

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/GR/BM/2023-24/28942-28943]

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

In respect of:

S. No.	Name of Noticees	PAN
1	Nagreeka Capital and Infrastructure Ltd.	AABCN5627N
2	Mr. Sushil Patwari	AEYPP3824K

In the matter of Rupa and Company Limited

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

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred as “**SEBI**”) conducted an investigation in the scrip of Rupa & Company Limited (hereinafter referred as “**RCL/ company**”) to ascertain as to whether certain entities have traded in the said company during the period February 01, 2021 to June 30, 2021 (hereinafter referred to as the “**Investigation Period / IP**”) when in possession of or having access to Unpublished Price Sensitive Information (hereinafter referred to as “**UPSI**”) relating to announcement of financial results for the quarter and year ended March 31, 2021 disclosed on May 31, 2021 (post market hours i.e. 17:39:00 IST) by RCL, in contravention of the provision of SEBI Act, 1992 (hereinafter referred as “**SEBI Act**”) and SEBI (PIT) Regulations, 2015 (hereinafter referred as “**PIT Regulations**”).
2. Pursuant to the aforesaid announcement, following was observed w.r.t. the price of the scrip of RCL:

Table 1:

Exchange	Closing price on May 31, 2021	Closing price on June 01, 2021 (next trading day)
NSE	Rs.396.80	Rs.476.15
BSE	Rs.396.50	Rs.475.80

3. From above, it was observed that the March quarter result led to a price rise of 20% in price of RCL on NSE and BSE on June 01, 2021. Accordingly, the UPSI period was taken from May 01 to May 31, 2021 (hereinafter referred to as the “**UPSI period**”).
4. During the investigation, 23 entities were found to be trading during the UPSI period but no adverse findings were observed in respect of 22 entities. However, it was suspected that the trading of Nigeria Capital and Infrastructure Ltd. (hereinafter referred to as “**Noticee No. 1/NCIL**”) was based on the UPSI shared by Mr. Sushil Patwari (hereinafter referred to as “**Noticee No. 2/Sushil**”), he being insider as he was Independent director & member of Audit Committee of RCL.
5. In view of the above, it was alleged that Noticee No.2, who was an insider in terms of Regulation 2(1)(g) of PIT Regulations, has violated the provisions of Sections 12A(d) of the SEBI Act and Regulation 3(1) of the PIT Regulations by communicating the UPSI to Noticee No.1 and Noticee No.1 violated the provisions of Sections 12A(d) & (e) of the SEBI Act read with Regulation 4(1) of the PIT Regulations by trading while in possession of UPSI.
6. Thus, based on the aforesaid findings, SEBI decided to initiate Adjudicating Proceedings under Section 15G of the SEBI Act for the above mentioned alleged violations by the Noticees.

APPOINTMENT OF ADJUDICATING OFFICER

7. SEBI, vide appointment order dated March 13, 2023, appointed the undersigned as the Adjudicating Officer (hereinafter referred to as “**AO**”) under section 15I(1) of the 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 “**SEBI Adjudication Rules**”) to enquire into and adjudge under Sections 15G of SEBI Act, 1992 for the alleged violations of Section 12A(d) & (e) of SEBI Act read with Regulation 4(1) of PIT Regulations by Noticee No.1 and for the alleged violation of Section 12A(d) of SEBI Act read with Regulation 3(1) of PIT Regulations by Noticee No.2 under Section 15G of SEBI Act, 1992.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

8. A common Show Cause Notice dated April 20, 2023 (hereinafter referred to as “**SCN**”) was issued separately with deferent reference numbers EAD-4/GR/BM/16057/1/2023 and EAD-4/GR/BM/16058/1/2023 to Noticee No.1 and 2 respectively in terms of Rule 4 of SEBI Adjudication Rules, calling them to show cause as to why an inquiry should not be held and penalty be not imposed on them under Section 15G of SEBI Act, for the violations, as applicable, alleged to have been committed by the Noticees. The said SCN was duly delivered to both the Noticees by SPAD as well as e-mail.
9. Noticee No.1 and 2 submitted their reply through their Authorized Representative (AR) vide letter date June 5, 2023.
10. Pursuant to the service of the SCN, an opportunity of personal hearing was granted to the Noticees on May 26, 2023 vide hearing notice dated May 15, 2023 which was duly served through e-mail. The Noticees authorized a common AR to represent them. Accordingly, vide e-mail dated May 25, 2023, AR of the Noticees sought for an adjournment which was granted and accordingly the hearing was rescheduled on June 07, 2023. However, vide e-mail dated June 06, 2023, the AR of the Noticees again sought for an adjournment and the hearing was again rescheduled to June 8 and then again to June 9, 2023. The AR of the Noticees attended the hearing on June 9, 2023. Subsequently, the Noticees submitted additional replies vide letters dated June 15, July 24 and July 26, 2023.
11. The summary of the replies dated June 5, June 15, July 24 and July 26, 2023 submitted by the Noticees, are as under:

- a) *The complete materials/ documents in support of the aforesaid allegations have not been made available to the Noticee. Reliance placed on T. Takano vs. Securities and Exchange Board of India, Civil Appeal No. 487488 of 2022 among others.*
- b) *Hearing was provided before examining the replies.*
- c) *The SCN is vague and uncertain to the effect of act of actual communication of the UPSIs and accordingly there is no material brought on record in support of the alleged incidence of communication of UPSIs.*
- d) *It is pertinent to note that the SCN itself records that the decision of investment and trading for and on behalf of the Noticee are taken by its Chief Financial Officer i.e. Mr. Sanjeev Kumar Agarwal. There is no record of any material to establish/ substantiate communication or passing on any UPSIs to anybody in the office to the Noticee and therefore the allegation of possession of UPSIs by the Noticee or Mr. Sanjeev Kumar Agarwal who took trading/ investment decisions on behalf of the Noticee does not survive.*
- e) *The trade in the scrip of RCL was done on the basis of the price movements observed in the other scrips of the similar sector around the relevant period.*
- f) *Noticee No. 02, being the Executive director and Chairman of Noticee No.1 was busy in the process of completion of audit and finalization of the accounts of the Noticee No.1 for the said period. This period was further marred by the death of the Finance head of the Nagreeka Group who was spearheading the process of finalization of the accounts of the Noticee passed away and the added burden of the process fell on the shoulders of Noticee No. 02 along with the deep grief of losing a trusted and dear colleague of 50 years.*
- g) *Therefore, Noticee No. 02. who though was in receipt of the email dated May 30, 2021 from RCL, he did not have the time to open the said email or go through the draft financial statements which were shared with him. Accordingly, while Noticee No. 02 was in receipt of the email dated May 30, 2021, he was not in possession of the UPSI.*

12. In view of the above, I note that principles of natural justice have been duly complied with, as SCNs/Hearing Notices were duly served upon the Noticees and sufficient opportunity was also granted to the Noticees to reply to the SCN and appear for hearing.

ISSUES FOR CONSIDERATION, EVIDENCE AND FINDINGS

13. I have carefully perused and considered the allegations levelled against the Noticees in the SCN, written replies received from the Noticees, submissions made by the Noticees during the personal hearing, the written submissions filed post the personal hearing and the materials available on record. The issues that arise for consideration in the present case are:

ISSUE I: Whether Noticee No.1 has violated the provisions of Section 12A(d) & (e) of SEBI Act read with Regulation 4(1) of PIT Regulations and Noticee No.2 has violated the provisions of Section 12A(d) of SEBI Act read with Regulation 3(1) of PIT Regulations?

ISSUE II: Does the violation, if any, on part of the Noticees attract penalty under Section 15G of the SEBI Act?

ISSUE III: If so, how much penalty should be imposed on the Noticees taking into consideration the factors mentioned in Section 15J of the SEBI Act?

14. Before I proceed further with the matter, it is pertinent to mention the relevant provisions of SEBI Act, 1992 and PFUTP Regulations, 2003, which read as under:

SEBI Act, 1992

12A No person shall directly or indirectly-

.....

(d) engage in insider trading.

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

PIT Regulations, 2015

Communication or procurement of unpublished price sensitive information.

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

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

Trading when in possession of unpublished price sensitive information.

4.(1) No insider shall trade in securities that are listed or proposed to be listed on a stock exchange when in possession of unpublished price sensitive information:

Explanation –When a person who has traded in securities has been in possession of unpublished price sensitive information, his trades would be presumed to have been motivated by the knowledge and awareness of such information in his possession.

Provided that the insider may prove his innocence by demonstrating the circumstances including the following:-(i) the transaction is an off-market inter-se transfer between insiders who were in possession of the same unpublished price sensitive information without being in breach of regulation 3 and both parties had made a conscious and informed trade decision.

Provided that such unpublished price sensitive information was not obtained under sub-regulation (3) of regulation 3 of these regulations.

Provided further that such off-market trades shall be reported by the insiders to the company within two working days. Every company shall notify the particulars of such trades to the stock exchange on which the securities are listed within two trading days from receipt of the disclosure or from becoming aware of such information.;

(ii) the transaction was carried out through the block deal window mechanism between persons who were in possession of the unpublished price sensitive information without being in breach of regulation 3 and both parties had made a conscious and informed trade decision;

Provided that such unpublished price sensitive information was not obtained by either person under sub-regulation (3) of regulation 3 of these regulations.

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

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

(v) in the case of non-individual insiders: –

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

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

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

NOTE: When a person who has traded in securities has been in possession of unpublished price sensitive information, his trades would be presumed to have been motivated by the knowledge and awareness of such information in his possession. The reasons for which he trades or the purposes to which he applies the proceeds of the transactions are not intended to be relevant for determining whether a person has violated the regulation. He traded when in possession of unpublished price sensitive information is what would need to be demonstrated at the outset to bring a charge. Once this is established, it would be open to the insider to prove his innocence by demonstrating the circumstances mentioned in the proviso, failing which he would have violated the prohibition.

FINDINGS

15. Considering the facts and circumstances of the case, submission of the Noticee and material available on record, I record my findings hereunder.
16. Before proceeding to deal with the merits of the case, I wish to settle the following preliminary objections raised in this proceeding by the Noticees:
 - a) Complete materials/documents have not been made available to them. They also relied among others on the judgement of Hon'ble Supreme Court in the matter of T. Takano vs SEBI and others.
 - b) They were provided a hearing before examining their replies.
17. With regard to the above contention of the Noticees at para 16 (a) above, I note that the relied upon and relevant documents in the present matter were duly provided to the Noticees during the course of instant proceedings which are in line with the principle pronounced via the aforesaid judgment of Hon'ble Supreme Court. It is pertinent to note that the question before the Hon'ble Supreme Court in the aforesaid judgment was whether an investigation report under Regulation 9 of the PFUTP Regulations must be

disclosed to the person whom a notice to show cause is issued, when all the relied upon documents have been furnished to the Noticees. In this context, the Apex court has opined at para 39 of the judgment that *“the actual test is whether the material that is required to be disclosed is relevant for the purpose of adjudication”*. The Apex Court also relied on test for the standard of ‘relevancy’ laid down by a four judge Bench of the Hon’ble Supreme Court in ***Khudiram Das vs. State of West Bengal (1975) 2 SCC 81***. The test is a two prong test where; firstly, the material must have nexus with the order and secondly, the material might have influenced the decision of the authority. The Black’s Law Dictionary defines “nexus” as “a connection or link, often a casual one”. Since, all relevant material relied upon in the instant proceedings have been provided to Noticee, I find that the principle pronounced by the Hon’ble Supreme Court in the said order has been duly complied with in the instant matter.

Further, I would like to refer to the observation of the Hon’ble SAT in the matter of **Anant R Sathe Vs. SEBI** (Appeal No. 150 of 2020) vide Order dated July 17, 2020, reaffirmed the principle elucidated in the judgment of Shruti Vora’s case, which has been reproduced herein and held that: *“the Authority is required to supply the documents that they rely upon while serving the show cause notice which in the instant case has been done and which is sufficient for the purpose of filing an efficacious reply in his defence”*.

18. Subsequently, exhaustive reply has also been filed by the Noticees as already detailed in the preceding paragraphs. Further, Noticees have also not sufficiently demonstrated how the documents sought by it were relevant to the allegation in the present case and how this ground of non-availability of information has caused prejudice to it. Therefore, I find no merit in the above contention of the Noticees.

19. I note that the Noticees have also contended that they were provided a hearing before examining their replies. In this regard, I note that vide SCN dated April 20, 2023, the Noticees were advised to submit their replies within 14 days from the date of receipt of the notice. I further note that though the SCN was delivered to the Noticees on April 21, 2023, no reply was received until May 10, 2023. Only on May 11, 2023, the AR of the Noticees sent a letter seeking documents. I also note that Noticees were granted an opportunity of personal hearing on May 26, 2023, vide hearing notice dated May 15,

2023 and advised to submit their replies by May 24, 2023 which was again not submitted and more time was sought to submit the replies which was also granted to them.. The Noticees finally submitted their replies on June 06, 2023 three days before the hearing was concluded on June 09, 2023. From the aforesaid facts, I note that the said contention of the Noticees is devoid of any merit.

20. In view of the above, I note that the principles of natural justice have been complied with and the Noticee's request in this regard are without merits.

21. Now that all the preliminary objections have been dealt with, I am now proceeding with the merits of the case.

ISSUE I: Whether Noticee No.1 has violated the provisions of Section 12A(d) & (e) of SEBI Act read with Regulation 4(1) of PIT Regulations and Noticee No.2 has violated the provisions of Section 12A(d) of SEBI Act read with Regulation 3(1) of PIT Regulations?

22. I note from the Investigation Report (IR) that RCL is engaged in the business of Garments and Apparels with the registered office at 1, Ho Chi Minh Sarani, Metro Tower, 8th Floor, Kolkata- 700071. The company is listed on BSE, NSE & MSE. Details of the management of RCL during the investigation period are as follows:

Table 2:

Sr. No.	Full Name	Designation	Date Appointment of	DIN / DPIN / PAN
1	Ashok Bhandari	Director	10/08/2018	12210
2	Alka Devi Bangur	Director	14/11/2014	12894
3	Sushil Patwari	Director	17/11/2003	23980
4	Dipak Kumar Banerjee	Director	30/05/2013	28123
5	Vinod Kumar Kothari	Director	26/07/2004	50850
6	Ghanshyam Prasad Agarwala	Wholetime Director	13/07/1987	224805
7	Kunj Bihari Agarwal	Managing Director	17/07/1987	224857

Sr. No.	Full Name	Designation	Date of Appointment	DIN / DPIN / PAN
8	Ramesh Agarwal	CFO(KMP)	10/02/2017	ADAPA4884F
9	Ramesh Agarwal	Wholetime Director	29/07/2009	230702
10	Dharam Chand Jain	Director	31/01/2003	453341
11	Prahlad Rai Agarwala	Wholetime Director	06/02/1985	847452
12	Mukesh Agarwal	Wholetime Director	29/07/2009	2415004
13	Niraj Kabra	Director	12/02/2018	8067989
14	Dinesh Kumar Lodha	CEO(KMP)	25/02/2019	AAZPL3330K
15	Manish Agarwal	Company Secretary	01/03/2022	AHXP8328B

23. The quarterly and yearly financial results of RCL for various quarters were observed in the IR as below:

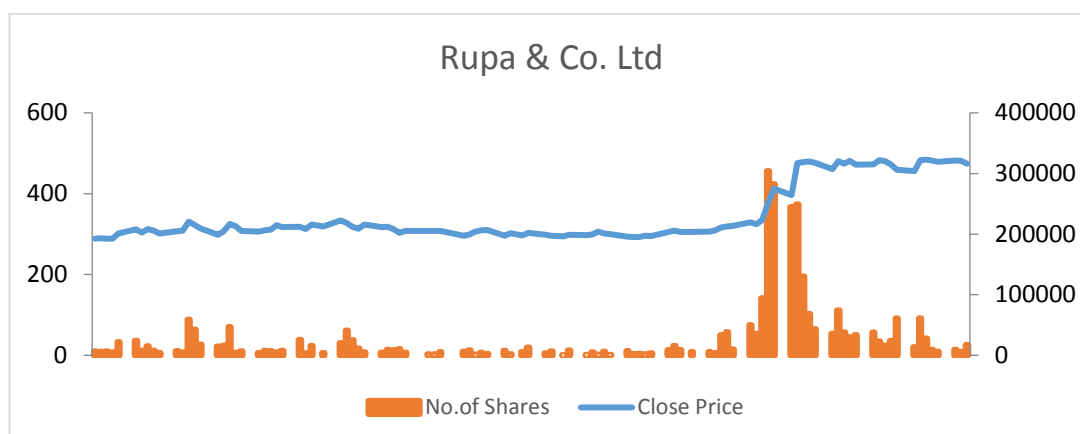
Table 3:

Particulars	Quarter on Quarter Basis (Rs. Crores)			Annual Results (Rs. Crores)	
	Sept 2020	Dec 2020	Mar 2021	FY 2019-2020	FY 2020-2021
Total income	305.62	347.30	457.24	982.01	1,319.95
Total Expenditure	-243.99	-288.45	-368.91	-898.03	-1,082.55
Net Profit /loss	45.39	43.39	65.89	61.90	175.26

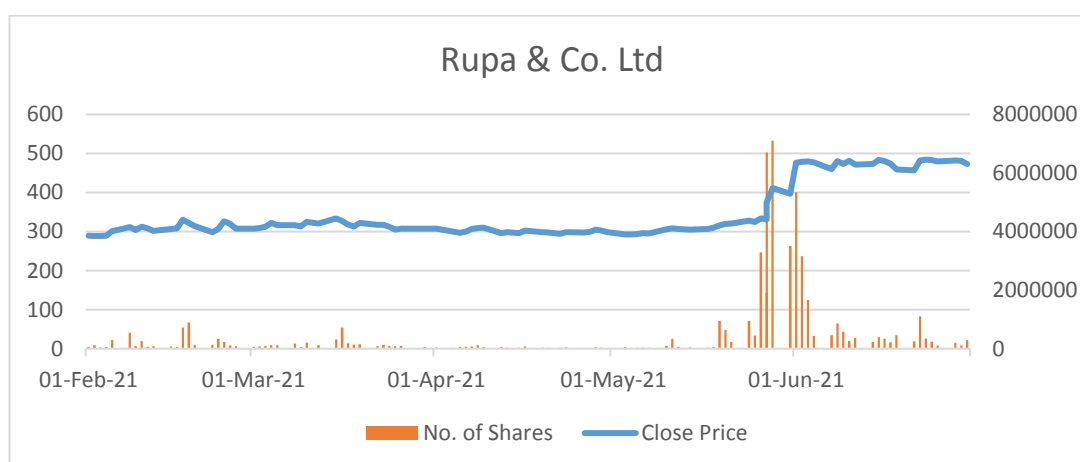
24. It was further observed from the IR that on Quarter-on-Quarter basis, during March 2021 Quarter, profit of RCL increased from Rs.43.39 Crore to Rs.65.89 Crore, i.e. an increase of 51.85%. Further, on annual basis, net profit of RCL increased from Rs.61.90 Crore in FY 2019-20 to Rs.175.26 Crore in FY 2020-2021, an increase of 183.13%.

25. Further, on price volume analysis for the investigation period February 01, 2021 to June 30, 2021, following was observed:

BSE:



NSE:



26. Before proceeding with the matter further, it is pertinent to note that the PIT Regulations have been formulated under Section 30 read with Section 11(2) (g) and Sections 12A (d) and (e) of the SEBI Act, 1992. Therefore, to ascertain as to whether the Noticees have violated the provisions, as alleged in the SCN, it has to be determined whether the Noticees have violated Regulation 3(1) and 4(1) of the PIT Regulations, 2015, as applicable, and if it is so, whether it will also amount to violation of Section 12A(d) and (e) of the SEBI Act, 1992, as applicable.

27. As noted above, a perusal of the provisions governing insider trading activities reveals that Regulation 3(1) and 4(1) of the PIT Regulations, 2015 pre-supposes the following Adjudication order in the matter of Rupa and Company Limited

essential ingredients to be present and to be satisfied to allege and establish the allegation of insider trading. These essential ingredients or preconditions are as under:

- A. There must be an insider;
- B. There must be an UPSI in existence;
- C. There must be a communication of UPSI and suspected entity must have traded based on such communication.

A. There must be an insider:

28. The first ingredient of Regulation 3(1) is that there must be an “insider”. In this regard, the term “insider” has been defined in Regulation 2(1)(g) of the PIT Regulation, 2015, as follows:

“Insider” means any person who is:

- i) a connected person; or*
- ii) in possession of or having access to unpublished price sensitive information;*

Further, Regulation 2(1)(d) defines ‘connected person’ as under:

(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.

29. I note from the IR that during the investigation period, Noticee No.2 was the independent director of RCL since November 17, 2003 which was also confirmed by him vide e-mails dated December 22 and 23, 2022 as well as by Noticee No.1 vide letter dated July 22, 2022. I further note that he is also the member of the audit committee of RCL since June 2004. I also note that the said facts were confirmed by Noticee No.1 and RCL as well as from the annual report for the financial year 2020-21 of the RCL.

30. In view of the aforesaid facts, it is quite evident that Noticee No.2 was an insider and connected to the company.

B. There must be an UPSI in existence:

31. Regulation 2(1)(n) of SEBI (PIT) Regulations, 2015, defines ‘UPSI’ as under:

"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; and

(vi) material events in accordance with the listing agreement.

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

32. The conjoint reading of the above provision inter alia provides that UPSI means any information, relating to a company, directly or indirectly, that is not published by the company or its agents and is not specific in nature and which, if published is likely to

materially affect the price of securities of company and shall be including, information relating to significant changes in policies, plans or operations of the company.

33. In this regard, I note that the financial results for the period ended on March 31, 2021 was announced by RCL on May 31, 2021 at 17:36:46 hours. Company made a net profit of Rs.65.89 Crore on standalone basis during that quarter. Quarter-on-Quarter basis, profit of RCL increased from Rs.43.39 Crore to Rs.65.89 Crore. Pursuant to the announcement, on NSE, price of the scrip moved from closing price of Rs.396.80 on May 31, 2021 to a closing price of Rs.476.15 on June 01, 2021 and on BSE, price of the scrip moved from closing price of Rs.396.50 on May 31, 2021 to a closing price of Rs.475.80 on June 01, 2021.

34. I note that the said financial results of RCL for the period ended on March 31, 2021 was a price sensitive information ('PSI') in terms of Regulation 2(1)(n) of the SEBI (PIT) Regulations, 2015, as it was directly related to RCL and when published, it materially affected the price of the scrip of the company, as can be seen from above.

35. Further, I note that Mr. Arihant Kumar Baid, Manager-Finance of RCL, vide e-mail dated May 30, 2021, shared the said financial and related papers with whole time directors and independent directors of RCL including Noticee No.2 which indicates that Noticee No.2 was in possession of UPSI.

36. Thus, the above records ostensibly suggest that the Noticee No.2 was in possession of the UPSI, consequently rendering him an insider under Regulation 2(1)(g) of the PIT Regulations.

Period of UPSI:

37. I note that RCL, vide letter / e-mail dated May 31, 2022, provided the chronology of events leading to the aforesaid corporate announcement stating that the discussion pertaining to the financial results commenced from first week of May 2021 leading to the announcement of results on May 31, 2021. Further, vide e-mail dated December 09,

2022, RCL confirmed that the results were finalized during the board meeting only when they placed the agenda on the table. From the above mentioned facts, I note that the aforesaid results were finalized only on May 31, 2021.

38. Since, preparation of financial results were commenced from first week of May 2021 and were finalized on May 31, 2021, the UPSI period was taken from May 01, 2021 to the date of announcement of results i.e. May 31, 2021.

39. I further note that the Pre-UPSI period was considered from February 01, 2021 to April 30, 2021 and Post-UPSI period was considered from June 01, 2021 to August 31, 2021.

40. With regards to the access to UPSI, Noticee No.2 has admitted that he was in receipt of mail dated May 30, 2021 containing draft financial statement of RCL forwarded through e-mail by Manager-Finance of RCL. However, in this regard, he contended that as the finance head of Nagreeka Group passed away, he was busy with completion of audit and finalization of the accounts of Noticee No.1. Because of the same, he did not open the said email and accordingly he has mentioned that he was not having the access to the UPSI. In this regard, as stated earlier, I find that during the investigation period, Noticee No.2 was the independent director as well as the member of the audit committee of RCL which is also confirmed from the Annual Report for the year 2020-21. This apart, as noted above, the preparation of financial results started from first week of May 2021. I further note that, as per the SEBI (LODR) Regulations, 2015 and also as per the 'Terms of Reference of Audit Committee' of RCL, one of the role of the audit committee is *"reviewing, with the management, the annual financial statements and auditor's report thereon before submission to the board for approval, with particular reference to."*

Hence, I am not inclined to accept the submission of Noticee No.2 made in this regard to claim that as he has not open the e-mail, he was not privy to the UPSI. In view of the aforesaid facts and the contents of the said email inter alia sent by Mr. Arihant Kumar Baid, Manager-Finance of RCL to Noticee No.2, it can be safely held that the Noticee

No.2 was in possession of UPSI until the same was disclosed to the Stock Exchanges on May 31, 2021.

C. There must be a communication of UPSI and suspected entity must have traded based on such communication:

41. The next pre-condition of Regulation 3(1) is that an insider must have communicated or counselled or procured directly or indirectly any UPSI to any person who while in possession of such UPSI have dealt in securities. To attract violation of Regulation 3(1), it needs to be established that Noticee No.2 being insider, was in possession of UPSI and communicated the same to Noticee No.1 who have traded in the shares of the company based on such UPSI and in the process made profit. In this context, it is already established in the preceding paragraphs that Noticee No.2 was an insider and he was in possession of UPSI.

42. Now, I move on to establish the connection between Noticee No.2 and Noticee No.1, who traded in the shares of the RCL during the UPSI period and made profit.

43. In order to understand the concept of “Connected Person”, reading the definition provided in Regulation 21(d) of PIT Regulations, which defines the term connected person as follows is important;

(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.

44. In this regard, I note from various submissions of RCL, Noticee No.1 and Noticee No.2 and from the annual report for the financial year 2020-21 of the RCL, that Noticee No. 2

is the Chairman and he is also the independent director as well as a member of audit committee of RCL. I also note that Noticee No.2 was the promoter of Noticee No.1 in 2020-21

45. As stated in the preceding para, it is to be noted that Mr. Arihant Kumar Baid (Manager-Finance, RCL), vide e-mail dated May 30, 2021, shared the financial and related papers with whole time directors and independent directors of RCL including Noticee No.2.

46. From the above, it is noted that Noticee No.2 is a common director in both RCL as well as NCIL (Noticee No.1) and is also part of the Audit Committee of RCL which makes him an insider. Further, he also had the access to UPSI as established above.

47. I further note that based on the tradings prior to disclosure of UPSI, Noticee No. 1 was identified for investigation and its trading was analysed for pre-UPSI, UPSI and post-UPSI period as defined below:

Table 4:

Pre-UPSI Period	February 01, 2021 to April 30, 2021
During UPSI Period	May 01, 2021 to May 31, 2021
Post-UPSI Period	June 01, 2021 to August 31, 2021

48. The summary of Noticee No.1's trading activity in the scrip of RCL vis-à-vis its gross trading across the market during the UPSI period as well as Pre-UPSI and Post-UPSI period is as under:

Table 5:

Nagreeka Capital and Infrastructure Ltd. (PAN- AABCN5627N) (in Rs.)									
Period	Rupa & Company Limited				Other Scrips				
	Gross buy value	% activity to gross	Gross sale Value	% activity to gross	Gross buy value	% activity to gross	Gross sale Value	% activity to gross	No of scrips

		bought value		sale value		bought value		sale value	
Pre-UPSI Period	0	0.00%	0	0.00%	1,30,81,163	100.00%	33,05,676	100.00%	11
UPSI Period	21,34,074.00	12.84%	0	0.00%	1,44,80,380	87.16%	73,13,755	100.00%	8
Post-UPSI Period	15,37,499.95	5.43%	23,71,500	15.21%	2,67,93,058	94.57%	1,32,15,549	84.79%	24

49. I further note that the investigation has observed the following:

Table 6:

Trade Date	Buy Quantity	Buy Value (in Rs.)	Sell Quantity	Sell Value (in Rs.)
21-Mar-2017	1,000	2,85,500	-	-
31-Mar-2017	-	-	1,000	3,26,700
28-June-2017	4,000	18,93,523		
31-Aug-2018			4,000	
31-May-2021 (before disclosure of UPSI)	5,000	21,34,074	0	0
01-Jun-2021 (after disclosure of UPSI)	0	0	5,000	23,71,500
06-Aug-21	3,000	15,37,499.95		
16-May-22	-	-	3,000	14,77,346.35
26-May-22	2,000	7,77,262.45	-	-

50. From the table above, I note that Noticee No.1 had not traded in the scrip of RCL since 2018 till 30/05/2021 i.e. one day prior to the UPSI period. Further, I also note that after a gap of around three years, Noticee No.1's first trade was only on May 31, 2021, wherein it bought 5,000 shares on May 31, 2021 and sold all the 5,000 shares on June 01, 2021, immediately after UPSI became public and in the process made a profit of Rs.2.37 lakh. In other words, for almost more than 3 years, Noticee No.1 had not traded in the scrip at

all and the aforesaid transaction had only happened during the UPSI period wherein it bought 5,000 shares one day prior to disclosure of financials result by RCL and same were subsequently sold on the very next day after disclosure of the said UPSI.

51. Further, I note that the placement of aforesaid buy order of 5000 shares at 09.50 am at a limit price of Rs.426.4/- matched with various sell order between 09:50 am and 09:51 am. Subsequent to the disclosure of UPSI at the end of the business hour of May 31, 2021, the sell order was placed on early morning of the very next day i.e. on June 01, 2021 at 09:15 am at a limit price of Rs.474.3/- (though the closing price on May 31, 2021 was Rs.396.8/-) which got matched only at 01:30 pm. Thus, from the date and time of receipt of UPSI and timing of placement of buy as well as sell order, the possibility of influence of UPSI on the aforesaid trading by Noticee No.1 cannot be ruled out.
52. It is imperative to note here that the UPSI was received by Noticee No.2 vide e-mail dated May 30, 2021 of Mr. Arihant Kumar Baid (Manager- Finance, RCL) and May 30, 2021 being Sunday, Noticee No.1 traded in the scrip of RCL on the next possible trading day i.e. May 31, 2021 (before disclosure of UPSI), buying 5000 shares and selling all the 5000 shares on the next day i.e. on June 01, 2021, after the UPSI became public, resulting in making a profit by NCIL.
53. In this regard, Noticee No.1 has contended that the trade in the scrip of RCL was done on the basis of the price movements observed in the other scrips of the similar sector around the relevant period. However, as established in the preceding para, the materials on record shows the sequence of events in execution of trade during the UPSI which clearly and unequivocally suggest that the trading of Noticee No.1 was very much based on the UPSI as Noticee No.1 was connected with Noticee No.2. Further, it is also a fact that the Noticee no.1 has not been able to convincingly justify its sudden indulgence in trading in the scrip of RCL that too buying of 5000 shares on May 31, 2021 i.e. before disclosure of UPSI and selling all the 5000 shares on the next day i.e. on June 01, 2021, after the UPSI became public, resulting in making a profit by NCIL. Hence the said facts clearly showed an irresistible conclusion that the trades were executed under the influence of and/or possession of the said UPSI.

54. The above chronology of events can be summarized as below:

Sl. No.	Events	Date	Time
1.	Email from Mr. Arihant Kumar Baid (Manager-Finance, RCL) to Noticee No.2, sharing the financials of RCL, which was an UPSI	May 30, 2021	11:46 am
2.	Placing of buy order of 5000 shares of RCL by Noticee No.1 at a limit price of Rs.426.4 – Rs.427	May 31, 2021	09:50 am
3.	Matching of the aforesaid buy order of 5000 shares of RCL by Noticee No.1	May 31, 2021	09:50 am
4.	Announcement of financial results for the quarter and year ended March 31, 2021	May 31, 2021	05:39 pm
5.	Placing of sell order of 5000 shares of RCL by Noticee No.1 at a limit price of Rs.474.3	June 01, 2021	09:15 am
6.	Matching of the aforesaid sell order of 5000 shares of RCL by Noticee No.1	June 01, 2021	01:30 pm

55. The above chronology of events showing the fact of Noticee No.1 buying just one day prior to disclosure of UPSI while Noticee No.2 was in possession of UPSI and selling on the next day after UPSI getting disclosed coupled with the events of trading in the scrip of RCL after a gap of 3 years clearly indicates the trading decisions of Noticee No.1 being based on the UPSI. This trading behaviour in the proximate time of the UPSI assumes significance to establish the communication of UPSI by Noticee No. 2.

56. With regards to the above, the Noticees have contended that there is no evidence of communication of UPSI by Noticee No.2 to Noticee No.1 and quoted the judgement of Hon'ble Supreme Court in Balram Garg v. SEBI in support of the same. They also contended and that trading decisions were not taken by Noticee No.2 but by the CFO, Mr. Sanjeev Kumar Agarwal.

57. In this regard, I note that Noticee No.2, being the Chairman of Noticee No.1 in executive capacity, has reasonable influence over the trading decisions of Noticee No.1. Therefore, though the CFO (Sanjeev Kumar Agarwal) was authorized to take trading decisions (who was authorized by Noticee No.2 himself), looking into the aforementioned facts coupled with the timing and trading pattern of Noticee No.1, it is evident that Noticee No.1 traded in the scrip of RCL under the influence of UPSI.
58. To conclude the present question regarding possibility of communicating the UPSI by Noticee No. 2 to Noticee No.1, attention is drawn to the fact that in cases of insider trading, direct evidence is seldom available and generally conclusion is arrived by relying on the chain of circumstances.
59. However, I note that the Hon'ble Supreme Court in the case of **Balram Gargy. SEBI [(2022) 9 SCC 425]** has emphasised on the reliance of direct evidences for the purpose of establishing violation of insider trading regulations while demonstrating the communication of UPSI. In this regard, it is imperative to mention the comments of N.K. Sodhi Committee which observed that it is simply not possible to obtain direct evidence in all insider trading cases, and the "facts and circumstances" of the case have to be assessed to determine if a person can reasonably infer to have access to UPSI.
60. On the question of sufficiency of circumstantial evidences, the Hon'ble Supreme Court has in **SEBI v. Kishore R. Ajmera [(2016) 6 SCC 368]** held that *"...It is a fundamental principle of law that proof of an allegation levelled against a person may be in the form of direct substantive evidence or, as in many cases, such proof may have to be inferred by a logical process of reasoning from the totality of the attending facts and circumstances surrounding the allegations/charges made and levelled. While direct evidence is a more certain basis to come to a conclusion, yet, in the absence thereof the Courts cannot be helpless. It is the judicial duty to take note of the immediate and proximate facts and circumstances surrounding the events on which the charges/allegations are founded and to reach what would appear to the Court to be a*

reasonable conclusion therefrom. The test would always be that what inferential process that a reasonable/prudent man would adopt to arrive at a conclusion...”

61. Comparing the facts of instant case with that of Balram Garg (supra), I note that in Balram Garg there was breakdown of communication between the tippers and tippees who were family members, as the family was partitioned. However, during investigation in the present case, the connection of Noticee No.2 with Noticee No.1 i.e. being a chairman in executive position of Noticee No.1 is sufficiently brought out which brings out the connection between both the parties. Hence, I note that the facts in instant case are different than Balram Garg and hence the principle laid down in the said judgment may not be squarely applicable. In the absence of direct proof, such inference has to be drawn on the basis of preponderance of probability. The Hon’ble Securities Appellate Tribunal (Hon’ble SAT) in the matter of **Ameen Khwaja & Others Vs. SEBI** (date of Decision: 15.06.2022) has clearly explained the position of law by observing the following: “33. *Upon hearing both the sides, in our view, the case essentially rests on its own facts to find out as to whether it can be reasonably expected from the material on record on preponderance of probability that the appellant Ameen Khwaja had access to UPSI.*34. *The burden of proof of having reasonable expectation of having access to the UPSI is initially no doubt on respondent SEBI. Once the respondent SEBI place material/probabilities then onus to prove shifts to the other side i.e. the appellants to prove otherwise. Since, admittedly, respondent SEBI is required to establish the facts on preponderance of probability and not beyond reasonable doubt, the similar standard of proof would apply to the appellants to shift the onus.*”

62. Considering the aforesaid factual findings and the observations regarding proximity of Noticee No.2 with Noticee No.1 coupled with the trading pattern of Noticee No.1, on preponderance of probability, it leaves no doubt in my mind that the above noted activities of Noticee No.1 and 2 in the present matter squarely satisfies the charges made against them and unassailably bring to conclusion that Noticee No.1 indeed had the access to the UPSI through Noticee No.2 and its trading decisions in the scrip of RCL were influenced by the same. Further, it can be reasonably established that the UPSI was

passed on to Noticee No.1 by Noticee No.2, who was the Chairman in executive capacity of Noticee No.1 and have reasonable influence on the trading decisions of Noticee No.1.

63. Since all the ingredients of Regulation 3(1) and 4(1) of PIT Regulations, 2015 are satisfied and found to be present in the facts of the instant case, it establishes that Noticee No.2 has violated the provisions of Sections 12A(d) of the SEBI Act and Regulation 3(1) of the PIT Regulations by communicating the UPSI to Noticee No.1 and Noticee No.1 has violated the provisions of Sections 12A(d) & (e) of the SEBI Act read with Regulation 4(1) of the PIT Regulations by trading while in possession of UPSI.

ISSUE II: Does the violation, if any, on part of the Noticees attract penalty under Section 15HA of the SEBI Act?

64. I further note that Hon'ble Supreme Court of India, in the matter of Chairman, SEBI vs. Shriram Mutual Fund {[2006] 5 SCC 361} held that "*In our view, the penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established and, therefore, the intention of the parties committing such violation becomes immaterial. Hence, we are of the view that once the contravention is established, then the penalty has to follow and only the quantum of penalty is discretionary*".

65. In view of the foregoing, I am convinced that the Noticees are thus liable for monetary penalty under Section 15G of SEBI Act which, read as under:

SEBI Act, 1992

Penalty for insider trading.

15G. If any insider who,—

(i) either on his own behalf or on behalf of any other person, deals in securities of a body corporate listed on any stock exchange on the basis of any unpublished price-sensitive information; or

(ii) communicates any unpublished price-sensitive information to any person, with or without his request for such information except as required in the ordinary course of business or under any law; or

(iii) counsels, or procures for any other person to deal in any securities of anybody corporate on the basis of unpublished price-sensitive information,

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

ISSUE III: If so, how much penalty should be imposed on the Noticees taking into consideration the factors mentioned in Section 15J of the SEBI Act?

66. While determining the quantum of penalty under Section 15G of the SEBI Act, it is important to consider the factors relevantly as stipulated in Section 15J of the SEBI Act, which reads as under:

15J -Factors to be taken into account by the adjudicating officer

While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely: -

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investor/+s as a result of the default;

(c) the repetitive nature of the default.

67. I note that the material available on record has quantified the amount of disproportionate gain or unfair advantage to the tune of Rs.2,37,426/- by the Noticee No.1. I also note that PIT regulations prohibits the trading in the shares of the company by the insiders while in possession of UPSI. Such regulation of trades by the insider is necessary to protect the interest of the investors in the securities market and also for the development of the market. If insider trading is not contained, prohibited and dealt with firmly, it will hamper and jeopardize the interest of a normal shareholders and that protection of the interests of the investors is the prime objective of SEBI. The objective behind such requirement is that the investing public shall not be deprived of any vital information in respect of their investments in the securities market. SEBI is duty bound to ensure that the investing public are not deprived of any statutory rights available to them. I am of the opinion that, the disregard for the law depicted by the Noticees as in this case may have placed investors in disadvantageous position in comparison to the Noticees, which cannot be in

the interest of the securities market. The law in this case does not permit any allowance to be made for such act as found in this case. Thus, in the present matter, the facts of the case clearly bring out the violations done by the Noticees. Hence, I note that Noticee No.2 has violated the provisions of Sections 12A(d) of the SEBI Act and Regulation 3(1) of the PIT Regulations by communicating the UPSI to Noticee No. 1 and Noticee No.1 has violated the provisions of Sections 12A(d) & (e) of the SEBI Act read with Regulation 4(1) of the PIT Regulations by trading while in possession of UPSI.

ORDER

68. In view of the above, after considering all the facts and circumstances of the case and the factors mentioned in the provisions of Section 15-J of the SEBI Act, and in exercise of the powers conferred upon me under section 15-I of the SEBI Act, read with Rule 5 of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules 1995, I hereby impose following penalty on the Noticees viz. Nagreeka Capital and Infrastructure Ltd. (Noticee No.1) and Mr. Sushil Patwari (Noticee No.2) in the proceedings initiated vide Show Cause Notice No. EAD-4/GR/BM/16057/1/2023 and EAD-4/GR/BM/16058/1/2023 dated April 20, 2023 respectively, under Section 15G of the SEBI Act, for the violation of provisions of Sections 12A(d) of the SEBI Act and Regulation 3(1) of the PIT Regulations by Noticee No.2 and Sections 12A(d) & (e) of the SEBI Act read with Regulation 4(1) of the PIT Regulations by Noticee No.1:

S. No.	Name of the Noticee	Violation	Penalty amount
1.	Nagreeka Capital and Infrastructure Ltd.	Sections 12A(d) & (e) of the SEBI Act read with Regulation 4(1) of the PIT Regulations	Rs.10,00,000/- (Rupees Ten Lakh Only/-)
2.	Mr. Sushil Patwari	Sections 12A(d) of the SEBI Act and Regulation 3(1) of the PIT Regulations	Rs.10,00,000/- (Rupees Ten Lakh Only/-)

69. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website of SEBI, i.e., www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT -> Orders -> Orders of AO -> PAY NOW

In case of any difficulties in payment of penalties, Noticees may contact the support at portalhelp@sebi.gov.in.

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

1. Case Name:	
2. Name of payee:	
3. Date of payment:	
4. Amount paid:	
5. Transaction no.:	
6. Bank details in which payment is made:	
7. Payment is made for: (like penalties/ disgorgement/ recovery/ settlement amount etc.)	

71. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, consequential proceedings including, but not limited to, recovery proceedings may be initiated under Section 28A of the SEBI Act, for realization of the said amount

of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

72. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to Noticees and also to the Securities and Exchange Board of India.

Place: Mumbai

Date: August 25, 2023

G. RAMAR

ADJUDICATING OFFICER