory enforcement efforts into what is the domain of free speech and expression protected and guaranteed by the Constitution of India. Therefore, the basis on which a news report filed by My Client bona fide became capable of intervention through proceedings alleging securities market fraud, would need to be very carefully examined. What influenced the formation of an opinion that a journalist should be accused of securities market fraud for no reason other than a news report lay at the heart of the adjudicating process involved.*
   b. *Since what was at issue was the bona fide conduct of journalistic work by a journalist, such proceedings impeded into the freedom of speech and expression. Absent any material to show how the Noticee would have been*

involved in any deceit, manipulation or conscious or deliberate misrepresentation, it would not even be possible to involve PFUTP Regulations against her. In the circumstances, a full compliance with the judgement in T. Takano versus SEBI & Anr. was imperative.

c. *Documents such as a complete copy of the investigation report and material which led to the formulation of the opinion that the Noticee had prima facie violated any provisions of the PFUTP Regulations were sought to be inspected.*

7. The above request of the Noticee was considered and acceded to in the interest of natural justice. Accordingly, vide Hearing Notice No. SEBI/EAD2/NH/VS/OW/P/2022/29497 dated July 21, 2022 a copy of the investigation report along with all annexures in the captioned matter, which constituted the complete material relied upon for initiation of adjudication proceedings and crystallisation of allegations against the Noticee, was provided to the Noticee. Further, time was granted till August 19, 2022 to the Noticee to make her submissions in respect of the allegations levelled against her in the SCN, and an opportunity of hearing was provided to the Noticee on August 22, 2022.

8. Vide e-mail dated August 18, 2022, Mr. Arjun Natarajan confirmed on behalf of the Noticee that the Noticee will avail the opportunity of hearing on August 22, 2022. Further, vide e-mail dated August 21, 2022 the following reply to the SCN was submitted on behalf of the Noticee:-

   a. *The SCN is an extraordinary one and is a deep intervention by SEBI into the field of perceived errors in the profession of journalism without any nexus whatsoever with misrepresentation in the course of dealing in securities. The core issue that falls for consideration is whether a journalist's reportage in good faith of her understanding of what transpired in a Court proceeding to her employer, (which is ultimately not shown to be untrue in any material particular), can at all amount to planting false or misleading news in connection with dealing in securities, under the PFUTP Regulations.*
   b. *SEBI had commenced investigation to ascertain if there had been manipulated price movement in the BFIL scrip. Having found a lot of*

synchronised trades, and yet finding no evidence to establish market manipulation, it has chosen to simply create a non-existent link between the price movement and the purportedly false and misleading statement made by Mr. Ravikumar in an interview.

c. *By ending up with finding fault with information provided by the Noticee, a journalist who acted in good faith and reported her understanding of what transpired before the NCLT, and that too privately to her employer, SEBI is extending itself way beyond matters of fraud in connection with transactions in securities to being a judge of journalistic standards. No extent of extrapolating a perceived error in reportage to market transactions would bring journalistic coverage into the domain of fraud in the securities market;*
d. *SEBI has overlooked the core and material fact that the record shows that NCLT had reserved orders on the proposed scheme of arrangement between BFIL and IBL on April 23, 2019. This is usually the last stage of a merger hearing and when orders are reserved, it inexorably and invariably means that the merger is approved and orders would be passed over time approving it. In the instant case, the merger was in fact approved on June 10, 2019.*
e. *The perceived error in reporting is that the Noticee conveyed the aforesaid understanding to ET Now, her then employer. ET Now interviewed Noticee No. 1 on the premise that the merger stood approved. No further hearing occurred between April 23, 2019 and June 10, 2019. Any lawyer practising the field of merger approvals would point out that such an understanding is off the mark at all, unless any extraordinary opposition to the scheme of arrangement on some fundamental premise of violation of law by the scheme was up for consideration by the NCLT. There is nothing on record to suggest that it was a case of such a contested merger;*
f. *A journalist's good faith reporting of events based on her understanding of what transpired and as explained to her by lawyers at the NCLT, cannot lead to a charge of making any misleading statement. In fact the merger was approved on June 10, 2019. Such reportage can never tantamount to securities fraud merely because it pertains to a listed company and that too without showing any element of connivance or inducement to deal in securities;*
g. *The PFUTP Regulations are not aimed at policing standards of conduct by journalists and media houses unless their statements have been made with the motive of inducing a dealing in securities;*
h. *SEBI is a securities market regulator and cannot usurp the role of journalistic regulator such as the Press Council of India or the*

Broadcasting Council, and such other bodies that are entrusted with the duty of policing journalistic standards;

i. *In this context, SEBI's reliance on the Hon'ble Supreme Court's judgement in SEBI v. Rakhi Trading (2018) 13 SCC 753 ("Rakhi Trading") is entirely misplaced and misapplied – that was a case dealing with synchronized and pre-meditated reversal of trades among stock market traders, and any comments on the role of the electronic media would not improve SEBI's case set out in the SCN;*

j. *In the past when SEBI attempted to make a similar regulatory intervention in the context of an interview, it led to a binding judicial precedent in the form of the judgement of the Hon'ble Securities Appellate Tribunal in RS Agarwal v SEBI (Appeal No.63 of 2018, Order dated March 13, 2019). In that case, it was specifically ruled that absent a motive or design behind a statement that is perceived to be misleading, it is not open for SEBI to latch on to a statement in a news report as evidence of fraud. While that standard was applied to a promoter-Chairman of a listed company, that standard would apply with even greater force to a reporter whose profession by its very nature, is reporting developments at the earliest opportunity;*

k. *In the instant case, the reportage was consistent with the reporter's understanding of what happens next when a scheme is reserved for orders. The scheme indeed got approved. Much ado is made about the scheme not being approved on that very day (April 23, 2019) and that only orders were reserved. There is no evidence to suggest that the scheme was extraordinarily contested and there was likelihood of it not being approved. Statements made in good faith are incompatible with the concept of fraud and deceit;*

l. *If the standard of liability stipulated in the SCN is accepted, it would have a chilling effect on free speech and result in journalists and media houses who cover events relating to listed companies, to prefer silence to running the risk of regulatory proceedings and that too for a heinous charge of securities fraud;*

m. *If this standard were to apply, SEBI would unwittingly be rendering a disservice to the cause of the public and investors whose interests lie in the free and uninhibited flow of information and at the earliest point of time.*

n. *As is evident from a copy of SEBI's undated investigation report provided ("Investigation Report") during inspection, the investigations admittedly commenced to examine if there was any market manipulation – either in form of trades in the scrip of BFIL being placed below Last Trade Price ("LTP") or synchronized trades. SEBI* *ultimately concluded that no case of market manipulation could be made out.*

o. *It is telling that although SEBI's investigations revealed that there was no market manipulation at all, the content of a reportage from the NCLT to ET Now is being spliced and sparsed and eventually elevated to a violation of PFUTP Regulations. Merely because the source of an interviewer's query to the Chairman of BFIL was the Noticee, a conclusion was drawn to initiate adjudication proceedings against the Noticee for allegedly planting a false or a misleading statement – when the record in fact shows that in fact on April 23, 2019, orders had been reserved and in June 2019, the reserved order was pronounced and the pronouncement was in fact exactly in conformity with the Noticee's understanding of the news that had developed. SEBI ought to have dropped the matter altogether when its investigations found that there was no market manipulation.*

p. *Such a fact pattern cannot be elevated to position of a "reckless" statement. It would be understandable if orders had not been reserved on April 23, 2019 and more hearings of contentious objections to the scheme were still underway. It would be understandable if orders had been reserved but seriously contested contentions from serious quarters – say regulators or very large shareholders had been considered. When contentions are still being heard, to state that the scheme got approved would have been misleading. When serious objections were to be ruled upon, to state that a reserved order is equal to scheme being approved would stand on a different footing. None of such facets exist in the instant case.*

q. *SEBI's case is based on an internal email that the Noticee wrote to her then employer ET NOW on April 23, 2019, it is necessary to extract the email with the subject "NCLT Mumbai approves IndusInd Bank, Bharat Financial Inclusion merger", in full:-*

   "<u>NCLT yet to publish written order of IndusInd Bank, Bharat Financial merger approval</u>. IndusInd Bank to notify exchanges once written order is published"

   <u>(Emphasis Supplied)</u>

r. *The internal e-mail dated April 23, 2019 from the Company Secretary of BFIL forming an integral part of the record provides a consistent summary of the hearing to the management of BFIL.*

s. *The aforesaid email too makes it abundantly clear that all queries raised by the Regional Director and the NCLT, were satisfactorily clarified and all directions had been complied with. The tone and tenor of the email also make it clear, that the order sanctioning the scheme* *was a formality as the email notes that the "order and the certified copy of the scheme would be available in the next 10 days;*

t. *While it is correct that the NCLT reserved the matter for orders on April 23, 2019 and did not formally approve the scheme on April 23, 2019 (which it indeed did on June 10, 2019), the Noticee truthfully reported that written order from the NCLT was awaited and that the stock exchanges would be informed, once the written order becomes available – her understanding is consistent with the understanding of the professional Company Secretary of BFIL too;*

u. *The Noticee provided a good faith account of her understanding of what transpired in the NCLT. There is no allegation of mala-fides or that it was done with a view to induce a dealing in securities.*

v. *The Noticee based on her observation of the proceedings and her discussions with the lawyers, was of the bona-fide view that since there were no objections raised, the formal order sanctioning the scheme was a formality. Her understanding that the order sanctioning the scheme was a formality is borne out by BFIL's internal email sent by the Company Secretary, and the Noticee also also clarified that a written order of approval was awaited.*

w. *IBL had in its notification to the stock exchanges on April 30, 2019, stated that the NCLT had reserved the matter for orders, clarifying the position.*

x. *Investigation Report draws an inference of recklessness from an internal e-mail sent by the Noticee to her employer but has rightly not charged her employer or the interviewer (who published in the public domain).*

y. *ET Now conducted an interview which is the instance of publication in the public domain without making it clear that the Noticee had actually said it in writing that the written order from the NCLT was still awaited. However, SEBI finds fault with the reporter who makes it clear that orders are awaited and finds no fault with the interview premised on the merger having come through without clarifying that orders are yet to be passed.*

z. *ET NOW has, admittedly, subsequently issued a clarification on May 29, 2019, based on a request from BFIL, that the NCLT had reserved the matter for orders. Such clarification was made by a listed company over one month after the Interview.*

aa. *IBL updated the stock exchanges on April 30, 2019 and BFIL issued a clarification on May 29, 2019. SEBI has no grouse with the listed companies for allegedly not clarifying the outcome of the NCLT proceedings promptly after the Interview aired.*

bb. *SEBI's actions in charging the journalist for securities fraud is an attempt at regulatory overreach. Reports issued by media houses and journalists are often based on sources of varying levels of credibility, as they rely on third party sources who often choose to remain anonymous. Investors who trade in the market are aware of the distinction between the importance to be attached to a news report about a listed company's affairs and an intimation to the stock exchange by the listed company itself. This is why publication by a listed company is the highest standard of what is generally available information whereas publication by anyone else is speculative in nature.*

cc. *Indeed, the disclosure regime put in place by SEBI requires listed companies to promptly react to news reports and other information in the public domain. The Code of Conduct to the PIT Regulations among others requires a listed company to put in place a mechanism for:-*
"<u>Appropriate and fair response to queries on news reports</u> and requests for verification of market rumours by regulatory authorities"
(<u>Emphasis Supplied</u>)

dd. *When a report is published by media about a material event, stock exchanges seek a clarification from the listed company to ascertain the veracity of what is reported, since it is the listed company that is duty bound to keep the market abreast of all material developments. In the instant case, no one found it misleading on April 23, 2019 and all the way to May 29, 2019 when BFIL issued a clarification. It is evident that no one reacted in any material manner to the an event which was in any case a foregone conclusion.*

ee. *Unless the conduct of a journalist in sending an internal email, or for that matter the conduct of her employer media house in publishing statements, is done with the motive of creating a false market in securities or inducing a dealing in securities, there is no question of the PFUTP Regulations being invoked. There is not a whisper of evidence of any dealings or connection to dealings by the Noticee or for that matter by ET Now and its owners.*

ff. *Hon'ble Supreme Court held in its earlier judgement of N.Narayanan v SEBI (2013) 12 SCC 152, ("Narayanan") that "Print and electronic media have also a solemn duty not to mislead the public, who are present and prospective investors, in their forecast on the securities market. <u>Of course, genuine and honest opinion on market position of a company has to be welcomed</u>. <u>But a media projection on company's position in the security market with a view to derive a benefit from a position in the securities would amount to market abuse, creating artificiality</u>. SEBI has the duty and obligation to protect ordinary*

genuine investors and SEBI is empowered to do so under the SEBI Act so as to make security market a secure and safe place to carry on the business in securities."
(<u>Emphasis Supplied</u>)

gg. *Hon'ble Supreme Court's observations in Narayanan pertained to media publishing any misleading projections of a company's position, "with a view to derive benefit from a position". That vital link is wholly absent here and SEBI has simply selectively picked on a few extracts, without context, to charge a journalist's good faith reporting of the outcome of a court proceeding, to her employer, as a securities fraud.*

hh. *There are vital elements before one can be charged with fraud: (i) the element of connivance; (ii) such connivance must be in relation to a dealing in securities and must be done in order to (iii) induce a dealing in securities. None of these elements have been alleged, let alone established.*

ii. *At worst, the record could perhaps point to ET Now's interview being premature and that too on the technical ground that although the approval was a foregone conclusion, it was yet to be received formally. That position was in fact clear from Noticee No. 2's email. By no means can Noticee No. 2 be said to have been fraudulent – it was clarified by her that the written order was awaited and she did so based on her understanding of what transpired at the NCLT and her conversations with the lawyers. Even that understanding is consistent with the understanding of the Company Secretary of BFIL. Assuming purely for the sake of argument that her statement can somehow be regarded as incorrect it would still be a statement made by a journalist in good faith, and cannot render her liable to a charge of securities fraud unless it is done in connivance or with a motive to induce a dealing in securities.*

jj. *In fact, the Hon'ble SAT in <u>RS Agarwal v SEBI</u> ("RS Agarwal"), dealing with an interview given by the Chairman of a listed company where a charge of fraud was levelled on account of expression of an interest by him in of acquisition opportunities, while setting aside the order of SEBI, held that:-*

""9. We do not find merit in the arguments of the respondent. First of all the statement attributed to the appellant is as reported by a news reporter. <u>There is no evidence as to the appellant acquiring any shares of Amrutanjan. On the other hand, what is available on record is that no effort in acquisition has been made.</u> Further the appellant has clarified to the Stock Exchange immediately on receiving their communication on April 5, 2010 that it was a general statement relating to his business interest. The statement is further emphasized by the clarification provided by Amrutanjan itself which also stated that "the said news

item is false and without basis and the promoters of the Company have no intention to sell out and the promoters do not foresee any reason to dilute their stake and exit from the company".

10. While dealing with a serious issue of fraud the authorities need to ascertain the motive in the absence of any connecting evidence. There is nothing to prove that the quoted statement in the news report is exactly what is stated by the appellant unless the statement is derived from a written communication issued by the Chairman or by his Company which is not the case here. Further there is no evidence to link to a motive. Neither the appellant nor his Company Emami had / have acquired the shares of Amrutanjan. In any case they were actually interested in acquiring; the Chairman of the acquiring company would not have talked up the prices of the shares of the acquiring company (Target Company). In the absence of any motive or a scheme or any evidence a reported news item alone is not sufficient to prove a serious charge like fraud. If at all the reported statement is correct it could an expansive mood of the person. Silence as a sign of wisdom cannot be stretched to a point of total silence in the world of securities market. Substantial movement in the prices etc. of a profitable company with sufficient liquidity cannot be attributed to such a reported statement alone. "

(Emphasis Supplied)"

kk. *In Regulation 2 (1) (c) of the PFUTP Regulations, statements made in good faith, have been excluded from the definition of "fraud".*

9. An opportunity of hearing was given to the Noticee and the hearing notice was duly serviced upon the Noticee. The hearing was conducted as scheduled. Noticee authorised Mr. Somasekhar Sundaresan, Counsel for the said hearing proceedings. During the hearing conducted on August 22, 2022, the Authorised Representative of the Noticee, reiterated the submissions made in the Noticee's reply dated August 21, 2022.

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

CONSIDERATION OF ISSUES AND FINDINGS

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

    I. Whether the Noticee violated Regulations 3(d), 4(1), 4(2)(f) and 4(2)(r) read with Regulation 2(1)(c)(5) of the PFUTP Regulations?

    II. If yes, whether the Noticee is liable for imposition of monetary penalty under Section 15 HA of the SEBI Act?

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

I. Whether the Noticee violated Regulations 3(d), 4(1), 4(2)(f) and 4(2)(r) read with Regulation 2(1)(c)(5) of the PFUTP Regulations?

12. The allegations levelled against the Noticee arise from the fact that the Noticee in the present case is a journalist who in her capacity as a reporter present on behalf of the TV Channel ET Now in the National Company Law Tribunal, Mumbai ("**NCLT**") courtroom on April 23, 2019 represented to ET Now regarding the proceedings in connection with an order reserved by the NCLT on the Composite Scheme of Arrangement among BFIL (amalgamating company), IBL (amalgamated company) and IndusInd Financial Inclusion Limited (IFIL/transferee company) in Company Scheme Petition No. 4648 of 2019. The Noticee communicated to her employer that "*NCLT Mumbai approves IndusInd Bank, Bharat Financial Inclusion merger*", and that "*NCLT yet to publish written order of IndusInd Bank, Bharat Financial merger approval*" and "*IndusInd Bank to notify exchanges once written order is published".* Upon receiving information about the said NCLT hearing from the Noticee, the news anchor of ET Now interviewed non-executive independent director and Chairperson of BFIL viz. Mr. Hayagreeva Ravikumar Puranam on alleged price-sensitive information about the abovementioned scheme of amalgamation, at around 04:32 p.m. on April 23, 2019.

13. The SCN brings on record that when compared to April 23, 2019 the close to open price of the scrip of BFIL was up by 1.67% on BSE and 1.07% on NSE on April 24, 2019. Therefore, the Noticee's information to ET Now regarding the approval of the "*IndusInd Bank, Bharat Financial Inclusion merger*" by NCLT Mumbai has been alleged to be a reckless and careless representation, "knowingly" reporting false information and "planting" of misleading news by the Noticee which caused a price and volume impact in the scrip of BFIL and IBL and was tantamount to fraud in terms of the PFUTP Regulations.

14. At the outset, I note that there are some inconsistencies in records regarding the date of NCLT proceedings and the date of the news report by the Noticee to ET Now and the news telecast of the interview of Mr. Ravikumar by ET Now. The NCLT letter of May 02, 2019 indicates that the News telecast of ET Now took place on April 24, 2019 and the same is mentioned at some places in the investigation report as well as the SCN. However, the recording on the ET Now interview of Mr. Ravikumar available at shows that the interview was telecast at 16:32 p.m. on April 23, 2019 itself. Therefore, the factual matrix of this case is noted in this context.

15. The timeline of events as per the material on record is tabulated below for ease of reference –

S. No.	***Date***	***Event***
1.	April 23, 2019 Second half (16:20 hrs)	Conclusion of NCLT proceedings on amalgamation of BFIL with IBL
2.	April 23, 2019 16:30	ET Now representative allegedly reached out to Chairman of BFIL Shri PH Ravikumar regarding the NCLT proceedings
3.	April 23, 2019 16:32 hrs	ET Now telecast of interview with Chairman of BFIL Shri PH Ravikumar
4.	April 23, 2019 22:32 hrs	BFIL e-mail to senior management of BFIL regarding NCLT proceedings
5.	April 25, 2019	Status of the merger proceedings before NCLT was

		disclosed on the website of the NCLT as "order reserved"
6.	April 30, 2019	IBL updated stock exchanges regarding the NCLT proceedings
7.	May 24, 2019	Erstwhile BFIL in consultation with exchanges issued emails to ET Now and ET regarding rectification of report regarding BFIL-IBL merger
8.	March 26, 2019 to May 25, 2019	Trading window closed by IBL
9.	April 1, 2019 to May 24, 2019	Trading window closed by BFIL
10.	June 4, 2019	Emails exchanged between ET Now and BFIL
11.	June 10, 2019	Date of approval of scheme by NCLT
12.	July 4, 2019	Date from which the scheme of amalgamation became effective

16. The Noticee is charged with "fraudulent" and "unfair trade practice" in terms of Regulations 3(d), 4(1), 4(2)(f) and (r) read with 2(1)(c)(5) of the PFUTP Regulations. Thus, in terms of the abovesaid provisions, the Noticee is alleged to have carried out a fraudulent and unfair trade practice by reporting *or causing to report information which is not true or which she did not believe to be true prior to or in the course of dealing in securities, planting false or misleading news which had the potential to induce sale or purchase of securities, making a representation in a reckless and careless manner whether it be true or false, all the while* carrying out an act *knowingly designed to influence the decision of investors in securities.*

17. The relevant legal provisions in this regard are reproduced as follows: -

<u>PFUTP Regulations</u>
Definitions
2. (1) *In these regulations, unless the context otherwise requires,—*
(c) *"fraud" includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce another person or his agent to deal in*

securities, whether or not there is any wrongful gain or avoidance of any loss, and shall also include—

(5) a representation made in a reckless and careless manner whether it be true or false;

***3.** Prohibition of certain dealings in securities*

No person shall directly or indirectly—

***(d)** engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.*

***4.** Prohibition of manipulative, fraudulent and unfair trade practices*

***(1)** Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.*

***(2)** Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:—*

***(f)** publishing or causing to publish or reporting or causing to report by a person dealing in securities any information which is not true or which he does not believe to be true prior to or in the course of dealing in securities;*

***(r)** planting false or misleading news which may induce sale or purchase of securities.*

18. Further, "*dealing in securities*" is defined as follows in Regulation 2(1)(b) of the PFUTP Regulations –

2. (1)

(b) "dealing in securities" includes:

(i) an act of buying, selling or subscribing pursuant to any issue of any security or agreeing to buy, sell or subscribe to any issue of any security or otherwise transacting in any way in any security by any persons including as principal, agent, or intermediary referred to in section 12 of the Act;

(ii) such acts which may be knowingly designed to influence the decision of investors in securities; and

(iii) *any act of providing assistance to carry out the aforementioned acts."*

19. The issue for determination is whether the Noticee's report to ET Now amounted to a fraudulent or unfair trade practice in terms of the provisions of Regulations 3(d), 4(1), 4(2)(f) and (r) and 2(1)(c) of the PFUTP Regulations.

20. I would like to begin with examining the "report" of the Noticee to ET Now which forms the basis of the allegations have been levelled against her. The Noticee's e-mail dated April 23, 2019 sent at 04:14 p.m. to her employer ET Now at storyslug@etnow.tv carried the subject – "*NCLT Mumbai approves IndusInd Bank, Bharat Financial Inclusion merger*", and the text of the mail was "*NCLT yet to publish written order of IndusInd Bank, Bharat Financial merger approval*" and "*IndusInd Bank to notify exchanges once written order is published*". ET Now carried newsflashes reflecting this information at around 5:41 p.m. shortly after the interview.

21. I note that the basis of the allegation is the Noticee's communication to her employer through the e-mail to storyslug@etnow.tv. Communication between the Noticee and the Mr. Adesh Verma, Channel Head for the particular assignment regarding the NCLT proceedings, or Mr. Ravi Kaushik who admitted to "taking reaction from Mr. P.H. Ravikumar" on the NCLT proceedings on April 23, 2019, is not on record. I further note that there is no evidence on record to indicate who called Mr. Ravikumar on April 23, 2019 and told him that NCLT had approved the amalgamation. The impression conveyed by the Noticee's communication is that NCLT had approved the merger between BFIL and IBL, whereas NCLT Mumbai had actually reserved its orders after the proceedings on April 23, 2019 regarding approval of the scheme of amalgamation involving BFIL, IBL and IFIL.

22. It is relevant to note at this point that judging the Noticee on whether she complied with the standard of professional care and diligence required of a reasonable person in her position while submitting her internal e-mail report to ET Now, or the quality and accuracy of her report as a journalist, is not required to be considered while adjudicating whether "fraud" or "unfair trade practice" was committed by the Noticee through her e-mail to ET Now. Unless the deviation from reasonable standard of care by the Noticee as a journalist tethers into the domain of fraudulent or unfair trade practice in terms of the provisions of Regulation 2(1)(c)(5), 3(d), 4(1), 4(2)(f) and (r) of the PFUTP Regulations as

alleged, I am conscious to note that one should not enter the domain of other authorities.

23. I also note that the Company Secretary of BFIL also had the same report about the NCLT proceedings in his e-mail to the Chairperson of BFIL and others on April 23, 2019. As per BFIL's e-mail dated April 23, 2019 to Mr. Ravikumar, the Chairman of BFIL, and a few others at 22:52 hours the same evening, Mr. Ashish Kamath, Advocate and team from law firm CAM representing BFIL, IBL and IFIL ("the Petitioner Companies") was present in the NCLT proceedings, and had submitted to the tribunal that "*at the last hearing all issues…were clarified to the satisfaction of the NCLT and that all compliances as directed by NCLT were complied with by the Petitioner Companies and the matter was kept today, when the NCLT may consider passing the order sanctioning the Scheme*". Further, "*after hearing Mr. Kamath for 20 minutes, the NCLT was pleased to reserve the matter for passing the order*" and that BFIL expected "*that the order and certified copy of the Scheme will be received by (them) in the next 10 days*". Thus, the impression gathered from the e-mail of the Company Secretary of BFIL is that even in the opinion of the advocate representing the petitioners (though no direct verification from lawyer Mr. Ashish Kamath is on record) the Scheme was likely to get sanctioned.

24. Therefore, the Noticee as a journalist reported her understanding of the outcome of NCLT proceedings on April 23, 2019 to her Channel head and ET Now during the course of her work. In view of the above, I do not find the contents of her e-mail dated April 23, 2019 to ET Now to be a "*reckless or careless"* representation, with an intention to present *false* or *misleading* news. I note the following reply of ET NOW that, '*As regards the source of information, we wish to clarify that the channel was updated of this development in the NCLT on April 23, 2019 by one of our reporters who inadvertently misunderstood the outcome of the hearings and confirmed the news on the merger as being formally approved by the NCLT. The said reporter is no longer engaged with ET NOW..."*

25. From the SCN as well as copy of ET Now's e-mail to SEBI enclosed with the SCN, it is seen that ET Now clarified that the channel covered the newsbreak regarding merger of BFIL and IBL only after receiving the update from the Noticee, who was understood to have on the said date communicated with Channel Head Mr. Adesh Verma regarding her assignment. Copies of e-mails dated March 7, 2020 and May 27, 2019 on record show that SEBI queried the news anchor Ms. Nayantara Rai, and Mr. Ravi Kaushik of ET Now respectively, of which Mr. Ravi Kaushik admitted to "*taking reaction from Mr. P.H. Ravikumar*" on the NCLT proceedings on April 23, 2019. I take note of the submission of the Noticee that it was the news anchor who actually placed in the public domain the fact of NCLT proceedings on the merger of BFIL and IBL, proceeding to interview Mr. Ravikumar on the basis of an assumption about approval of the said merger even though orders were reserved by NCLT at that point up until June 10, 2019. I further take note of the submission of the Noticee that by April 25, 2019, the status of the said merger proceedings before NCLT was disclosed on the website of the NCLT as "order reserved". As per copy of IBLs' letter dated September 11, 2019 to SEBI during investigation, BFIL merged with IBL effective July 4, 2019.

26. The news anchors for the interview, namely, Ms. Nayantara Rai and Mr. Pankaj Poddar, vide their e-mails dated March 19, 2020 and March 18, 2020 respectively to SEBI denied being the source of the information which was broadcast on April 23, 2019 and stated that the Noticee was the source of the said information. I note that the Noticee in her reply to SEBI during investigation also contested being the source of the information and stated that she had confirmed her understanding of the NCLT proceedings from the lawyers present in the court during the proceedings. The Noticee has not provided details of her source, indicating that as a journalist she is not bound by law to disclose the source of her information.

27. I take note of the mention in ET Now's e-mail to SEBI dated October 16, 2020 that the Noticee on the said day was communicating with Mr. Adesh Verma regarding her assignment and had clarified to him that IndusInd counsel had

appeared during the NCLT proceedings and made submissions. I further note that there was no bar on reporting of NCLT proceedings. From IBL's reply dated September 11, 2019 to SEBI during investigation it is noted that IBL updated stock exchanges on April 30, 2019 while BFIL updated stock exchanges on May 29, 2019 regarding the fact that NCLT order was actually reserved in respect of the NCLT proceedings for BFIL-IBL merger which took place on April 23, 2019. ET Now itself issued clarification regarding the NCLT proceedings only on May 29, 2019. There is no material on record to indicate that any queries were made to IBL, BFIL or ET Now regarding the lag in taking corrective action in terms of rectification of the original news report dated April 23, 2019 regarding approval of merger of BFIL and IBL.

28. The allegations of manipulative, fraudulent or unfair trade practice, reckless and arbitrary representation, knowingly reporting information without believing it to be true, or planting false or misleading news which could have induced sale or purchase of securities levelled against the Noticee in terms of Regulation 3(d) or 4 (1) or 4 (2) (f) or 4 (2) (r) of the PFUTP Regulations needs to be looked at from the lens of whether the Noticee while conveying the report of approval of the merger of BFIL and IBL to her employer ET Now carried out an act *knowingly designed to influence decision of investors in securities.*

29. In this regard, I note that "*reckless and arbitrary*" representation in alleged violation of Regulation 2(1)(c)(5) of the PFUTP Regulations, or "*knowingly publishing or causing to publish or reporting or causing to report by a person dealing in securities any information relating to securities, including….mergers and acquisitions, regulatory approvals, which is not true or which he does not believe to be true prior to or in the course of dealing in securities*" in terms of Regulations 4(2)(f) of the PFUTP Regulations, or "*knowingly planting false or misleading news which may induce sale or purchase of securities'* in terms of Regulation 4(2)(r) of the PFUTP Regulations necessitate that the Noticee filed the impugned news report with ET Now with a *pre-determined intent to manipulate scrip prices or induce investors*.

30. It is pertinent to note that material on record does not bring out that she omitted to mention the correct status of NCLT proceedings as required by Regulation 2 (1) (c) of the PFUTP Regulations. Further, there is no material on record to show 'dealing in securities' that the Noticee held securities of BFIL or IBL or stood to benefit from conveying an impression of approval of the scheme of merger or a price-rise in the scrip of BFIL or IBL.

31. The Noticee admittedly was present in the NCLT during the proceedings on April 23, 2019 and upon confirming her understanding of the outcome with the lawyers also present, she communicated her understanding of the outcome to ET Now. Her e-mail dated April 23, 2019 of 04:14 p.m. clearly qualifies the NCLT approval of the merger with the statement that "*NCLT yet to publish written order of IndusInd Bank, Bharat Financial merger approval*" and "*IndusInd Bank to notify exchanges once written order is published*". I take note of the qualifying statement in the Noticee's e-mail dated April 23, 2019 to ET Now that "*NCLT (was) yet to publish written order of IndusInd Bank, Bharat Financial merger approval*" and "*IndusInd Bank to notify exchanges once written order is published*". Thus, the likely impact, if any, of the Noticee's report and the actual interview televised by ET now on April 23, 2019 can reasonably be expected to have been toned down by the said qualification in the Noticee's e-mail and the news flashed by ET Now at around 5:41 p.m. which also clearly stated the above qualifications. It is not appropriate or legally warranted in the present case before me to further question the exactness and quality of reporting by a journalist where the report conveyed to her employer, taken in totality, is not apparently misleading.

32. I also note that the company itself chose to not disclose the said information regarding the NCLT merger pending publication of the NCLT order, till April 30, 2019 when IBL intimated the stock exchanges regarding timing of declaration of its quarterly financial statement for QE March 31, 2019, and also informed that the scheme for merger of BFIL and IBL was heard by the NCLT and the matter was reserved for order by NCLT. In it reply dated September 11, 2019 to SEBI,

IBL has stated that it did not consider the NCLT proceedings on April 23, 2019 as a material event warranting disclosure.

33. I also note that there is nothing on record to suggest that the NCLT proceedings on April 23 2019 were *in camera* or inaccessible to lawyers and general public. Therefore, there was no apparent bar to reporting of the said proceedings.

34. Even in cases where trial by media was alleged in an ongoing criminal investigation, for instance in the matter of *Nilesh Navalakha v. Union of India*, [2021 SCC OnLine Bom 56, decided on January 18, 2021 by the Bombay High Court], courts have been loathe to restrain media with more than an advisory, conscious of the Constitutional guarantee of freedom of speech and expression in Article 19 (1) (a) of the Constitution of India. The abovesaid case cited the decision of the Hon'ble Supreme Court in the matter of *Rajendran Chingaraveluv. R.K. Mishra,* (2010) 1 SCC 457 wherein the apex court held - "*Every journalist/reporter has an overriding duty to the society of educating the masses with fair, accurate, trustworthy and responsible reports relating to reportable events/incidents and above all to the standards of his/her profession. Thus, the temptation to sensationalize should be resisted***.**"

35. In the present proceedings against the Noticee, the allegation is one of manipulative, fraudulent and unfair trade practice while dealing in securities, in as much as acted in a reckless and careless manner by providing false/misleading information about an unpublished price sensitive information. However, there is no material on record connecting the Noticee's news report to ET Now with any knowing inducement of investors of trades of the Noticee or others knowingly influenced by the Noticee and that acted in a reckless and careless manner by providing false/misleading information about an unpublished price sensitive information.

36. At this juncture, it is also useful to note that an element of good faith is present in Regulation 4 (2) (f) which states that dealing in securities involves *knowingly publishing or causing to publish or reporting or causing to report by a person*

dealing in securities any information relating to securities, including financial results, financial statements, mergers and acquisitions, regulatory approvals, which is not true or which he does not believe to be true prior to or in the course of dealing in securities [emphasis supplied]. Thus, where the material on record shows that the Noticee believed the information to be true on the basis of a reasonable person's understanding of the proceedings and where the said understanding appears to match the version of persons qualified to record the proceedings such as the Company Secretary of BFIL, and where the information actually turned out to be true as the merger was in fact approved vide the NCLT's order dated June 10, 2019, the Noticee's version of events cannot be stated to be manipulative, fraudulent or an unfair trade practice in violation of Regulation 4 (1) and 4 (2) (f) and (r) of the PFUTP Regulations.

37. I find it pertinent to refer to the decision of the Hon'ble Supreme Court in N. *Narayanan v. SEBI* [(2013) 12 SCC 152] relied on by the Noticee for reiterating the law on duty of print and electronic media in relation to the securities market. The apex court has stated that – "*Print and Electronic Media have also a solemn duty not to mislead the public, who are present and prospective investors, in their forecast on the securities market. Of course, genuine and honest opinion on market position of a company has to be welcomed. But a media projection on company's position in the security market with a view to derive a benefit from a position in the securities would amount to market abuse, creating artificiality*."

38. I further note the decision of the Hon'ble Securities Appellate Tribunal in the case of *R.S. Agarwal v. SEBI* (decided on 13.03.2019) cited by the Noticee wherein the Tribunal did not hold the Chairman of a listed company liable for "*fraud*" due to a news report of his interest in acquisition of shares in another company, which was followed by price volume increase in the scrip of the latter company. The SAT held that "*in the absence of any motive or a scheme or any evidence a reported news item alone is not sufficient to prove a serious charge like fraud.*"

39. In view of the material on record and findings above, the charges levelled against Noticee of violations of the provisions of Regulations 3(d), 4(1), 4(2)(f) and (r) read with 2(1)(c)(5) of the PFUTP Regulations do not stand established. Therefore, issues II and III do not merit consideration.

40. Media plays an important role in providing timely and factual information relating to the securities markets to investors, though it cannot be said that what is reported in the media will not influence the investment decisions of investors. However, a distinction ought to be made between a *bonafide* news report where the reporter believes the report to be true and a report deliberately planted with a deliberate intention to influence investment decisions of investors. Thus, it is all the more important that editors and those who are in-charge and responsible for the news stories that are published in print or electronic media, exercise due and proper diligence and check veracity of facts before bringing them into the public domain.

ORDER

41. In the light of the findings noted hereinabove, the adjudication proceedings initiated against the Noticee vide SCN dated March 24, 2021 are disposed of.

42. Copies of this Adjudication Order are being sent to the Noticee viz. Ms. Ishita Guha and also to SEBI in terms of Rule 6 of the Adjudication Rules.

DATE: OCTOBER 31, 2022 **N HARIHARAN**

PLACE: MUMBAI **ADJUDICATING OFFICER**