BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER NO. Order/AK/AS/2023-24/ 29281-29289

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

S No	Name of Noticee (PAN)	Address
1	Rajiv Amarish Agarwal (AACPA2745E)	Chamaria Niwas, 3rd Floor, 41 Mahant Road, Vile Parle East, Mumbai-400057
2	Varsha Rajiv Agarwal (AABPA0253E)	Chamaria Niwas, 3rd Floor, 41 Mahant Road, Vile Parle East, Mumbai-400057
3	Hitesh Kantilal Shah (ACZPS4265L)	9/B Ratnamani, Hindu Colony, Stadium Road, Navrangpura, Ahmedabad-380014
4	Menal Rasesh Parikh (AHBPP5326J)	11, Monalisa Bomanji Petit Road, Near Parsee General Hospital, Mumbai-400036
5	Jaisingh Sudhirkumar Choudhary (AMSPC2415K)	No 64, United Jain Students Home Road, Jain Society, Sion, Mumbai-400022
6	Himanshu K Desai (AADPD1640C)	301, Garden View Shimpoli Road Kastur Park Borivali West-400092
7	Anirudh R Parikh (AADPP2391N)	11 Monalisa Bomanji Petit Road Near Parsee General Hospital Mumbai-400036
8	Sudhirkumar Choudhary (ABPPC9845B)	B/604, Iscon Heights, Gotri Road, Vadodara, Gujarat-390021
9	Nipun Lodha (AAXPL1782B)	B-502, Rihan Apartment, A.C.Cross Road, Kandivali E, Mumbai-400101

In the matter of ABC Bearings Ltd

BACKGROUND OF THE CASE

1. On July 05, 2017 at 02:09 AM, ABC Bearings Ltd (hereinafter referred to as **“ABC”**) made a corporate announcement on BSE relating to merger of ABC with Timken India Ltd (hereinafter referred to as **“TIL”**) through a scheme of

Amalgamation and Arrangement. It was observed that the price of the scrip of ABC moved from a closing price of Rs.238.10 on July 04, 2017 to the closing price of Rs. 285.70 on July 05, 2017 on BSE, registering an increase of 19.99% in one trading day. Thereafter, Securities and Exchange Board of India (hereinafter referred to as **"SEBI"**) conducted detailed investigation in the matter to ascertain whether trading was done in the scrip of ABC by certain suspected entities on the basis of unpublished price sensitive information (hereinafter referred to as **"UPSI"**) relating to merger of ABC with TIL. Investigation Period was from January 25, 2017 to July 05, 2017 (hereinafter referred to as the **"Investigation Period"**). On the basis of the aforesaid investigation, the violation of following provisions was alleged:

1.1 Regulation 3(1) and 4(1) of SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as **"PIT Regulations"**) and Section 12A(d) and (e) of the SEBI Act, 1992 (hereinafter referred to as **"SEBI Act"**) by Rajiv Amarish Agarwal (hereinafter referred to as **Rajiv**);

1.2 Regulation 4(1) of the PIT Regulations and Section 12A(d) and (e) of the SEBI Act by Varsha Rajiv Agarwal, Hitesh Kantilal Shah, Menal Rasesh Parikh and Jaisingh Sudhirkumar Choudhary (hereinafter referred to as **Varsha, Hitesh, Menal and Jaisingh respectively**);

1.3 Regulation 3(1) of the PIT Regulations and Section 12A(e) of the SEBI Act by Himanshu K Desai, Anirudh R Parikh, Sudhirkumar Choudhary and Nipun Lodha (hereinafter referred to as **Himanshu, Anirudh, Sudhir and Nipun respectively**).

APPOINTMENT OF ADJUDICATING OFFICER

2. Upon being satisfied that the Noticees have violated the abovementioned provisions, SEBI, in exercise of powers under Section 19 read with sub-section (1) of Section 15-I of the SEBI Act and Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as the "**Adjudication Rules**"), appointed Ms. Geetha G as the Adjudicating Officer, vide order dated December 30, 2021, to inquire into and adjudge under Section 15-I

read with Section 15G of the SEBI Act, the alleged violations by the Noticees. Pursuant to the transfer of Ms. Geetha G, SEBI appointed the undersigned as Adjudicating Officer, vide order dated August 29, 2022, to inquire into and adjudge under Section 15-I read with Section 15G of the SEBI Act, the alleged violations by the Noticees.

SHOW CAUSE NOTICE AND PERSONAL HEARING

3. A common Show Cause Notice dated September 20, 2022 (hereinafter referred to as **"SCN"**) was issued to the Noticees to show cause as to why an inquiry should not be initiated against them and why penalty should not be imposed against them under Section 15G of the SEBI Act, as alleged therein for the violations brought out against the Noticees. SCN was also issued to Sahir Patel (**Sahir**), who has opted for Settlement under SEBI (Settlement Proceedings) Regulations, 2018 (hereinafter referred to as **"Settlement Regulations"**) and a separate order is being passed in respect of Sahir. The details of communication with the Noticees are provided below:

3.1. <u>Rajiv and Varsha</u>

Vide email dated September 21, 2022, digitally signed copy of the SCN was served on the Noticees. Vide email dated October 04, 2022, Noticees sought additional time for submitting reply to the SCN. Vide Hearing Notice dated October 04, 2022, opportunity of personal hearing was granted on October 18, 2022. Vide email dated October 17, 2022, Noticees submitted reply to the SCN. Personal hearing in the matter was held on October 18, 2022, as scheduled. During the course of hearing, Authorized Representative of the Noticees submitted that the trades were executed by the Noticees in regular course, without any intention of earning profits on the basis of UPSI, and that the profits made by Noticees were due to increase in scrip-price post announcement of merger. Further, it was contended that no conclusions must be drawn based on interactions of Rajiv with Nipun, which used to happen in normal course of business even prior to the UPSI period. Thereafter, Noticees made post-hearing submissions vide email dated October 21, 2022.

3.2. Hitesh

Vide email dated September 21, 2022, digitally signed copy of the SCN was served on the Noticee. Vide Hearing Notice dated October 04, 2022, opportunity of personal hearing was granted on October 18, 2022. Vide email dated October 11, 2022, Noticee sought opportunity of inspection in the matter. Inspection of documents in the matter was conducted on October 13, 2022. Vide email dated October 18, 2022, Noticee conveyed that he intended to apply for Settlement in the matter, and requested to adjourn the hearing, as scheduled. Further, he conveyed that the inspection of documents in the matter was incomplete, and submitted list of additional documents which he further intended to inspect. During the course of personal hearing held on October 18, 2022, Authorized Representative of the Noticee conveyed that as Noticee had filed for settlement, adjudication proceedings must be put on hold. In this regard, it was conveyed that in terms of Regulation 8(1) of the Settlement Regulations, the filing of a settlement application would not affect the continuance of the proceedings save that the passing of the final order would be kept in abeyance till the application is disposed of. The Authorized Representative sought time till November 15, 2022 to submit reply to the SCN, and also, sought another opportunity of personal hearing. Vide email dated October 28, 2022, Noticee was provided comments as regards the request for additional documents, and conveyed that the inspection in the matter was complete. Further, Noticee was provided another opportunity of personal hearing on November 16, 2022. Vide email dated November 16, 2022, Noticee conveyed that the application for settlement had been submitted and reiterated its request for inspection of additional documents, and interalia, requested for cross examination of Noticee No. 6 in the matter. Further, Noticee requested to adjourn personal hearing scheduled on November 16, 2022. Vide email dated November 22, 2022, Noticee was provided comments as regards the request for inspection and cross examination, along with other queries raised by it, and was given time till December 09, 2022, for submitting reply to the SCN. Vide email dated February 10, 2023, Settlement Division of SEBI informed that the Settlement application had been filed by the Noticee in the matter. Vide email dated April 27, 2023, Settlement Division of SEBI informed that the settlement application against the Noticee was disposed of and Adjudication Proceedings against him could be resumed. Vide Hearing Notice dated August 22, 2023, Noticee was granted opportunity of personal hearing on September 04, 2023. Personal hearing in the matter was held on September 05, 2023. During the course of hearing, Authorized Representative of the Noticee made submissions relying upon the responses dated October 11, 2022, October 18, 2022 and November 16, 2022. Noticee made post hearing submissions vide email dated September 11, 2023.

3.3. Menal

Vide email dated September 21, 2022, digitally signed copy of the SCN was served on the Noticee. Vide email dated September 30, 2022, Noticee sought additional time for submitting reply to the SCN. Vide email dated October 18, 2022, Noticee submitted reply to the SCN. Vide email dated October 31, 2022, opportunity of personal hearing was granted on November 16, 2022. Vide email dated November 11, 2022, Noticee sought adjournment of personal hearing scheduled on November 16, 2022. Vide email dated November 11, 2022, Noticee was granted another opportunity of personal hearing on November 30, 2022. Noticee submitted letter of authority and the documents to be relied upon during the course of hearing vide emails dated November 28 and 30, 2022 respectively. Personal Hearing in the matter was held on November 30, 2022. During the course of hearing, Authorized Representatives appearing on behalf of the Noticee and reiterated the written submissions made vide emails dated November 28 and 30, 2022. Further, referring to the contract note dated July 04, 2017, Authorized Representative argued that the order was placed at 10:52 AM for buying 7000 shares. However, meeting in which the matter was finalized was held at 04:00 PM on July 04, 2017. Therefore, order was placed before the aforesaid meeting had happened. Thereafter, Noticee made post hearing submissions vide email dated December 08, 2022.

3.4. Jaisingh

Vide email dated September 21, 2022, digitally signed copy of the SCN was served on the Noticee. Vide Hearing Notice dated October 04, 2022, opportunity of personal hearing was granted on October 18, 2022. Vide email dated October 06, 2022, Noticee sought opportunity of inspection in the matter. Inspection of documents in the matter was conducted on October 13, 2022. Vide email dated October 18, 2022, Noticee conveyed that he had applied for Settlement in the matter, and requested to adjourn the hearing, as scheduled. Further, he conveyed that the inspection of documents in the matter was incomplete, and submitted list of additional documents which he further intended to inspect. During the course of personal hearing held on October 18, 2022, Authorized Representative of the Noticee conveyed that as Noticee had filed for settlement, adjudication proceedings must be put on hold. In this regard, it was conveyed that in terms of Regulation 8(1) of the Settlement Regulations, the filing of a settlement application would not affect the continuance of the proceedings save that the passing of the final order would be kept in abeyance till the application is disposed of. The Authorized Representative sought time till November 15, 2022 to submit reply to the SCN, and also, sought another opportunity of personal hearing. Vide email dated October 28, 2022, Noticee was provided comments as regards the request for additional documents, and conveyed that the inspection in the matter was complete. Further, Noticee was provided another opportunity of personal hearing on November 16, 2022. Vide email dated November 16, 2022, Noticee conveyed that the application for settlement had been submitted and reiterated its request for inspection of additional documents, and interalia, requested for cross examination of certain entities in the matter. Further, Noticee requested to adjourn personal hearing scheduled on November 16,

2022. Vide email dated November 22, 2022, Noticee was provided comments as regards the request for inspection and cross examination, along with other queries raised by it, and was given time till December 09, 2022, for submitting reply to the SCN. Vide email dated January 30, 2023, Settlement Division of SEBI informed that the Settlement application had been filed by the Noticee in the matter. Vide email dated March 24, 2023, Settlement Division of SEBI informed that the settlement application against the Noticee was disposed of and Adjudication Proceedings against him could be resumed. Vide Hearing Notice dated July 31, 2023, Noticee was granted opportunity of personal hearing on August 21, 2023. Vide email dated August 18, 2023, Noticee, interalia, stated that he had not received certain Annexures to the SCN, and requested for adjournment of personal hearing as scheduled. Vide email dated August 21, 2023, Noticee was provided Annexures to the SCN as sought, and vide Hearing Notice dated August 22, 2023, Noticee was granted opportunity of personal hearing on September 04, 2023. Personal hearing in the matter was held on September 05, 2023. During the course of hearing, Authorized Representative of the Noticee made submissions relying upon the responses dated October 06, 2022, October 18, 2022, November 16, 2022 and August 18, 2023. Noticee made post hearing submissions vide email dated September 11, 2023.

3.5. Himanshu

Vide email dated September 21, 2022, digitally signed copy of the SCN was served on the Noticee. Vide email dated October 03, 2022, Noticee sought additional time for submitting reply to the SCN. Vide email dated October 04, 2022, Noticee was granted opportunity of personal hearing on October 18, 2022. Vide email dated October 15, 2022, Noticee submitted reply to the SCN. Vide email dated October 31, 2022, another opportunity of personal hearing was granted on November 16, 2022. Vide email dated November 11, 2022, Noticee sought adjournment of personal hearing scheduled on November 16, 2022. Vide email dated November 11, 2022, Noticee was granted another opportunity of personal hearing on November 30, 2022. Vide emails dated November 28 and 30, 2022, Noticee made further submissions in the matter. Personal Hearing in the matter was held on November 30, 2022. During the course of hearing, Authorized Representatives appearing on behalf of the Noticee reiterated the submissions made vide emails dated November 28 and 30, 2022.

3.6. Anirudh

Vide email dated September 21, 2022, digitally signed copy of the SCN was served on the Noticee. Vide email dated October 02, 2022, Noticee sought additional time for submitting reply to the SCN. Vide email dated October 15, 2022, Noticee submitted reply to the SCN. Vide email dated October 31, 2022, opportunity of personal hearing was granted on November 16, 2022. Vide email dated November 11, 2022, Noticee sought adjournment of personal hearing scheduled on November 16, 2022. Vide email dated November 11, 2022, Noticee was granted another opportunity of personal hearing on November 30, 2022. Vide email dated November 30, 2022, Noticee made further submissions in the matter. Personal Hearing in the matter was held on November 30, 2022. During the course of hearing Authorized Representatives appearing on behalf of the Noticee reiterated the submissions made vide emails dated November 30, 2022.

3.7. Sudhir

Vide email dated September 21, 2022, digitally signed copy of the SCN was served on the Noticee. Vide Hearing Notice dated October 04, 2022, opportunity of personal hearing was granted on October 18, 2022. Vide email dated October 06, 2022, Noticee sought opportunity of inspection in the matter. Inspection of documents in the matter was conducted on October 13, 2022. Vide email dated October 18, 2022, Noticee conveyed that he had applied for Settlement in the matter, and requested to adjourn the hearing, as scheduled. Further, he conveyed that the inspection of documents in the matter was incomplete, and submitted list of additional documents which he further intended to inspect. During the course of personal hearing held on October 18, 2022, Authorized Representative of the Noticee conveyed that as Noticee had filed for settlement, adjudication proceedings must be put on hold. In this regard, it was conveyed that in terms of Regulation 8(1) of the Settlement Regulations, the filing of a settlement application would not affect the continuance of the proceedings save that the passing of the final order would be kept in abeyance till the application is disposed of. The Authorized Representative sought time till November 15, 2022 to submit reply to the SCN, and also, sought another opportunity of personal hearing. Vide email dated October 28, 2022, Noticee was provided comments as regards the request for additional documents, and conveyed that the inspection in the matter was complete. Further, Noticee was provided another opportunity of personal hearing on November 16, 2022. Vide email dated November 16, 2022, Noticee conveyed that the application for settlement had been submitted and reiterated his request for inspection of additional documents, and interalia, requested for cross examination of certain entities in the matter. Further, Noticee requested to adjourn personal hearing scheduled on November 16, 2022. Vide email dated November 22, 2022, Noticee was provided comments as regards the request for additional documents and cross examination, and the queries raised by it, and was given time till December 09, 2022, for submitting reply to the SCN. Vide email dated December 11, 2022, Noticee, interalia, reiterated its request for cross examination and certain additional documents. Vide email dated January 30, 2023, Settlement Division of SEBI informed that the Settlement application had been filed by the Noticee in the matter. Vide email dated March 24, 2023, Settlement Division of SEBI informed that the settlement application against the Noticee was disposed of and Adjudication Proceedings against him could be resumed. Vide Hearing Notice dated July 31, 2023, Noticee was granted opportunity of personal hearing on August 21, 2023. Vide email dated August 18, 2023, Noticee, interalia, stated that it had not received certain Annexures to the SCN, and requested for adjournment of personal hearing as scheduled. Vide email dated August 21, 2023, Noticee was provided Annexures to the SCN as sought, and vide Hearing Notice dated August 22, 2023, Noticee was granted opportunity of personal hearing on September 04, 2023. Personal hearing in the matter was held on September 05, 2023. During the course of hearing, Authorized Representative of the Noticee made submissions relying upon the responses dated October 06, 2022, October 18, 2022, November 16, 2022, December 11, 2022 and August 18, 2023. Noticee made post hearing submissions vide email dated September 11, 2023.

3.8. Nipun

Vide email dated September 21, 2022, digitally signed copy of the SCN was served on the Noticee. Vide email dated October 04, 2022, Noticee sought inspection of documents in the matter. Further, vide email dated October 04, 2022, Noticee was granted opportunity of personal hearing on October 18, 2022. Inspection of documents was conducted on October 07, 2023. Vide email dated October 17, 2022, Noticee, interalia, conveyed that the inspection of documents in the matter was incomplete and vide emails dated October 18, 2022, also sought cross examination of Rajiv. Further, Noticee sought reply of Rajiv in the matter. Noticee also requested for adjournment of personal hearing as scheduled on the same day i.e. October 18, 2022. Vide email dated October 27, 2022, Noticee was provided comments as regards the request for additional documents and cross examination, replies of Rajiv dated October 17 and 21, 2022, and further, was granted opportunity of personal hearing on November 15, 2022. Vide email dated November 14, 2022, Noticee submitted reply to the SCN. Personal hearing in the matter was held on November 15, 2022. During the course of hearing, Authorized Representative of the Noticee made submissions relying upon the response dated November 14, 2022.

CONSIDERATION OF ISSUES AND FINDINGS

4. The issues that arise for consideration are as under:
   4.1. What is the UPSI in the instant matter, when did the UPSI come into existence and what was the UPSI period?
   4.2. Whether Rajiv violated the provisions of Regulation 3(1) and 4(1) of PIT Regulations and Section 12A(d) and (e) of the SEBI Act, Varsha violated the provisions of Regulation 4(1) of the PIT Regulations and Section 12A(d) and (e) of the SEBI Act and Nipun violated the provisions of Regulation 3(1) of the PIT Regulations and Section 12A(e) of the SEBI Act?
   4.3. Whether Himanshu and Anirudh violated the provisions of Regulation 3(1) of the PIT Regulations and Section 12A(e) of the SEBI Act and Menal violated the provisions of Regulation 4(1) of the PIT Regulations and Section 12A(d) and (e) of the SEBI Act?
   4.4. Whether Hitesh violated the provisions of Regulation 4(1) of PIT Regulations and Section 12A(d) and (e) of the SEBI Act?
   4.5. Whether Sudhir violated the provisions of Regulation 3(1) of the PIT Regulations and Section 12A(e) of the SEBI Act, and Jaisingh violated the provisions of Regulation 4(1) of the PIT Regulations and Section 12A(d) and (e) of the SEBI Act.
   4.6. If yes, whether the violations, if any, attract monetary penalty under the provisions of Section 15G of the SEBI Act? If so, what quantum of monetary penalty should be imposed on the Noticees, as applicable, after taking into consideration the factors mentioned in Section 15J of the SEBI Act?

5. Before I proceed with the matter, it is pertinent to mention the relevant legal provisions alleged to have been violated by the Noticees and the same are reproduced below:

<u>SEBI Act</u>

Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.

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;

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

<u>PIT Regulations</u>

Communication or procurement of unpublished price sensitive information

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

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:

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 promoters 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.

ii) 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;

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

6. I note that the findings of the investigation and allegations levelled against the Noticees in the SCN were as under:

   6.1. On July 05, 2017 at 02:09 AM, ABC made a corporate announcement relating to merger of ABC with TIL

   6.2. a scheme of amalgamation and arrangement to BSE and on the same day, TIL made a corporate announcement related to aforesaid merger to BSE and NSE at 01:22 AM and 08:42 AM respectively. The said corporate announcement, relating to merger of ABC with TIL through a scheme of amalgamation, was considered as UPSI in terms of provisions of PIT Regulations.

   6.3. The UPSI related to merger of ABC with TIL had come into existence on January 25, 2017 i.e. the date on which the letter of intent relating to aforesaid merger was executed between ABC and TIL. Thereafter, the UPSI was published as per the following details:

   On BSE – On July 05, 2017 at 02:09 AM by ABC and at 01:22 AM by TIL

On NSE – On July 05, 2017, at 08:42 AM by TIL.

Based on the above, the period of UPSI was considered as January 25, 2017 to July 05, 2017 at 01:22 AM.

6.4. During the course of investigation, SEBI identified certain suspected entities, out of which five entities namely, (1) Rajiv Agarwal, (2) Varsha Agarwal, (3) Menal Parikh, (4) Hitesh Shah and (5) Jaisingh Chaudhary were found to be allegedly connected to the insiders pertaining to the said UPSI. The trading details of the aforesaid 5 Noticees are provided below:

S No	Name of Noticee	Buy Qty during the UPSI period (A)	Sell Qty during the UPSI period (B)	Net Qty (Buy qty-Sell qty)(C =A-B)	Buy Qty post UPSI period	Sell Qty post UPSI period	Buy value in Rs (D)	Weighted Average Buy Price in Rs (E=D/A)	Buy value based on weighted average buy price (F=E*C)	Sell value in Rs (Based on close price i.e. Rs 285.70 on the day of announcement) (G=C*285.70)	Profit in Rs (Sell value-Buy value)(H=G-F)
1	Rajiv Amarish Agarwal	15000		15000		14725	3075181.75	205.01	3075181.75	4285500.00	1210318.25
2	Varsha Rajiv Agarwal	13928	3000	10928		10928	2730423.30	-	2163705	3122129.60	958424.60
3	Jaisingh Sudhirkumar Choudhary	6300		6300		6300	1058168.95	167.96	1058168.95	1799910.00	741741.05
4	Hitesh Kantilal Shah	5000		5000		5000	1190382	238.08	1190382.00	1428500.00	238118.00
5	Menal Rasesh Parikh	7000		7000	743	7273	1599292.40	228.47	1599292.40	1999900.00	400607.60

Rajiv and Varsha

6.5. On BSE, Rajiv had bought 15,000 shares of ABC during the UPSI period (10,000 shares on May 23, 2017 and 5,000 shares on July 04, 2017) and sold 14,725 shares of ABC post-UPSI period on July 19, 2017. The profit earned through aforesaid trading was Rs. 12.10 Lakh.

6.6. Varsha had bought and sold 3,000 shares of ABC on May 22, 2017 and June 27, 2017 respectively. Further, on July 03, 2017 and July 04, 2017 i.e. during the UPSI period, the aforesaid entity bought 10,928 shares of ABC and sold 10,928 shares of ABC post UPSI period during July 12- 13, 2017. The profits earned through aforesaid trading (buying and selling of 10,928 shares of ABC) was Rs. 9.58 Lakh.

Correspondence between Rajiv and Keynote

6.7. In respect of connection with ABC, TIL and other entities involved in the merger, Rajiv, in his reply dated August 21, 2021, inter-alia, stated that he had known Keynote Corporate Services Ltd (hereinafter referred to as **“Keynote”**) for more than a decade for various transactions pertaining to various professional engagements.

6.8. Further, in this regard, Keynote, which was the merchant banker for providing fairness opinion pertaining to the merger, vide its reply dated July 12, 2021, interalia, stated that Keynote was acquainted with Rajiv only in a professional capacity, and it was not aware of any involvement of Rajiv Agarwal in ABC.

6.9. Nipun (Vice President of Keynote) was an insider, with whom Rajiv had interacted during the UPSI period. Hence, vide email dated September 02, 2021, Keynote and Rajiv were advised to provide details of their interaction/ discussion with each other, *inter-alia*, including date of interaction/discussion, name of the person/s involved, topic of discussion/ interaction in a chronological order during the period January 01, 2017 to July 31, 2017.

6.10. Vide email dated September 06, 2021, Rajiv, inter-alia, stated that his association with Keynote team dated back to the year 2010 which was several years before the instant Investigation period, and he had been interacting with Nipun Lodha, among others, from time to time. Given Rajiv’s role in RARE Enterprises, he was regularly in touch with various intermediaries, and had not used any information whether sensitive or otherwise pertaining to any of his trades including ABC Bearing. Rajiv had always done his trading and investment based on public information and research and could also provide the details of all his trading history and rationale even after the investigation period.

6.11. Vide email dated September 07, 2021, Keynote, interalia, stated the following-

i. We have been interacting with Rare Enterprises where Mr Rajiv Agarwal is one of the directors. Rajiv Agarwal takes care of Private Equity business at Rare. Our *interaction with Rajiv as a representative of Rare goes since 2010. Our authorized personnel have been interacting with him for various professional engagements. This includes discussions on acquisition targets/ divestment opportunities for investee companies of Rare as well as new deals for investments.*

ii. *During the period between January 1, 2017 and July 31, 2017, there could have been many discussions around investments. To the best of our knowledge, we have engaged in discussions relating to potential targets in the edutech and testing space for one of their investee company as well as an /PO for John Energy Limited - another investee company of Rare Enterprise. From our team Vineet Suchanti, Uday Patil and Nipun Lodha have interacted on these discussions. There are no emails or any correspondence exchanges which we have record of as the discussions are done with every investors generally and sometimes to gauge the interest. It is only after any discussion culminating into a concrete deal, we follow our protocol and compliances to maintain confidentiality and contain the information. From the review of all the records which we tried to gather, we could see one specific email exchange that had taken place between Vineet Suchanti and Rajiv Agarwal in relation to a conference call for John Energy on 19th of July 2017. Similarly, we found another email exchange in relation to his views on the prospective deal on 27th of July 2017 with Nipun Lodha. We do not have any correspondence or any emails exchanged with him in regard to ABC Bearings Limited.*

iii. *We also wish to inform you that our interaction with Rajiv Agarwal has been continuous and ongoing even during the period mentioned in your email, before that and even after that. Our interactions has been ongoing even as on date with Rajiv Agarwal like any other investor or client. We confirm that we have never shared any sensitive information with any of our clients or investors, including with Rajiv Agarwal, whether it pertains to ABC or otherwise. We have taken utmost care in keeping confidential the information having signed a Confidentiality Agreement with ABC Bearings Ltd.*

6.12. Further, vide emails dated September 17, 2021, Nipun and Rajiv forwarded emails in respect of their communication with each other. The emails pertained to some investment opportunities for his professional requirement. In the replies received from Keynote and Rajiv, it was stated that the interactions were done in normal course of business and they were interacting before the UPSI period also. Further, Rajiv was also interacting with other persons from Keynote who were not insiders for the purposes of the instant matter. However, it was observed that the aforesaid emails provided by Rajiv and Nipun in respect of their communication pertained to the post-UPSI period and no emails were provided in respect of their communication for the UPSI period.

6.13. Also, as per reply of Keynote, during May 17 - 22, 2017, ABC approached Keynote for the assignment of the issuance of Fairness Opinion for a proposed transaction. Keynote Financial Services Limited shared a requisition list of information required with ABC on May 17, 2017. A summary of the financials for Fiscal 2017 was furnished to Keynote by ABC on May 19, 2017 and just one day after aforesaid period i.e. on May 23, 2017, Rajiv bought 10,000 shares of ABC and also bought, 5,000 shares of ABC on July 04, 2017 i.e. just one day before the public announcement of aforesaid merger on July 05, 2017. Also, Rajiv had not traded in the scrip of ABC during three months prior to UPSI period. Therefore, aforesaid buying of shares of ABC by Rajiv was not a coincidence.

<u>Correspondence between Varsha and broker</u>

6.14. In respect of connection with ABC, TIL and other suspected entities, Varsha, in her reply dated August 21, 2021, interalia, stated the following-

i. *I am an interior designer by profession, and invest my savings in listed and unlisted companies; my husband (i.e. Rajiv) invests and trades on my behalf since 2006. He has been in the equity market and private equity investment professional.*

ii. *All these investments and portfolio has been in small and mid-caps like ABC Bearing Limited as can be seen from my demat statements and holding. My investment and trading has been focused only on such stocks and there is nothing in particular or different in ABC Bearings. lnfact, the total investments in ABC Bearing in the relevant financial year is only 0.58 % of overall turnover. My purchases were to the tune of 3000 shares which were executed on May 22, 2017 and sold on 27th June 2017 where I booked a loss; then again we purchased the* *shares on July 3, 2017 (3102). Out of these, 3102 shares were sold by me on July 12 and July 13, 2017 after the scrip witnessed 52 weeks high immediately before my sale. I also purchased 7826 shares on July 3 and Jul 4, 2017 in my trading account and they were sold on July 12. We sold the shares and booked profits. Similarly, even my husband sold the shares in July after the increase in price of the scrip along with increase in SENSEX and NIFTY. My trading and investment history reveals the same pattern of my trading ever since I have been investing in the market.*

6.15. From aforesaid, it was established that Varsha is wife of Rajiv. As per reply dated August 21, 2021, Varsha, interalia, stated that her husband i.e. Rajiv trades on her behalf. From the reply dated September 06, 2021 of broker (i.e. Phillip Capital (India) Private Limited) in respect of trading account of Varsha, it was observed that Varsha had given trading authorization to her spouse and Rajiv had traded in the shares of ABC from the trading account of Varsha during the UPSI period.

6.16. No trading in the scrip of ABC in the three months prior to the UPSI period was observed in the trading account of Varsha. Further on July 03, 2017 and July 04, 2017 i.e. during the UPSI period, Rajiv was observed to be buying 10,928 shares of ABC through trading account of Varsha and during the aforesaid period, Keynote had submitted Draft Fairness Opinion Report to Sahir (Director of ABC) on July 03, 2017. Aforesaid buying of shares of ABC in the trading account of Varsha was not a coincidence.

<u>Allegations in respect of Varsha and Rajiv</u>

6.17. As per reply from Keynote, Nipun was involved in the aforesaid merger and therefore, he was in possession of UPSI and was an insider in terms of Regulation 2(1)(g)(ii) of the PIT Regulations.

6.18. Rajiv was a connected person in terms of Regulation 2(1)(d)(i) of the PIT Regulations and hence, an insider in terms of Regulation 2(1)(g)(i) of the PIT Regulations, considering the following:

i. He interacted with Nipun (an insider) during the UPSI period.

ii. No emails pertaining to the UPSI period were provided by Nipun and Rajiv to support their submissions that their communication during the UPSI period were related to normal course of business.

iii. Rajiv did not trade in the scrip of ABC in the three months prior to the UPSI period. Further, during the UPSI period, Keynote had initial interactions with ABC with respect to issuance of Fairness Opinion for aforesaid merger during May 17-22, 2017 and just one day after aforesaid period i.e. on May 23, 2017, Rajiv bought 10,000 shares of ABC and also bought, 5,000 shares of ABC on July 04, 2017 i.e. just one day before the public announcement of aforesaid merger on July 05, 2017.

6.19. Varsha was a connected person in terms of Regulation 2(1)(d)(i) of PIT Regulations and hence, an insider in terms of Regulation 2(1)(g)(i) of PIT Regulations, considering the following-

i. She is wife of Rajiv, who was a connected person in terms of Regulation 2(1)(d)(i) of PIT Regulations and hence, an insider in terms of Regulation 2(1)(g)(i) of PIT Regulations.

ii. As Rajiv and Varsha (husband and wife) both shared common address and communication between such close family members would seldom be in written form, frequent communication between them could not be ruled out.

iii. Varsha had given trading authorization to Rajiv.

iv. No trading in the scrip of ABC in the three months prior to the UPSI period was observed in the trading account of Varsha. Further on July 03, 2017 and July 04, 2017 i.e. during the UPSI period, Rajiv was observed to be buying 10,928 shares of ABC through trading account of Varsha and during the aforesaid period, Keynote had submitted Draft Fairness Opinion Report to Sahir (Director of ABC) on July 03, 2017.

6.20. Therefore, it was alleged that:

i. Nipun communicated the UPSI to Rajiv and thereby, allegedly violated provisions of Regulation 3(1) of PIT Regulations and Section 12A(e) of the SEBI Act.

ii. Rajiv (a connected person and thereby, an insider) communicated the UPSI to Varsha and thereby, allegedly violated provisions of Regulation 3(1) of PIT Regulations and Section 12A(e) of the SEBI Act.

iii. Rajiv and Varsha, (connected persons and thereby, insiders) traded in the shares of ABC on the basis of UPSI when in possession of UPSI during the UPSI period and thereby, violated provisions of Regulation 4(1) of PIT Regulations and Section 12A(d) & (e) of the SEBI Act.

Menal

6.21. On BSE, the aforesaid entity had bought 7,000 shares of ABC on July 04,2017 i.e. during the UPSI period and bought and sold 743 and 7,273 shares of ABC post-UPSI period respectively. The profit earned through aforesaid trading was Rs. 4.01 Lakh.

Correspondence with Parikh & Shah (statutory auditor of ABC), ABC and Menal

6.22. With respect to involvement in merger between ABC and TIL and connection with Menal, Parikh & Shah (hereinafter referred to as **"P&S"**) vide its reply dated July 13, 2021, interalia, stated the following

i. We were not involved at any stage in the process for the Scheme of Merger between ABC and Timken India Pvt Ltd for amalgamation and arrangement. Consequently providing of information as called for cannot be given.

ii. Consequent to our attending the Audit Committee Meeting on 04.07.2017 the proposed Scheme of amalgamation and arrangement amongst both Company was tabled and considered.

iii. Menal Parikh is known to us being daughter-in-law of our Senior Partner Late Mr.H.S. Parikh and we are not aware about her dealings in shares/securities.

6.23. However, ABC vide its reply stated that date of intimation/ acquisition of information relating to aforesaid merger by P&S was May 19, 2017.

6.24. Further, w.r.t. connection with P&S and any past and/or present directors/officers/employees/partners/any other persons of P&S, Menal, vide reply dated July 22, 2021, interalia, stated the following:

i. I am the daughter-in-law of Late Mr. H.S. Parikh, who was the founder of Parikh & Shah, Chartered Accountant. He expired in 08th May, 2016. I neither know nor am associated with anyone else on the list provided.

6.25. From the aforesaid reply of P&S, the names of all their partners were provided in short forms which, interalia, included one A. R. Parikh and from the family details provided by Menal, it was observed that Anirudh R Parikh (PAN-AADPP2391N) is her son. In order to establish whether the son of Menal i.e. Anirudh is the same person who was the partner in P&S, details were sought from P&S and in this regard, P&S vide reply dated October 14, 2021 provided full name and PAN of A.R. Parikh and from the aforesaid details, it was observed that the aforesaid partner i.e. A.R. Parikh is son of Menal and prior to 2017 for 10 years, he was an article and then employee and from 2017 till date was a partner of P&S. The aforesaid relationship of Menal with Anirudh (mother and son) was neither disclosed by P&S nor by Menal.

6.26. Further, vide email dated October 20, 2021, P&S was advised to provide copies of emails/communication sent/received to/from ABC and/or its directors/any other person associated with ABC in respect of aforesaid merger during the period May 15, 2017- July 10, 2017. In this regard, vide reply dated October 20, 2021, P&S, inter-alia, stated the following-

i. ABC had hired other professional agencies for the process of the merger with Timken India Ltd and our role was restricted to certification and for other statutory requirements.

ii. A few meetings, where our presence was required, were attended by Mr. H. K. Desai including the audit committee meeting held on 4/7/17 where they announced the merger.

iii. We have not received any mails or communication from ABC Bearings Ltd. or from any other person in relation to the merger and any emails received during the period mentioned by you were restricted to finalization of accounts for the quarter ended 30/06/2017.

6.27. Vide email dated October 21, 2021, P&S was advised to provide the following;

i. *Details of your role related to certification and other statutory requirements in chronological order, inter-alia, including date, details of persons involved, details of work done.*

ii. *Details of all the meetings (where your presence was required) in chronological order, inter-alia, including date of the meeting, name and designation of the persons present, topic of discussion, mode of communication for the invitation to meetings, copies of communication/invite for the meeting*

6.28. P&S, vide reply dated October 22, 2021, inter-alia, stated the following

i. *For the following meetings our partner H.K.Desai was the sole representative from our firm: Meeting at the office of Desai and Diwanji on 1st June Meeting at the office of J M Financial Pvt Ltd on 5th June 2017 and Audit committee meeting held at the office of ABC Bearings Ltd on 4th July 2017.*

ii. *The topic discussed was relating to the merger only.*

iii. *The invite for the above mentioned meetings was via a phone call from the Directors of ABC Bearings Ltd to H K Desai directly requesting him to be present.*

6.29. Vide email dated October 25, 2021, P&S was advised to inform whether the meetings at the office of Desai and Diwanji on 1st June 2017 and at the office of J M Financial Pvt Ltd on 5th June 2017 was related to the merger.

6.30. P&S, vide reply dated October 27, 2021, inter-alia, stated the following

- *both the meetings were relating to procedural and taxation aspect of the merger*

It was stated by P&S that Himanshu (partner of P&S) had attended aforesaid meetings on behalf of P&S.

6.31. It is concluded that Himanshu (partner of P&S) was in the possession on UPSI prior to July 04, 2017 as aforesaid meetings related to procedural and taxation aspect of merger were attended by him prior to July 04, 2017.

6.32. In this regard, vide email dated October 29, 2021, Himanshu (Partner of P&S) was advised to provide the following:

i. *Details of person/s, apart from you, from Parikh* & *Shah, involved in the procedural and taxation aspect of the merger* as *well* as *the audit committee meeting relating to the said merger*

ii. *Were the aforesaid details shared with any other entity/ies? If* yes, *provide details of the* same *such* as *name of the entity, your relation with the entity, date when the* *information* was *shared, details of the information shared, designation with Parikh & Shah, if applicable etc.*

6.33. Himanshu, vide reply dated October 30, 2021 stated the following:

- *No one else* was *involved from the organization. The information relating to the merger* was *also not shared with anyone.*

6.34. P&S (statutory auditor of ABC) in its earlier reply had stated that they were not involved at any stage in the process for the Scheme of Merger between ABC and TIL. Pursuant to seeking additional details from P&S, it was observed that prior to the public announcement of aforesaid merger, Himanshu (Partner of P&S) was present in the meetings related to procedural and taxation aspect of the merger. Further, relationship between Menal and Anirudh (partner of P&S) i.e. mother and son was not disclosed by Menal and P&S. From the address details of Menal and Anirudh as provided by Menal and P&S, both shared a common address.

6.35. Also, Menal had bought 7,000 shares of ABC on July 04, 2017 i.e. just one day before the public announcement of aforesaid merger on July 05, 2017 and had not traded in the scrip of ABC during three months prior to UPSI period. Hence, it was observed that it was not a mere coincidence that Menal bought shares of ABC on July 04, 2017 i.e. just one day before the public announcement of aforesaid merger on July 05, 2017.

6.36. As per reply from P&S, Himanshu was involved in the meetings related to aforesaid merger and therefore, it was observed that he was in possession of UPSI and was an insider in terms of Regulation 2(1)(g)(ii) of PIT Regulations.

6.37. Anirudh was a connected person in terms of Regulation 2(1)(d)(i) of PIT Regulations and hence, an insider in terms of Regulation 2(1)(g)(i) of PIT Regulations, considering the following -

i. He was one of the partners in P&S
ii. P&S was the statutory auditor of ABC
iii. Since Anirudh and Himanshu (an insider) both were partners in P&S, frequent communication between them could not be ruled out.

6.38. Menal was a connected person in terms of Regulation 2(1)(d)(i) of PIT Regulations and hence, an insider in terms of Regulation 2(1)(g)(i) of PIT Regulations, considering the following-

i. She is mother of Anirudh, who was a connected person in terms of Regulation 2(1)(d)(i) of PIT Regulations and hence, an insider in terms of Regulation 2(1)(g)(i) of PIT Regulations.

ii. The relationship between Menal and Anirudh i.e. mother and son was not disclosed by Menal and P&S.

iii. As Menal and Anirudh (mother and son) both shared common address and communication between such close family members would seldom be in written form, frequent communication between them could not be ruled out.

iv. Menal did not trade in the scrip of ABC in the three months prior to the UPSI period. Further during the UPSI period, she bought shares of ABC on July 04, 2017 i.e. just one day before the public announcement of aforesaid merger on July 05, 2017.

6.39. In view of the above, the following was alleged in the SCN:

i. Himanshu (an insider) communicated the UPSI to Anirudh and thereby, violated Regulation 3(1) of PIT Regulations and Section 12A(e) of the SEBI Act.

ii. Anirudh (a connected person and thereby, an insider) communicated the UPSI to Menal and thereby, violated Regulation 3(1) of PIT, 2015 and Section 12A(e) of the SEBI Act.

iii. Menal (a connected person and thereby, an insider) traded in the shares of ABC on the basis of UPSI when in possession of UPSI during the UPSI period and thereby, violated provisions of Regulation 4(1) of the PIT Regulations and Section 12A(d) and (e) of the SEBI Act.

Hitesh

6.40. On BSE, Hitesh had bought 5,000 shares of ABC on July 04, 2017 i.e. during the UPSI period and sold 5,000 shares of ABC post UPSI period on July 14, 2017. The profit earned through aforesaid trading was Rs. 2.38 Lakh.

Correspondence between Hitesh, Sahir and ABC

6.41. W.r.t. details of relationship/ association/ connection of ABC and/ or any of its past and/or present promoters/ directors/ KMPs with Hitesh, ABC vide its reply dated July 02, 2021, inter-alia, stated that they had checked the Books of Accounts of ABC Bearings Ltd. of the relevant period and we confirm that ABC Bearings Ltd. did not have any transaction interalia with Hitesh during the period of the calendar year of 2017.

6.42. Further, w.r.t. relationship/association/connection of Hitesh with ABC, vide email dated July 12, 2021, Hitesh, inter-alia, stated that neither he nor his family members know/ knew and/or are/ were ever associated/ related/ connected etc., in any capacity whatsoever, whether directly and/or indirectly, to any past and/or present directors/ officers /employees I any other persons of ABC Bearings Ltd.

6.43. However, from the bank statement of Hitesh (A/c no – 03420400000141, Bank of Baroda), it was observed that on December 05, 2016, Hitesh had transferred Rs. 3,00,000 to Sahir. As a fund transfer was observed between Sahir and Hitesh, details of aforesaid fund transfer were sought from Hitesh and Sahir. Further, vide summons dated October 22, 2021 Sahir was asked details of his relationship/association/connection with Hitesh.

6.44. In this regard, vide email dated November 02, 2021, Sahir, inter-alia, stated the following-

- *I have checked my personal accounts from the time I* was *appointed* as *director in ABC on October 19, 2016 until the announcement of the merger on July 4, 2017 and during this time, I have not transferred any funds to any of the entities listed by your Honour. However, prior to this period,* a *transfer of* Rs. *3 lacs were made to one Hitesh Shah on March 31, 2016* as *advance for* a *property investment as negotiated by our erstwhile realtor Manu M. Patel.* As *the opportunity did not fructify, the entire sum* was *returned to me on December 5, 2016. Hitesh Shah is* a *property broker that our erstwhile realtor Manu M. Patel knew,* was *in touch with, and dealt with.*

6.45. Pursuant to aforesaid, vide email dated November 02, 2021, Sahir was, inter-alia, asked the following –

i. *Details of your communication/discussion with Hitesh Kantilal Shah/Manu M.Patel inter alia including date of the communication/discussion, frequency of ommunication, mode of communication, during the period January 01, 2017 to July 31, 2017*

ii. *Documentary evidence w.r.t. property investment and fund transfer*

6.46. In this regard, vide email dated November 09, 2021, Sahir, interalia, stated the following -

i. *Since the matter of property which I* was *contemplating to buy was not being seriously pursued by* me*, there were rare communications in this regard and naturally no records were kept of such communications/discussions. Please* also *note there had been no transaction (other than the one stated) with either of the parties during the period January 1, 2017 to July 31, 2017 and no communication in this regard.*

ii. *Please find* attached *relevant copy of passbook showing transfer and receipt of funds (Rs. 3,00,000/-).*

No other documentary evidence w.r.t. property investment was provided except the copy of passbook showing transfer of funds.

6.47. In this regard, vide email dated November 02, 2021 Hitesh was, interalia, asked to provide details of his relationship/association/connection with Sahir. In this regard, two emails dated November 08, 2021 were received from Hitesh. The first email received on 15:42 was having a word document as an attachment and the second email received on 16:09 was a plain text email without any attachments. From the attached word document provided in the first email, it was observed that the attached word document was provided in a track change mode.

6.48. From aforesaid word document, following comments were observed in respect of connection of Hitesh with Sahir-

i. *Don't think good idea to say he knows me as that goes against what was stated earlier?*

ii. *Should say that he doesn't know me but manu wanted to invest in property and had investors like me*

6.49. From the first comment available in the aforesaid word doc, it was observed that Hitesh intentionally did not disclose his connection with Sahir initially. From the second comment available in the aforesaid word doc, it was observed that he was again intentionally trying to hide his connection with Sahir and was providing false reference of Manu Patel for his connection with Sahir. Further, Hitesh stated that Manu Patel had passed away.

6.50. In second email dated November 08, 2021, Hitesh, interalia, stated that in early 2016, Sahir had given an advance towards a property investment through reference of Manu Patel. However, the transaction did not materialize and the token amount paid was returned back.

6.51. Initially, Hitesh and ABC both had denied any relationship/ association/ connection with each other and ABC had also denied any relationship/ association/ connection of its directors (Sahir was a director of ABC) with Hitesh. However, subsequent to the analysis of bank statements of Hitesh, Sahir was asked to provide details of relationship/association/connection with Hitesh and in reply to which, Sahir informed that there was a fund transfer between him and Hitesh which was an advance for a property investment. However, Sahir did not provide any other documentary evidence w.r.t. property investment except the copy of passbook showing transfer of funds. Further, as stated above, from the comments available in the word doc provided by Hitesh it was observed that Hitesh was intentionally trying to hide his connection with Sahir.

6.52. Further, Hitesh had bought 5,000 shares of ABC on July 04, 2017 i.e. just one day before the public announcement of merger on July 05, 2017 and had not traded in the scrip of ABC during three months prior to UPSI period. Hence, it was observed that it was not a mere coincidence that Hitesh bought shares of ABC on July 04, 2017 i.e. just one day before the public announcement of merger on July 05, 2017.

6.53. As per reply from ABC, Sahir was involved in the aforesaid merger and was in possession of UPSI and hence, was an insider in terms of Regulation 2(1)(g)(ii) of PIT Regulations.

6.54. It was observed that Hitesh was a connected person in terms of Regulation 2(1)(d)(i) of PIT Regulations and hence an insider in terms of Regulation 2(1)(g)(i) of PIT Regulations, considering the following –

i. A fund transfer was observed between Hitesh and Sahir (an insider) on December 05, 2016.

ii. Despite a fund transfer, Hitesh and ABC both denied any relationship/association/connection with each other and ABC also denied any relationship/association/connection of its directors (Sahir was a director of ABC) with Hitesh.

iii. Sahir did not provide any other documentary evidence w.r.t. property investment except the copy of passbook showing transfer of funds.

iv. Hitesh intentionally did not disclose his connection with Sahir initially and he was intentionally trying to hide his connection with Sahir and was providing false reference of Manu Patel for his connection with Sahir. Therefore, frequent communication between them could not be ruled out.

v. Hitesh did not trade in the scrip of ABC in the three months prior to the UPSI period. Further during the UPSI period, he bought shares of ABC on July 04, 2017 i.e. just one day before the public announcement of aforesaid merger on July 05, 2017.

6.55. In view of above, it was alleged that the following was alleged that Hitesh, (a connected person and thereby an insider), traded in the shares of ABC on the basis of UPSI when in possession of UPSI during the UPSI period and thereby, allegedly violated provisions of Regulation 4(1) of PIT Regulations and Section 12A(d) & (e) of the SEBI Act.

Jaisingh

6.56. It was observed that on BSE, Jaisingh had bought 6,300 shares of ABC during the UPSI period and sold 6,300 shares of ABC post UPSI period on July 13, 2017. The profit earned through aforesaid trading was Rs. 7.42 Lakh.

Correspondence between Jaisingh, Sudhir and ABC

6.57. With respect to professional details and relationship/association/connection with ABC, vide email dated August 25, 2021, Jainsingh, interalia, stated that he was working in banking sector in Dubai since last 9 years and his father, Sudhir worked with ABC Bearings Ltd. as General Manager- A&F/CFO.

6.58. Vide email dated September 02, 2021, Jaisingh was asked to provide details of his communication with his family members, inter-alia, including name of the family member, frequency of communication, mode of communication, his location at the time of communication during the period January 01, 2017 to July 31, 2017. In this regard, Jaisingh vide reply dated September 08, 2021, inter alia, stated that he was out of family house since 2004, and was out of country since about a decade. He was independent and had no financial support from his family. They communicated as a normal family would on festivals and occasions.

6.59. Further, vide email dated September 08, 2021, Sudhir was asked to provide details of his role in the merger of ABC with TIL through a scheme of Amalgamation and arrangement, inter-alia, including date of discussions, nature of discussions, person/s involved and details of communication with Jai Chaudhary, interalia, including frequency of communication, mode of communication, his location at the time of communication during the period January 25, 2017 to July 31, 2017. In this regard, Sudhir vide reply dated September 14, 2021, interalia, stated that he was never part of any meeting with TIL or any Professional agencies involved in the said merger with TIL. He was not even aware about the said corporate transaction at all till the time it was announced in public. So practically he had no role to play except giving information asked by management to be given, on a routine course which was also provided in a routine manner. Further, he stated that since his son was separated in finance, house and worship; he did not have much communication in such respect as such. However, normal greetings and blessing messages between family members on festivals and pious days did take place, which is normal that would happen in any family. Sudhir was in India all through that period of January to July 2017.

6.60. As it was stated by Sudhir that he was giving information asked by management, copies of all emails exchanged with Desai & Diwanji, CNK Associates, NA Shah Associates LLP or TIL or any other entity in respect of the merger of ABC Bearings Ltd and TIL were sought from TIL. In this regard, TIL vide its reply dated September 24,2021, interalia, forwarded certain emails and from one of the emails dated May 19, 2017, it was observed that the email dated May 19, 2017 from CNK Associates having subject line valuation requirement was forwarded to Sudhir by Sahir.

6.61. Further, with respect to copies of communication/emails of ABC with Keynote, vide email dated September 17, 2021, interalia, Keynote forwarded certain emails. From the aforesaid emails provided by Keynote it was observed that Sudhir was providing information to Keynote in respect of valuation of aforesaid merger. In one of the emails dated May 19, 2017, Sudhir had forwarded details related to valuation of ABC such as balance sheet, history of ABC, contingent liabilities pertaining to the Business and proposed to be transferred etc. to JM Financial Institutional Securities Ltd, which was the Financial Advisor to the Transaction (hereinafter referred to as **"JMFL"**).

6.62. Also, copies of communication/emails of Desai & Diwanji with Sudhir till July 2017 in respect of aforesaid merger were sought from Desai & Diwanji. In this regard, vide reply dated September 22, 2021, Desai & Diwanji, interalia, stated Sudhir was not directly involved in the merger transaction, and that their interactions with Sudhir were limited to procuring factual information from him in relation to accounting, tax and certain land related matters pertaining to ABC. Though the information was sought from him, he was not informed that it was sought in connection with the merger transaction.

6.63. Vide email dated September 27, 2021, Sahir (on behalf of ABC) informed that Sudhir was not aware of the merger. However, it was observed that, Sudhir was involved in the exchange of information pertaining to the merger and was also the Chief Financial Officer (CFO) of ABC. Further, his son had not traded in the scrip of ABC during three months prior to UPSI period and had bought 6,300 shares of ABC during the period February 14, 2017- March 10, 2017 (part of UPSI period).

6.64. Being the then CFO of ABC and due to the involvement in the exchange of information w.r.t. aforesaid merger, it was observed that Sudhir was a connected person in terms of Regulation 2(1)(d)(i) of the PIT Regulations and hence, was an insider in terms of Regulation 2(1)(g)(i) of PIT Regulations.

6.65. Jaisingh was a connected person in terms of Regulation 2(1)(d)(i) of PIT Regulations and hence, an insider in terms of Regulation 2(1)(g)(i) of PIT Regulations, considering the following –

i. He is son of Sudhir, who was a connected person in terms of Regulation 2(1)(d)(i) of PIT Regulations and hence, an insider in terms of Regulation 2(1)(g)(i) of PIT Regulations.

ii. Jaisingh and Sudhir (Son and Father), being family members and as communication between such close family members would seldom be in written form, frequent communication between them cannot be ruled out.

iii. Jaisingh did not trade in the scrip of ABC in the three months prior to the UPSI period.

6.66. In view of aforesaid, the following are alleged -

i) Sudhir communicated the UPSI to Jaisingh and thereby, allegedly violated provisions of Regulation 3(1) of the PIT Regulations and Section 12A(e) of the SEBI Act.

ii) Jaisingh, (a connected person and thereby an insider), traded in the shares of ABC on the basis of UPSI when in possession of UPSI during the UPSI period and thereby, allegedly violated provisions of Regulation 4(1) of the PIT Regulations and Section 12A(d) & (e) of the SEBI Act.

7. The submissions made by the Noticees have been summarized below in seriatim:

7.1 <u>Rajiv and Varsha</u>

7.1.1 The SCN proceeds on a fundamentally incorrect presumption that Rajiv was an insider by virtue of his prior professional relationship and interaction with Nipun and other individuals of Keystone. Rajiv’s association with Keynote was simply a professional relationship given that both operate in the investment space, as is the case with several other entities like merchant bankers, law firms and accounting firms who were involved in the ABC merger. Rajiv had been interacting with multiple individuals from

Keynote, including Nipun, and all interactions with Keynote, before, during, and after the purported UPSI Period had been strictly limited to topics of private equity investments, IPO mandates, etc. with respect to organizations where Rajiv is involved and had nothing to do with the impending merger of ABC.

7.1.2 SEBI has attempted to construct an allegation by putting together a presumption of frequent communication and a superficial proximity between the dates where Keynote had been approached for the Fairness Opinion and the trades of Rajiv and Varsha. The SCN only relies on *ipse dixit* to allege that because of the proximity of dates between the assignment given to Keystone by ABC and the purchase of shares by Rajiv and furthermore, the proximity of the dates between the subsequent purchase of shares and the eventual Announcement, Rajiv was in possession of UPSI.

7.1.3 The trading pattern of Rajiv and Varsha, in fact, indicates that some shares were sold when the price of the scrip fell and thereafter upon a rally of the price, Rajiv and Varsha purchased additional shares. Had Rajiv and Varsha intended to take benefit of the information, they would not have sold any shares and in fact would have taken advantage of the fall of prices to purchase additional shares knowing full well that the price would increase in the future.

7.1.4 The trades of Rajiv and Varsha are only a meagre portion of the total turnover of Noticees' during the concerned Financial Year and no large position was taken to take 'advantage' of UPSI.

7.1.5 The procedure for holding of inquiry as mandated under Adjudication Rules has not been followed.

7.1.6 Rajiv is Managing Director with RARE Enterprises (hereinafter referred to as **"RARE"**), an asset management firm. Rajiv has been involved in the financial market since 2006 with RARE in various professional engagements and is currently engaged closely in the private equity segment, handling various private equity deals and investment for RARE. Varsha is the wife of Rajiv. Varsha is an interior designer by profession and invests her savings in the financial market which are carried out by Rajiv on her behalf.

7.1.7 Rajiv and Varsha, have an extensive trading history, having been investing in the securities market for a considerable period of time. The investment strategy has been driven by market research, study of fundamentals, and tracking of price movements of scrips.

7.1.8 In 2017, there were large number of small and midcap stocks which were witnessing very high level of buying interest from investors across a host of sectors, including automotive components and bearings manufacturers. In view of this, Noticees had purchased shares a number of shares in several small and midcap stocks including ABC. Choice of investing in ABC was aligned with Noticees' trading strategy as there was interest in the sector on account of global demand for automotive parts and products and the peer group was indicating momentum.

7.1.9 Rajiv and Varsha had purchased 10,000 and 3,000 shares of ABC respectively. At the time of purchase of these shares, the share price ranged between Rs. 185 to Rs. 190 per share. Yet, after the holding the shares for over a month, as the price of the shares of ABC dropped to a low of Rs. 170 towards the end of June 2017, a decision was taken to sell a small portion of 3000 shares held by Noticee No. 2 on June 27, 2017, to prevent accumulation of losses. However, at the beginning of July 2017, the price of ABC once again rallied and began to trend upwards. Seeing this upwards trend, Noticees decided to purchase around 10000 shares of ABC on July 3, 2017 and as the prices continued to soar upwards, they made an additional purchase of around 5000 shares on July 4, 2017.

7.1.10 Announcement of ABC's merger with TIL resulted in a significant rise in the price. As the upward trajectory remained consistent over the coming week, Noticees decided to sell the shares in a phased manner, just as they had purchased and consolidated gains. As the share price crossed Rs. 400, Noticees decided to first sell the shares held by Noticee No. 2 and book profits and a week thereafter, as the share touched a 52 week high, Noticee No. 1 sold his shares and booked profits.

7.1.11 Noticees' trading in ABC was conducted in the ordinary course, using their funds, and in line with our general investment strategy. Noticees had been trading in various securities i.e., buying and selling, all through FY 2017-18, and their trading in ABC was done in ordinary course. In FY 2017-18, Noticees' total turnover from investments in the securities market was approx. Rs. 21 Crore, all in small and midcap companies, and had earned sizable profits from holding in several scrips including ABC, which incidentally only constituted a meagre percentage of the overall receipts from trading, being approximately 1.47%.

7.1.12 The only basis for levelling the instant allegation is that in response to SEBI's query to both Rajiv and Nipun to provide emails exchanged between them, no emails existed which pertained to the UPSI Period. Accordingly, SEBI prejudicially inferred absence of any correspondence in a brief period of time to mean that Rajiv had intentionally not provided any emails for the UPSI period. In this regard, Noticees have relied upon the judgement of the Hon'ble Supreme Court in the matter of Balram Garg vs SEBI.

7.1.13 SCN alleges without proof, that the proximity of dates between ABC approaching Keynote for issuance of Fairness Opinion and the purchase of shares by Rajiv and Varsha as well as the proximity of the purchase of additional shares and the Announcement meant that Rajiv and Varsha traded while in possession of UPSI, communicated by Nipun. In any event the alleged UPSI had not even crystallized when Rajiv and Varsha purchased shares of ABC. Rajiv and Varsha initially purchased 13000 shares on May 22 and May 23, 2022. At the relevant time, as per the chronology of events provided by both ABC and TIL, the parties were at the stage of having meetings to discuss the diligence findings and to discuss the transaction structure and documents. Therefore, as on May 22 or May 23, 2017, there was no resolution to the discussions and the information regarding the merger had not crystallized. In this regard, Noticees have relied upon the judgement of the Hon'ble Securities Appellate Tribunal (hereinafter referred to as **"SAT"**) in the matter of Rakesh Agarwal vs. SEBI.

7.1.14 Notwithstanding the fact that ABC has provided that the negotiations were completed on July 3, 2017, based on various chronologies provided by the intermediaries to the merger indicate that even as on July 3 and 4, 2017, the modalities to the transaction had not been completed.

7.1.15 Rajiv used his own demat account for long term trading, and that of Varsha for short term trading. This approach is evident in the instant matter where the decision to sell the shares held by Varsha was taken after just a month when the price dipped by Rs. 20/-, to prevent the accumulation of loss, while the shares were held long term in Rajiv's account. The strategy of short term trading in Varsha's account is further substantiated by SEBI's own data which shows that in addition to ABC, similar investments were also made in scrips of inter-alia VIP Industries, Kolte Patil, Onmobile to name a few. In fact, Kolte Patil is another such example where large gains were made by Rajiv and Varsha in a short period of holding.

7.1.16 Noticees placed reliance on the judgement of the Hon'ble Supreme Court in the matter of SEBI vs. Abhijit Rajan, wherein it was held, interalia, that the activity of an alleged insider demonstrating intent of profit motive is a crucial factor while alleging an allegation of insider trading and the same could not be sustained merely on a generic assertion of possession of UPSI. The same test could be applied to the present case to demonstrate the conduct of Rajiv and Varsha. The trades of Rajiv and Varsha were contrary to the assumption that the same were conducted while in possession of UPSI. For instance, it is alleged that Rajiv and Varsha had bought shares after being informed of the merger by Nipun. Assuming without admitting that being the case, it is submitted that there would be no reason for Rajiv to sell 3000 shares on June 27, 2022, and undertake a loss.

7.1.17 SEBI's premise that Rajiv and Varsha are connected persons and therefore deemed insiders is erroneous. SEBI has attempted to levy this allegation based on presumption that Rajiv and Nipun knew each other and had had prior interaction. However, in the matter of Balram Garg, the Hon'ble Supreme Court has settled the issue that communication of information has to be proved on the basis of material evidence and not circumstantial inference. Noticees also relied upon the judgement of the Hon'ble Supreme Court in the matter of Chintalapati Srinivasa Raju vs SEBI.

7.1.18 Trades undertaken by Rajiv and Varsha caused no impact on the price of the ABC's shares, and no harm was caused to the investors as a result. Further, no unfair gain or advantage occurred to Rajiv and Varsha as a result of the trades.

7.2 <u>Hitesh</u>

7.2.1 SCN has been issued after an unexplainable delay of 5 years, and therefore, it is liable to be disposed of as the delay has caused great prejudice to the Noticee. In this regard, Noticee has relied upon the judgements of the Hon'ble Sat in the matters of Yatin Pandya HUF vs SEBI, Ashlesh Gunwantbhai Shah vs SEBI, Rakesh Kathotia & Ors vs SEBI, Ashok Shivlal Rupani vs SEBI, Sanjay Jethalal Soni & Ors vs SEBI, Parag Sarda vs SEBI and ICICI Bank Ltd vs SEBI.

7.2.2 Further, it may be kindly noted that I regularly trade in the stock market and yearly undertake transactions of crores of rupees on the securities market.

7.2.3 The Noticee once against states and maintains that he does not know Sahir personally and directly. As stated earlier prior to the investigation period, on March 31, 2016 a transfer of Rs. 3 Lakh was made to the Noticee from Sahir as advance for a property investment negotiated/ facilitated through an intermediary, Mr. Manu Patel. As the opportunity did not fructify, the entire sum of Rs. 3 Lakh was returned to the Sahir on December 5, 2016.

7.2.4 SCN is vague and ambiguous, as it has alleged connection of Hitesh and Jaisingh, interalia, on the basis of comments mentioned in a word document in track change mode. In this regard, Noticee has relied upon the judgement of the Hon'ble SAT in the matter of Dhanalakshmi Bank Ltd vs SEBI.

7.3 <u>Menal</u>

7.3.1 Noticee made purchase of shares of ABC on the basis of apparent upward movement in price of the scrip of ABC, and sold the same after a few days considering the profit due to continued rise in the price. Further, Noticee's trade in ABC was not the largest of her trades in the concerned FY. If the Noticee had access to UPSI, she could have made larger profits in the scrip of ABC by buying more shares, and could have held the shares for a longer period of time.

7.3.2 Noticee had bought 7000 shares and had sold 7743 shares, that is, she sold 743 extra shares. The aforesaid indicates that she had been an owner of ABC since a considerable period of time and had been tracking the scrip.

7.3.3 Noticee does not interact about professional affairs with her son i.e. Anirudh R Parikh, and do not disclose their trades to each other. Further, Noticee had not hidden relation with Anirudh as she was under the impression that he had become a partner in P&S only after January 2017. Further, she does not keep track of the changes happening in P&S. She also does not have any relation with Himanshu.

7.3.4 Noticee did not have any malafide intentions which is evident from the fact that she had disclosed common address vis-à-vis Anirudh R Parikh during the course of investigation. Further, Menal vide her reply dated August 22, 2021 had responded honestly to the queries posed to her vide SEBI's email dated July 06, 2021, and had disclosed details of her relationship with Anirudh therein. Vide SEBI's email dated July 06, 2023, no query was posed to her with respect to P&S or Anirudh or Himanshu. Even the list of names as mentioned in SEBI's email dated July 06, 2021 had no reference to P&S, Anirudh or Himanshu.

7.3.5 Noticee's father was a director in various companies, and she had never solicited information from him for trading in those companies.

7.3.6 Noticee is neither an insider not a connected or deemed to be connected person for the purposes of instant matter. There is no proof of communication of UPSI by Anirudh R Parikh to the Noticee. Noticee also had no role to play in the negotiation with regard to the merger of ABC and TIL, and the allegations are based on surmises and conjectures.

7.3.7 Merely because a person was related or working together in the firm with the connected person cannot be itself be a foundational fact to draw an inference. In this regard, Noticee has relied upon the judgement of the Hon'ble Supreme Court in the matter of Chintapati Srinivas Raju vs SEBI, Kishore R Ajmera vs SEBI and Seema Silk & Sarees vs Directorate of Enforcement.

7.3.8 Menal traded in the scrip of ABC even after the purported UPSI period further fortifies the fact that she was trading in ABC as per her own independent trading strategy and not on the basis of any purported UPSI.

7.4 <u>Jaisingh</u>

7.4.1 Noticee vide its email dated September, 24, 2021 and November 13, 2021 had clarified reason behind his purchase of shares of ABC Bearings Ltd. The Noticee had stated that his sister Ms. Poonam Nirat Patel (daughter of Sudhir) is married, financially independent and stays separately. She takes her own decisions relating to investing in securities without consulting anyone. Ms. Poonam Nirat Patel had been regularly investing on her own and has been buying and selling shares of various companies periodically, including that of ABC Bearings Ltd. Coming to know of her trades and gathering that such investments made by her in 2016 had yielded good returns and that she had bought several times in 2016, starting from beginning of the year and including towards the end of 2016 again, the Noticee bought shares of ABC Bearings Ltd. in February 2017.

7.4.2 ABC Bearings Ltd has clearly denied that Sudhir was directly involved in the merger transaction and that he had no idea that any information/emails sent or received by him was in connection to the merger and therefore if he had no knowledge of the same the question of passing on the alleged UPSI to me cannot arise at all.

7.4.3 Besides stating that the present Noticee's father was the then CFO of ABC Bearings Ltd. and that been family members and as communication between such close family members would seldom be in written form, frequent communication between them cannot be ruled out, there is no evidence given. Therefore, in that respect, the SCN is extremely vague and ambiguous.

7.4.4 SCN alleges that the Noticee had knowledge of UPSI on May 19, 2017. However, Noticee had purchased shares of ABC in the months of February and March, 2017, which is prior to the dates of email establishing knowledge of UPSI, and the date on which Sudhir came to know of the merger of ABC with TIL.

7.4.5 The electronic evidence provided along with the SCN does not follow the provisions of Section 65B of Indian Evidence Act, 1872 and Information Technology Act, 2000. In this regard, Noticee relied upon the judgement of the Hon'ble Supreme Court in the matter of Arjun Panditrao Khotkar vs Kailash Kishanrao Goratyal.

7.5 Himanshu

7.5.1 Noticee is a partner in P&S, and has been associated with it for more than 45 years. Noticee has imbibed the quality of being honest and having strong moral principles, being a Partner of the firm. He is a practicing Chartered Accountant for over 50 years, and has an unblemished professional reputation.

7.5.2 Noticee did not play any role in trading scrip of ABC by Menal, nor had communicated to anybody about the merger of ABC with TIL.

7.5.3 The news of merger might have already been in the public domain during the alleged UPSI period, and thus, the question of there being a UPSI does not arise.

7.5.4 Noticee's presence in the meetings pertaining to the merger of ABC with TIL were passive and more for passive interest. He has not entered into a share transaction with ABC, and is not a beneficiary of the price variation.

7.5.5 There is no proof or direct and specific finding pertaining to the communication of the UPSI to Anirudh.

7.5.6 Merely because a person was working together in a firm with the connected person, cannot be a foundational fact to draw an inference. Noticee is not immediate relative to Anirudh or Menal, and has nothing to do with then in any decision making process pertaining to securities or otherwise. Noticee and Anirudh are also residing in separate addresses. In this regard, Noticee has relied upon the judgement of Hon’ble Supreme Court in the matter of Chintalapati Srinivasa Raju vs SEBI, Kishore R. Ajmera vs SEBI, Seema Silk & Sarees vs Directorate of Enforcement and Balram Garg vs SEBI, and contended that burden of proof is on SEBI to establish any communication of UPSI by placing on record cogent evidence.

7.5.7 Anirudh was not concerned with ABC or TIL, and had become partner of P&S only on January 01, 2017, and therefore, was not involved in meeting with old clients such as ABC. It is general practice in P&S to not discuss and disclose sensitive information of their respective clients. All the information is handled on a need-to-know basis by the respective partner and no sensitive information is communicated to any other person in the firm except to those who are involved in the dealings with the clients.

7.5.8 If Noticee intended to share UPSI with Anirudh, he would have done so in May 2017 or June 01, 2017 when he had first attended the meeting and price of the shares were low, and would not have waited for as late as July 04, 2017.

7.5.9 Provision to Regulation 4 of PIT Regulations provides that when no UPSI was communicated by the individuals possessing the information to the individuals taking trading decisions and there is no evidence of such arrangements have been breached, it cannot be said that Regulation 4 has been breached or violated.

7.5.10 The meeting of Audit Committee of ABC was held on July 04, 2017 at 04:00 PM, which implies that Noticee was not aware of any UPSI until after 4 PM, which is aftermarket hours. Therefore, Noticee could not have shared UPSI with regard to merger of ABC with TIL during the market hours of July 04, 2017 for anyone to take advantage of the same.

7.6 <u>Anirudh</u>

7.6.1 Noticee has not played any role in the trading scrip of ABC by Menal nor had any idea about the merger nor did communicate to anybody about the merger of ABC with TIL. Noticee has never played any role in the audit of ABC.

7.6.2 The relation of Menal with Noticee was not disclosed as he assumed that relationship with only the partner involved with ABC was to be disclosed. The same was a matter of misunderstanding.

7.6.3 If Noticee had any malafide intentions, he could have benefitted tremendously as P&S is statutory auditors for multiple listed entities, and share price of its clients has gone up manifold during the time P&S has been their internal auditor.

7.6.4 There is not proof of communication of UPSI by Noticee to Menal, and also, Noticee is not the beneficiary of the price variation. Noticee is neither an insider nor a connected person nor a person deemed to be connected, and was not directly related to ABC.

7.6.5 There is no direct or specific allegation that Himanshu communicated UPSI to Anirudh, who in turn communicated the same to Menal.

7.6.6 There are no findings to conclusively establish that Noticee was an insider or that he had possession of UPSI. The SCN also does not show or establish when and how Anirudh purportedly communicated any UPSI to Menal on the basis of which she traded in the scrip of UPSI.

7.6.7 At the outset, it is also SEBI's case that Anirudh was not in receipt of or in possession of any information or was privy to any discussion in any manner whatsoever with respect to the merger of ABC with TIL.

7.6.8 Noticee is not a connected person in terms of Regulation 2(1)(d)(i) of PIT Regulations. Noticee is not connected with ABC in any manner, and only one of the Partners of P&S has been interacting with ABC on behalf of the firm. It is fallacious to assume to merely because Noticee was a partner of P&S, he would have all information of ABC.

7.6.9 Menal is an active trader in market, and places her trades on the basis of her own independent research and guidance from professionals.

7.6.10 If the intention of Noticee was to share UPSI with Himanshu/ Menal, then he would have done the same in May, 2017, and not in July, 2017, as alleged in SCN.

7.6.11 Noticee relied on the judgement of the Hon'ble SAT in the matter of Dilip Pendse vs SEBI, and of the Hon'ble Supreme Court in the matter of Balram

Garg vs SEBI, and contended that to prove charges of insider trading, the allegations must be fully established and all the facts must be consistent with guilt of the accused.

7.7 Sudhir

7.7.1 ABC has denied that that the Noticee was directly involved in the merger transaction and stated that he had no idea that any information/emails sent or received by him was in connection to the merger and therefore if he had no knowledge of the same the question of passing on the alleged UPSI to Jaisingh cannot arise at all. Further, as then then CFO of ABC Bearings Ltd., it was responsibility of the Noticee to routinely send necessary information like valuations, balance sheets etc. to the management for their strategic considerations, however, that does not imply that Noticee was aware of the transactions for which they were sought, in this case the merger.

7.7.2 SCN is extremely vague and ambiguous. Besides stating that the present Noticee was the then CFO of ABC and had received/sent some emails, there is no evidence given on how the information contained in the said emails is relevant. Therefore, in that respect, the SCN is extremely vague and ambiguous. In this regard, Noticee has relied upon the judgement of the Hon'ble SAT in the matter of Dhanalakshmi Bank Limited vs SEBI.

7.7.3 Jaisingh purchased shares in the month of February 2017 and March 2017, which is prior to the dates of these emails and prior to the date on which the present Noticee allegedly came to know of the merger.

7.7.4 As reliance has been placed in the instant matter on one email dated May 19, 2017 to draw the inference that Noticee was aware of the merger, cross examination of TIL personnel who forwarded the said emails to SEBI, CNK Associates who were the authors of the email, and that of Sahir, who allegedly forwarded the emails dated May 19, 2017 to Noticee was necessary. The same was needed to ascertain the reasons for parting with such information and to know whether Noticee was aware of such reasons. Also, it would be necessary to cross examine the officials of JMFL to whom

Noticee sent the other email dated May 19, 2017, to ascertain why such information was being parted with and whether Noticee was aware of such reason.

7.7.5 Since SEBI sought copies of communication/emails from Desai & Diwanji with Sudhir till July 31, 2017, details given by Desai & Diwanji of communication from January 1, 2017 till July 31, 2017 should have been provided. Further, cross examination of employees of Desai & Diwanji who are the authors of such emails, should have been allowed.

7.7.6 Noticee was stationed at Bharuch plant of ABC until he left the company in November, 2018. However, the registered office of ABC is that of Mumbai and corporate affairs including, all merger related corporate transactions were handled in Mumbai office where MD, Chairman, Company Secretary and other promoter group director, i.e. Sahir were located. Therefore, Noticee was not aware of the ongoing discussions about proposed merger of ABC with TIL.

7.7.7 Further, as then then CFO of ABC Bearings Ltd., it was the Noticee's responsibility to routinely send necessary information like history of the company, valuations, balance sheets etc. to the management when asked for their strategic considerations. However, it does not imply that the Noticee was aware of the transactions for which they are sought, in this case the merger.

7.8 Nipun

7.8.1 The SCN is mutually contradictory as on one hand it charges Nipun for communicating alleged UPSI presumably, on the other hand the SCN does not provide what was the UPSI in possession of Nipun, his role, act, motive, profit or loss avoided, or any other reason thereof.

7.8.2 It has been alleged that Nipun had allegedly communicated a purported UPSI to Rajiv relying on which Rajiv had undertaken certain transactions. Therefore, cross-examination of Rajiv becomes relevant. Without these documents and opportunity of cross-examination being made available to

Nipun, it is not possible for Nipun to effectively defend the allegations levelled against him in the SCN.

7.8.3 SEBI provided only selective information during the course of inspection of documents provided to the Noticee, and the same cannot be considered as knowledge of complete facts for Noticee. In this regard, Noticee has relied upon the judgements of the Hon'ble Supreme Court in the matters of T. Takano vs SEBI and Reliance Industries vs SEBI. Noticee has further relied upon the judgement of the Hon'ble Supreme Court in the matter of Price Waterhouse vs SEBI, and contended that not only the "relied upon", but all the documents collected during the course of inspection must be provided. As laid down in Mayrose Capfin Private Ltd v. SEBI, a fundamental principle of natural justice that squarely applies in quasi-judicial proceedings, such as the present matter, is that an adjudicatory body cannot base its decision on any material unless the person against whom it is sought to be utilized is apprised of it.

7.8.4 It needs to be considered that Nipun has issued at least 50 fairness opinions for various reputed companies and there has never been any question or allegation whatsoever. The impeccable track record and career of Nipun is being questioned here based on assumptions and presumptions. In this regard, Noticee has relied upon the judgement of the Hon'ble SAT in the matter of Dilip Pendse vs SEBI.

7.8.5 It has been alleged that Nipun was in possession of alleged UPSI due to his employment with Keynote. However, no specific evidence has been presented by SEBI in SCN to establish the nature of alleged UPSI nor the possession of the same by Nipun. In fact, the SCN is surprisingly silent as to what was that information which was price sensitive in relation to merger of ABC with TIL that was in possession of Nipun. No email has been provided to this effect.

7.8.6 Further, to the surprise of Nipun, the statement recorded of Nipun before the Investigating Authority on September 15, 2021 under Oath in compliance of Section 11C of the SEBI Act has not been considered and is not even mentioned in the SCN perhaps for the reason that it demolishes

SEBI's assumption and presumption. Accordingly, not considering the statement on Oath available on record of Nipun is perverse in facts and in law. Using selective evidence, despite being available with SEBI, is in violation of Section 11C of the SEBI Act vitiating the entire proceedings and makes the SCN perverse.

7.8.7 It is submitted that there was no UPSI in possession of Nipun and no UPSI was needed to be known by Nipun, in furtherance of legitimate purposes, performance of duties or discharge of legal obligations. Fairness Opinion drafted by Keynote was based on the valuation report by the independent valuer which in turn considers performance of the company and disclosures such a financial result, Profit & Loss etc which were all in public domain.

7.8.8 The impugned transaction was not even finalized at the time when Keynote submitted the Fairness Opinion. In this regard, Noticee relied upon the judgement of the Hon'ble SAT in the matter of Samir C. Arora vs SEBI, wherein it was held that information that is uncertain could not be labelled as information at all.

7.8.9 SCN does not assert / allege what was that particular UPSI, which was not in furtherance of legitimate purposes, performance of duties or discharge of legal obligations, that was possessed by Nipun. In the absence of any evidence to suggest the same, it could not be held that Nipun was aware, or might have been aware, of the price sensitive information.

7.8.10 There is no material to show that Nipun had access to UPSI. As in the definition of 'connected persons' in terms of PIT Regulations, the person should be reasonably expected to be in possession of UPSI, which is absent in the SCN. Noticee has relied upon the judgement of the Hon'ble Supreme Court in the matter of Chintapali Raju vs SEBI and contended that conclusive evidence must establish that the connected person could be reasonable expected to have access to UPSI.

7.8.11 The assumption against Nipun being an insider, in absence of any material evidence on record would be, SEBI's 'figment of imagination', as has been held recently in the matter of Vishvapradhan Commercial Pvt. Ltd. v. SEBI, although in the context of Takeover Code. Therefore, any information in possession of Nipun was strictly on a ‘need-to-know’ basis in furtherance of legitimate purposes, performance of duties or discharge of legal obligations.

7.8.12 Nipun could not be held liable unless there was an evidence to prove that he “possessed or accessed” and thereafter “communicated” UPSI to any other person. Further, this communication of alleged UPSI should be based on the cogent material evidence and could not be based on assumptions and presumptions. In this regard, Noticee relied upon the judgement of the Hon’ble Supreme Court in the matter of Balram Garg v. SEBI.

7.8.13 The statement recorded by Rajiv before the Investigating Authority on September 15, 2021 under oath in compliance of Section 11C of the SEBI Act has not been considered and is not even mentioned in the SCN. Rajiv had in the aforesaid statement submitted that his interactions with Nipun were routine professional exchanges and no discussions with respect to ABC were held.

7.8.14 Rajiv has himself admitted that he had known and had communication with several other entities involved in the impugned transaction. However, during investigation when the aforementioned entities were asked about their ‘association / relation / connection’ to Rajiv or if they ‘knows / knew’, all of these entities, except Keynote, had either made vague / evasive submissions or remained silent on their ‘association / relation / connection’ with Rajiv. Further, the aforesaid entities had given submissions, which were at variance with the submissions made by Rajiv himself. However, SEBI did not seek any further information or clarification from them. SEBI has purported that Nipun had communicated the alleged UPSI solely on the ground that he had honestly responded to the queries of SEBI, unlike the others entities. In this regard, Noticee has relied on the judgement of the Hon’ble SAT in the matter of Shruti Vora vs SEBI, wherein it was held, interalia, that a person could not be held liable for communication of UPSI unless it was proved by SEBI with regards to knowledge, possession and the onward communication with the knowledge of UPSI for an intent / motive. Further, the Hon’ble Supreme Court in the matter of SEBI vs

Abhijeet Rajan held that transactions done while in possession of UPSI were not violative of PIT Regulations if the motive for the trade was not established.

7.8.15 None of the factors provided in Section 15J of the SEBI Act are applicable in the instant matter against Nipun.

Issue No. I: What is UPSI in the instant matter and when the UPSI came into existence and what was the UPSI Period?

8. Before dealing with the issues on merits, I note that the Noticees have raised the ground of delay, and contended that the SCN is liable to be disposed of as it has been issued after an unexplainable delay of more than 5 years, causing great prejudice to the Noticees. In this regard, Noticees have relied upon the judgements of the Hon’ble SAT in the matters of Yatin Pandya HUF vs SEBI, Ashlesh Gunwantbhai Shah vs SEBI, Rakesh Kathotia & Ors vs SEBI, Ashok Shivlal Rupani vs SEBI, Sanjay Jethalal Soni & Ors vs SEBI, Parag Sarda vs SEBI and ICICI Bank Ltd vs SEBI. In this regard, I find it relevant to note the chronology of events in the matter which have culminated in the instant proceedings. I note that pursuant to preliminary examination in the matter after public announcement of the merger of ABC with TIL, matter was referred for detailed investigation to the Investigation Department of SEBI on July 23, 2018. Thereafter, comprehensive investigation was done pertaining to the trading pattern of 17 suspected entities, involving detailed analysis of bank statements, replies of the entities etc for finding out relations/ connections, if any, of the entities with the alleged insiders. Pursuant to the investigation, Adjudication Proceedings in the matter were approved on December 07, 2021. Further, the matter was transferred to the undersigned on September 05, 2022. Accordingly, SCN was issued on September 20, 2022. Thereafter, the matter was kept pending for disposal of settlement application by, interalia, Sahir Patel. Settlement Division of SEBI informed the undersigned about disposal of settlement applications of the aforesaid Noticee on August 23, 2023. In summary, I note that pursuant to the merger of ABC with TIL, SEBI had carried

out preliminary examination immediately to ascertain whether insider trading had been done. However, in view of the prima facie findings made in the preliminary examination, the matter had to be referred for detailed investigation, which consumed some time on account of complexity of the matter, interalia, involving detailed analysis of possible connections to satisfy higher burden of proof required to establish charges of insider trading.

9. I further note that the case laws relied upon by the Noticees are distinguishable from the instant matter. For instance, in the matter of Ashok Shivlal Rupani vs SEBI, the violations alleged therein occurred in 2010, and the Investigation Period was observed between January 04, 2010 to January 10, 2011, while the SCN was issued in 2018. Further, the disclosure violations that had occurred were held to be 'technical' in nature by the Hon'ble SAT, which is distinguishable vis-a-vis the instant matter. In the matter of Yatin Pandya HUF vs SEBI, the disputed trades were of the year 2008-2009, and the SCN was issued after a delay of more than 11 years. In the matter of Parag Sarda vs SEBI, the alleged violation had occurred in 2002, while the SCN had been issued after a delay of more than 17 years in 2019. Accordingly, I note that the instant matter is distinguishable from the referred case laws on grounds of less quantum of time gap in issuance of SCN since the approval of Adjudication Proceedings, and justification of the same on grounds of time invested in analysis of trades and connections of multiple entities. Therefore, the contention of delay made by the Noticees is not acceptable considering the aforementioned chronology and facts of the case. I now proceed to consider the matter on merits.

10. I note that the term UPSI has been defined in Regulation 2(1)(n) of the PIT Regulations as below:

"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.

11. I note from the conjoint reading of above provision that UPSI is 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.

12. In the instant matter, on July 05, 2017 at 02:09 AM, ABC made a corporate announcement relating to merger of ABC with TIL through a scheme of amalgamation and arrangement to BSE and on the same day, TIL made a corporate announcement related to aforesaid merger to BSE and NSE at 01:22 AM and 08:42 AM respectively. I not that the 'mergers' fall in the definition of UPSI as per Regulation 2(1)(n)(iv) of the PIT Regulations.

13. I further note that the details of the corporate announcements made by ABC during the Investigation Period and their impact on the price of the scrip of ABC are given as follows:

S No	**Date/ Time**	**Announcement/ News**	**Price Impact/Shares Traded**						**Remarks**
			Date	Open(O)	High(H)	Low(L)	Close(C)	No of shares traded	
1	17-03-2017 17:20:20	<u>Updates</u> Intimation under Regulation 30 of the SEBI (Listing Obligations and	17.03.2017	166.60	169.95	165.65	169	2,102	The closing price of the scrip increased by 6.92% on the next trading
			20.03.2017	171	183.50	169.60	180.70	91,875	

<table>
<tr><td></td><td></td><td>Disclosure Requirements) Regulations, 2015 to inform that the Board of Directors fo ABC Bearings Ltd at its meeting held on 16 March, 2017 has granted its approval for the sale of its entire 2.5% equity stake in NSK-ABC Bearings Pvt Ltd</td><td></td><td>day of announcement.</td></tr>
<tr><td>2</td><td>21-03-2017 17:02:04</td><td><u>Updates</u>
Intimation under Regulation 30 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 to inform that ABC has sold its entire 2.5% equity stake in NSK ABC bearings Pvt Ltd to NSK India Sales Company Pvt Ltd</td><td><table>
<tr><th>Date</th><th>Open(O)</th><th>High(H)</th><th>Low(L)</th><th>Close(C)</th><th>No of shares traded</th></tr>
<tr><td>21.03.2017</td><td>180.70</td><td>181</td><td>173.80</td><td>175.50</td><td>16,2987</td></tr>
<tr><td>22.03.2017</td><td>175</td><td>175.30</td><td>169</td><td>169.25</td><td>15,223</td></tr>
</table></td><td>No substantial movement in price.</td></tr>
<tr><td>3</td><td>11-04-2017 17:23:54

11-04-2017 17:31:16</td><td>Compliance Certificate Under Regulation 7(3) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 for the period ended as on 31st March, 2017

Statement of Investor Complaint For the quarter ended 31st March, 2017 as per Regulation 13(3) of SEBI (Listing Obligations and</td><td><table>
<tr><th>Date</th><th>Open(O)</th><th>High(H)</th><th>Low(L)</th><th>Close(C)</th><th>No of shares traded</th></tr>
<tr><td>11.04.2017</td><td>176.50</td><td>185.90</td><td>173.15</td><td>182.50</td><td>78,342</td></tr>
<tr><td>12.04.2017</td><td>183</td><td>184.95</td><td>178.80</td><td>183.05</td><td>11,231</td></tr>
</table></td><td>No substantial movement in price.</td></tr>
</table>

<table>
<tr><td></td><td>11-04-2017 18:19:29</td><td>Disclosure Requirements) Regulations, 2015

Shareholding for the period ended March 31, 2017</td><td></td><td></td></tr>
<tr><td>4</td><td>14-04-2017 15:34:17</td><td>Certificate Under Regulation 40(9) of SEBI (Listing Obligations And Disclosure Requirements) Regulations, 2015 in respect of half year ended 31st March, 2017, issued by SV Subramania Iyer, Practising Company Secretary</td><td><table>
<tr><td>Date</td><td>Open(O)</td><td>High(H)</td><td>Low(L)</td><td>Close(C)</td><td>No of shares traded</td></tr>
<tr><td>13.04.2017</td><td>184</td><td>187</td><td>181.55</td><td>184.55</td><td>11,239</td></tr>
<tr><td>17.04.2017</td><td>186.90</td><td>186.90</td><td>180</td><td>180</td><td>2,543</td></tr>
</table></td><td>No substantial movement in price.</td></tr>
<tr><td>5</td><td>16-05-2017 15:53:50

16-05-2017 16:03:41</td><td>Board Meeting on 24th May, 2017 Notice is hereby given pursuant to Regulation 29(1)(a) and 29(1)(e) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 that a Meeting of the Board of Directors of the Company will be held on Wednesday the 24th May, 2017 at Mumbai, inter alia, to consider and approve Audited Financial Resutls of the Company for the year ended 31st March, 2017 and to recommend dividend, if any.

Board to consider Dividend</td><td><table>
<tr><td>Date</td><td>Open(O)</td><td>High(H)</td><td>Low(L)</td><td>Close(C)</td><td>No of shares traded</td></tr>
<tr><td>16.05.2017</td><td>174.80</td><td>174.80</td><td>174</td><td>174</td><td>429</td></tr>
<tr><td>17.05.2017</td><td>175.30</td><td>181.80</td><td>171.90</td><td>180.75</td><td>6289</td></tr>
</table></td><td>No substantial movement in price.</td></tr>
</table>

<table>
<tr><td>6</td><td>24-05-2017 18:51:13

24-05-2017 19:17:40</td><td>Financial Results for the year ended 31.03.2017
The above results have been reviewed by the Audit Committee and approved by the Board of Directors of the Company at their meeting held on 24th May, 2017. The Board has also recommended dividend @ 20% for the financial year ended 31.03.2017

Board recommends dividend</td><td>
<table>
<tr><td>Date</td><td>Open(O)</td><td>High(H)</td><td>Low(L)</td><td>Close(C)</td><td>No of shares traded</td></tr>
<tr><td>24.05.2017</td><td>191</td><td>196.50</td><td>181.45</td><td>189.75</td><td>12,349</td></tr>
<tr><td>25.05.2017</td><td>192.90</td><td>193</td><td>178.40</td><td>179.45</td><td>17,919</td></tr>
</table>
</td><td>No substantial movement in price.</td></tr>
<tr><td>7</td><td>05-06-2017 15:02:59</td><td>Financial Results For 31.03.2017 Notice is hereby given pursuant to Regulation 29(1)(a) and 29(1)(e) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 that a meeting of the Board of Directors of the Company will be held on Wednesday, the 24th May, 2017 at Mumbai, interalia to consider and approve Audited Financial Results of the Company for the year ended 31st March, 2017 and to recommend dividend, if any.</td><td>
<table>
<tr><td>Date</td><td>Open(O)</td><td>High(H)</td><td>Low(L)</td><td>Close(C)</td><td>No of shares traded</td></tr>
<tr><td>02.06.2017</td><td>175.95</td><td>175.95</td><td>170</td><td>170.45</td><td>11,583</td></tr>
<tr><td>05.06.2017</td><td>170</td><td>174.70</td><td>170</td><td>173</td><td>14,113</td></tr>
</table>
</td><td>No substantial movement in price.</td></tr>
<tr><td>8</td><td>05-07-2017 02:09:07</td><td>Amalgamation/ Merger/ Demerger</td><td>
<table>
<tr><td>Date</td><td>Open(O)</td><td>High(H)</td><td>Low(L)</td><td>Close(C)</td><td>No of shares traded</td></tr>
</table>
</td><td>The closing price of the scrip increased</td></tr>
</table>

		This is to inform you that the Board of Directors ("Board") of ABC Bearings Ltd ("Transferor Company") at its meeting held today, July 04, 2017, has approved the merger of ABC Bearings Ltd as a going concern with TIL ("Amalgamation")	04.07.2017	201.35	238.10	201.35	238.10	1,05,426	by 19.99% on the next trading day of announcement
			05.07.2017	285.70	285.70	285.70	285.70	12,514	

I note that price of the scrip of ABC moved from a closing price of Rs.238.10 on July 04, 2017 to the closing price of Rs. 285.70 on July 05, 2017 on BSE i.e. it registered an increase of 19.99% in one trading day. I note that the said information pertaining to the merger of ABC with TIL was not publicly available, and upon becoming available in public domain, affected the price of the scrip of ABC materially. Therefore, I note that the said information satisfies the ingredients of being a price sensitive information in terms of provisions of Regulation 2(1)(n)(iv) of the PIT Regulations.

14. I note that the chronology of events pertaining to the merger between ABC and TIL, as provided by the entities, was as follows:

14.1. AB (email dated July 02, 2021)

S No	Date/ Period	Event
1	15 April, 2017 and 24 April, 2017	Meeting to discuss transaction documents
2	3 May 2017	Meetings to discuss due diligence aspects
3	23 May 2017	Meeting to discuss transaction structure
4	5June 2017	Meeting to discuss transaction structure including tax structuring
5	28 June 2017	Meeting to close out remaining open issues on the transaction documents
6	February 2017 to 4 July 2017	Discussions included the following: • Discussing various commercial, tax, accounting and legal issues connected to structuring the transaction • Negotiating the terms and conditions of the transaction documents On 3 July 2017 the negotiations on the terms of the transaction documents were concluded

14.2. TIL (emails dated June 23, 2021 and September 20, 2021)

S No	Date/s	Event
1	25/01/2017	Letter of Intent was signed by Timken
2	27/01/2017	Letter of Intent executed between the Company and the TransferorCompany.
3	15/04/2017, 24/04/2017 and 25/04/2017	Meetings to discuss transaction documents
4	03/05/2017	Discussion on the due diligence findings
5	23/05/2017	Meetings to discuss transaction documents
6	05/06/2017	Discussions on the tax implications of the transaction
7	28/06/2017	Meetings to discuss transaction documents
8	04/07/2017	Audit Committee and Board Meetings of the Company.

14.3. Pricewaterhouse Coopers Pvt Ltd (assisted in financial and tax due diligence of the Target and review of documentation related to the transaction) (email dated July 21, 2021)

S No	Date / Period	Event
1	July 25, 2016	Preliminary discussion on the acquisition. The discussion related to the modes in which a listed entity can acquire another entity (directly or through subsidiary) and high level implications (stamp duty, taxation etc.). The name of the target was not disclosed
2	November 11, 2016	Preliminary discussion on the acquisition and steps involved in merger of listed entities. The name of the target was not disclosed
3	November 21, 2016	Discussion on draft step plan for acquisition of listed entity by way of merger
4	November 24, 2016	Email and Draft scope of work of PwC in relation to due diligence assistance
5	December 2, 2016	Email and Preliminary checklist of information for the due diligence
6	December 15,2016	Discussion on requirements of TIL for IT due diligence, credentials of the team and discussion on scope of work for the diligence
7	February 17, 2017 to April 07, 2017	This was the due diligence period when the diligence teams were in regular discussions with TIL teams for receipt of information, seeking clarifications, updating information request lists, having weekly update meetings etc.
8	March 9, 2017	Email and Draft key deal tax report shared
9	March 16-28, 2017	Discussion on draft demerger scheme, Draft detailed tax DD report shared, Discussion on report, TP implications of the transaction, Finalization of scheme for Demerger, Discussion on accounting under IND AS
10	March 30, 2017 and March 31,2017	Email trail and Draft slide deck with comments from an tax perspective on the various options for acquisition envisaged by TIL
11	April 03-21, 2017	Email and Draft IT DD report, Mail and deck with comments on the tax implications of proposed acquisition structure Email and Draft Financial DD report
12	May-June 2017	Discussion around and preparation of list of debt like items Discussion on scheme of arrangement, tax implications, accounting implications etc
13	June 26, 2017	Communication of final structure-merger of ABC into TIL
14	June 28, 2017 to July 1, 2017	Draft scheme of amalgamation for review

14.4. JMFL (Financial Advisor to the Transaction, Merchant Banker) (letter dated July 27, 2021)

S No	Date/ Period	Event
1	8-Aug-2016	Meeting between the representatives of JM Financial Institutional Securities Limited ("JMFISL") and TIL at TIL's office in Bengaluru wherein JM Financial made a presentation on potential transaction options
2	30-Aug-2016	Execution of Engagement Letter (EL) for provision of advisory services by JMFISL to TIL for the proposed transaction
3	18-0ct-2016	Email correspondence by JMF Representatives with the international deal team of the Timken Group and representatives of TIL (hereinafter collectively referred to as the "Timken Representatives") in relation to certain queries received from them.
4	19-Nov-2016	Sharing of preliminary draft of the Letter of Intent (LOI) by JMF
5	21-Nov-2016	Sharing of revised draft of the LOI by JMF Representatives
6	28-Nov-2016	Received comments on the draft LOI from Timken
7	29-Nov-2016	Draft LOI was shared by the JMF Representatives with J. Sagar Associates, ("JSA", Legal Advisors to TIL}
8	4-Jan-2017	Revised draft of the LOI after incorporating the comments received from Ambit Pvt. Ltd. ("Ambit", Advisor to the ABC)
9	5-Jan-2017	JMF Representatives sent their observations on the revised draft of the LOI to Ambit with a copy marked to Timken Representatives.
10	12-Jan-2017	Received responses/comments from Ambit on the observations shared with them on 5th January, 2017
11	25-Jan-2017	Execution of LOI amongst the concerned parties.
12	27-Jan-2017	Activity timeline was shared by Timken Representatives with the JMF Representatives. Group meeting between Timken Representatives and JMF Representatives via conference call
13	29-Jan-2017	Email summarizing the discussions held during the group meeting/call on 27th January 2017 was circulated by the Timken Representatives.
14	3-Feb-2017	Quotes received from three VDR service providers were shared with Timken Representatives
15	7-Feb-2017	JSA shared their views on Stamp Duty and Applicable Approvals
16	21-Feb-2017- 25- Feb-2017	i. Draft Implementation Agreement was shared by JSA with Timken Representatives and JMF Representatives for their review and comments ii. Timken Representatives shared their initial comments/questions on the Draft Implementation Agreement. Response by JSA and circulation of revised draft of the Implementation Agreement.
17	28-Feb-2017	Draft Scheme of Arrangement was shared by JSA with the Timken, Representatives for review and comments along with a copy marked to, JMF Representatives
18	30-Mar-2017 & 31-Mar-2017	Evaluation of restructuring options between Timken Representatives and PwC, Due Diligence advisor to Timken for the proposed transaction.
19	22-Apr-2017	Promoter Support Agreement shared by JSA with Timken Representatives and JMF Representatives for comments
20	28-Apr-2017	JMF Representatives shared the timeline specifying the activities to be completed on or before the Board Meeting with the Timken Representatives.
21	8-May-2017	JMF Representatives shared a revised schedule of activities with the

		Timken Representatives after discussion
22	15-May-2017	JSA circulated the draft agenda for the board meeting along with the draft board resolution and draft audit committee report on recommendation of the Scheme.
23	16-May-2017	Timken Representatives shared their comments on the draft engagement letter for appointment of SSPA & Co., Chartered Accountants, for recommendation of fair share entitlement ratio.
24	17-May-2017	JSA circulated the draft of the Stock Exchange Intimation and the Press Release
25	25-May-2017	Execution of letter agreement between JMFISL and TIL for extension of EL for further period of one year.
26	27-Jun-2017	JMF Representatives shared a working related to swap ratios with the Timken Representatives
27	30-Jun-2017	JMF Representatives shared the draft Fairness Opinion with the Timken Representatives
28	3-Jul-2017	JMF Representatives shared the draft Management Representation letter with the Timken Representatives for their review and comments
29	4-Jul-2017	Timken Representatives shared the draft Stock Exchange Intimation. JMFISL issued Fairness Opinion to the Board of Directors of TIL on the share exchange ratio recommended by SSPA & Co, Chartered Accountants, for the proposed Scheme of Amalgamation and Arrangement
30	5-Jul-2017	TIL submitted an intimation to Stock Exchanges announcing the merger of ABC with TIL.

14.5. S.R. Batliboi & Co LLP (Chartered Accountants, Statutory Auditors) (email dated July 14, 2021)

S No	Date/s	Event
1	24-Mar-17	First discussion between CFO and Partner where CFO informed the Partner about the proposed transaction. Discussions on the accounting implications of the proposed transaction.
2	28-Mar-17	Discussions on the accounting implications of the proposed transaction.
3	03-Apr-17	Discussion on Illustrative accounting entries for various acquisition scenarios.
4	04- May-17	Avila(Director) informed Avishrant on our understanding of the certificates which the Company will require for the scheme. Avila also informed Avlshrant of our estimated efforts and the fees for these services and the requirement of Corporate Audit Committee approval for accepting the services.
5	16-May-17	Draft scheme was shared with SRBC
6	05- Jun-2017, 21-Jun-17	Discussions on the tax and accounting implications of the transaction.
7	27-Jun-17 & 28-Jun-17	Appointed date of scheme was discussed Revised draft scheme was shared with SRBC
8	04-Jul-17	Service scope letter for the certificate required under the scheme was signed between SRBC and TIL. Following certificates were issued by us - a) Certificate on accounting treatment under the scheme b) Voting certificate (Non- applicability of requirements prescribed
9	28-Jul-2017	Avishrant (CFO, TIL) requested for certain information on our firm and people who have worked in respect of the engagement on the proposed transaction

10	01-Aug-17	Certificate of pre and post net worth was issued by SRBC

14.6. J. Sagar Associates (Law Firm advising TIL) (letter dated July 16, 2021)

S No	Date	Event
1	November 28, 2016	i. Timken approaches JSA for the proposed transaction ii. JSA provides its quote for the proposed transaction
2	November 29, 2016	i. Timken engages JSA for the proposed transaction with the ABC Bearings Ltd. ii. Timken shares the first draft of Non-binding Offer Letter ("Lol") with JSA for review and comments
3	January 30, 2017	Timken shares signed copy of Lol
4	February 09, 2017	Email from JSA setting out names of attorneys for access to the virtual data room
5	February 10, 2017	Letter of engagement executed by Timken
6	February 13, 2017	Email from Timken requesting JSA to proceed with due diligence and drafting of application to the CCI
7	February 14, 2017	JSA shares CCI analysis with Timken
8	February 21, 2017	JSA shares draft Implementation Agreement with Timken. Timken shares preliminary timeline with JSA
9	February 28, 2017	JSA shares draft Implementation Agreement with Timken.
10	March 11, 2017	Email from JSA circulating the preliminary key issues identified in the legal due diligence
11	April11, 2017	Call to discuss the preliminary legal key issues report
12	April13, 2017	Call to discuss implementation agreement and next steps.
13	May 15, 2017	Email circulating first drafts of: Agenda for the board meeting; board resolution; audit committee report on recommendation of the scheme.
14	May 18, 2017	Email from Timken circulating draft press release (India), press release (Global); customer communication and FAQs for comments
15	May 20,2017	Email from Desai Diwanji, legal advisors to ABC, circulating a preliminary draft of the disclosure letter along with annexures
16	May 23, 2017	Meeting scheduled with Alphabet promoter family on May 23, 2017 at 10:00 at JMFL office.
17	June 23, 2017	Email intimating the intent of both sides to announce the deal by July 01, 2017 and requesting JSA to start finalizinQ the documents
18	July 04, 2017	Final version of MoU, Waiver Letter, Promoter Support Agreement and the Scheme was circulated.
19	July 05, 2017	i. Execution version of the lA was circulated ii. Implementation Agreement and Scheme was executed. iii. Promoter Support Agreement was executed. iv. Memorandum of Understanding was executed v. Waiver letter was executed. vi. Disclosure letter was executed

14.7. Desai & Diwanji (legal advisors for ABC) (email dated July 09, 2021)

S No	Date	Event
1	15 April 2017 & 24 April 2017	Meeting to discuss transaction documents

2	23 May 2017	Meeting to discuss transaction structure
3	5 June 2017	Meeting to discuss transaction structure including tax structuring
4	28 June 2017	Meeting to close out remaining open issues on the transaction documents
5	03-05 July 2017	Conclusion of negotiations on the terms and conditions of transaction documents
6	February 2017 to June 2017	Several discussions were held over meetings, calls and emails between ABC, its advisors and Timken and its advisors to finalize the structure and terms and conditions of the transaction

14.8. CNK Associates (Tax Advisors for ABC) (letter dated July 12, 2021)

S No	Date	Event
1	May 09, 2017	Comments on the implementation of agreement (from an accounting/tax perspective) in connection with the transaction
2	May 23, 2017	Meeting to discuss transaction structure
3	May 30,2017	Email containing note on Ind-AS(accounting) and tax implications with regards to the transaction.
4	June 05, 2017	Discussion of the accounting/tax implications of the transactions.
5	June 27, 2017	Email from CNK- comments on the tax implementation agreement (tax indemnities, tax litigation and other tax implications) of the transaction
6	July 03, 2017	Email from CNK- comments on the Tax Disclosure Statement w.r.t. disputed tax liabilities

14.9. N.A. Shah Associates LLP (Tax Advisors for ABC) (email dated July 10, 2021)

S No	Date	Event
1	May 27, 2017	Ashok Shah (Partner of N.A. Shah Associates LLP) was for the first time approached on 27th May 2017 to advise on the tax and accounting implication of the proposed scheme of Amalgamation and arrangement of ABC with Timken India Ltd.
2	June 01, 2017	Meeting at the office of Desai Diwanji
3	June 05, 2017	Meeting at the office of ABC Bearings Ltd
4	June 08,·2017	Meeting in the office of Mr. Pardiwala Meeting at the office of ABC Bearings Ltd
5	June 09 - 22, 2017	Meeting at the office of ABC Bearings Ltd./Conference call

14.10. P&S (Statutory Auditors-ABC) (email dated July 13, 2021) intimated that they were not involved at any stage in the process for the Scheme of Merger between ABC and TIL for amalgamation and arrangement. They further informed that consequent to their attending the Audit Committee Meeting on July 04, 2017, the proposed Scheme of amalgamation and arrangement amongst both Company was tabled and considered. However, ABC in its reply dated has stated that Date of intimation/ acquisition of information by P&S was May 19, 2017.

14.11. Keynote (Merchant Banker for furnishing fairness opinion) (email dated July 12, 2021)

S No	Date	Event
1	May 17- May 22, 2017	ABC approached Keynote Financial Services Limited for the assignment of the issuance of Fairness Opinion for a proposed transaction. Keynote Financial Services Limited shared a requisition list of information required with ABC on May 17, 2017. A summary of the financials for Fiscal 2017 was furnished to Keynote Financial Services Limited by ABC on May 19, 2017
2	June 30, 2017	Issuance of formal engagement letter by Keynote Financial Services Limited for providing the fairness opinion
3	July 2, 2017	Keynote Financial Services Limited received the Draft format of the proposed report from the Valuer - SSPA and Co., Chartered Accountants {"Valuer") in respect of the Scheme which did not contain the details of the exchange ratio.
4	July 3, 2017	Submission of Draft Fairness Opinion Report by Keynote Financial Services Limited to Sahir Patel- Director at ABC.
5	July 4, 2017	Receipt of Final valuation report from the Valuer Submission of Fairness Opinion Report dated July 4, 2017 to the Board of Directors of ABC at the Board meeting of ABC held on that day.

14.12. SSPA & Co (valuers for furnishing valuation report) (as per letter dated June 30, 2021)

S No	Date	Event
1	May 17,2017	Non-disclosure agreement with the parties
2	May 18, 2017- July 05, 2017	Meetings, conference calls and discussions with the respective managements/consultants of ABC and TIL

15. I note from the chronology of events detailed above, that the UPSI related to merger of ABC with TIL had come into existence on January 25, 2017 i.e. the date on which the letter of intent relating to aforesaid merger was executed. Further, the UPSI was published as per the following details:
On BSE – On July 05, 2017 at 02:09 AM by ABC and at 01:22 AM by TIL
On NSE – On July 05, 2017, at 08:42 AM by TIL.

16. Based on the above, I note that the period of UPSI was January 25, 2017 to July 05, 2017 at 01:22 AM.

Issue No. II: Whether Rajiv violated the provisions of Regulation 3(1) and 4(1) of the PIT Regulations and Section 12A(d) and (e) of the SEBI Act, Varsha violated the provisions of Regulation 4(1) of the PIT Regulations and Section 12A(d) and (e) of the SEBI Act and Nipun violated the provisions of Regulation 3(1) of the PIT Regulations and Section 12A(e) of the SEBI Act?

17. I note that the instant issue pertains to the allegation against Nipun, that as an insider, he had communicated UPSI to Rajiv, and that further, Rajiv had traded on the basis of UPSI to earn profits. Further, it was also alleged that Rajiv, as a connected person, had communicated the UPSI further to his wife i.e. Varsha, who traded on the basis of the same to earn profits as well.

18. I firstly note that Keynote was the Merchant Banker, from whom ABC had sought fairness opinion pertaining to the proposed merger. Further, Nipun was a Vice President in Keynote during the Investigation Period, and by virtue of the same, had been alleged to be an insider with respect to the instant matter. Nipun, vide his response to the SCN, has submitted that he possessed information only on a 'need-to-know' basis in furtherance of legitimate purposes, performance of duties or discharge of legal obligations, and that no specific evidence has been presented in the SCN to establish the nature of alleged UPSI or the possession of the same by him. In this regard, I note that 'fairness opinion' comprises of objective evaluation of terms of a commercial transaction prepared by an independent third party valuer. Hence, the preparation of 'fairness opinion' by Keynote indicates that Nipun Lodha, who was representing Keynote, was aware of the proposed merger, for which said 'fairness opinion' was being prepared. As submitted by Keynote itself, ABC had approached it for assignment of Fairness Opinion on May 17, 2017. Accordingly, it can be reasonably expected that Keynote had the information about proposed merger on the said date. As per Keynote's submissions dated July 12, 2021 during the course of investigation, Nipun was one of the officials who was aware of the merger on May 17, 2017 itself, which forms the UPSI for the purpose of instant matter. Therefore, I note

that Nipun was reasonably expected to have the access to UPSI pertaining to merger of ABC and TIL based on his involvement in preparation of aforesaid ‘fairness opinion’, and was an insider in terms of Regulation 2(1)(g)(ii) of the PIT Regulations.

19. I further note that on BSE, Rajiv had bought 15,000 shares of ABC during the UPSI period (10,000 shares on May 23, 2017 and 5,000 shares on July 04, 2017) and sold 14,725 shares of ABC post-UPSI period on July 19,2017, earning a profit of Rs. 12.10 Lakh. I note that the trading pattern of Rajiv, such that he had bought shares in the UPSI period prior to the announcement of merger of ABC and TIL just after the date on which Keynote became aware of the merger i.e. May 17, 2017, and further, sold them after the announcement to earn profits, is suspicious. However, to arrive at the finding of insider trading as alleged, it is imperative to establish preponderance of probabilities that Rajiv was a connected person, that is, Nipun had communicated the UPSI to Rajiv, which was then relied upon by Rajiv for the aforesaid trading.

20. I further note that Rajiv has been alleged to be a connected person as per Regulation 2(1)(d)(i) of the PIT Regulations, which states that,

2(1)(d) connected person means,-

(i)any person who is or has during the six months prior to the concerned act been associated with a company, directly or indirectly, in any capacity including by reason of frequent communication with its officers or by being in any contractual, fiduciary or employment relationship or by being a director, officer or an employee of the company or holds any position including a professional or business relationship between himself and the company whether temporary or permanent, that allows such person, directly or indirectly, access to unpublished price sensitive information or is reasonably expected to allow such access.”

21. The above provisions dealing with the definition of “connected person” states that the person should be associated with the company by way of various means including frequent communication/ contractual, fiduciary or employment

relationship/ professional relationship etc, which should allow him/ her access to unpublished price sensitive information or indicate that the person is reasonably expected to have such access. I note from the above that the connection between Rajiv and Nipun needs to be proved on the basis of cogent evidence which establishes communication of UPSI between them, or adduces to the reasonable expectation of communication of UPSI.

22. In this regard, I note that Investigation had brought out the connection between Nipun and Rajiv, indicating that Nipun had communicated the UPSI to Rajiv for carrying out the alleged trades, on the basis of following grounds:

22.1. Rajiv and Nipun submitted that they had been interacting with each other for professional purposes, even before the UPSI period. However, the email conversations provided by Rajiv and Nipun pertained to the post-UPSI period and no emails were provided in respect of their communication during the UPSI period.

22.2. During May 17 to 22, 2017, ABC approached Keynote for the assignment of the issuance of Fairness Opinion for the proposed transaction. Keynote shared a requisition list of information required with ABC on May 17, 2017, and thereafter, a summary of the financials for Fiscal 2017 was furnished to Keynote by ABC on May 19, 2017. One day after aforesaid period i.e. on May 23, 2017, Rajiv bought 10,000 shares of ABC and also, bought 5,000 shares of ABC on July 04, 2017 i.e. just one day before the public announcement of aforesaid merger on July 05, 2017. Thereafter, Rajiv had sold 14,725 shares on July 19, 2017 to earn profit of Rs 12.10 Lakh.

22.3. Rajiv had not traded in the scrip of ABC during three months prior to UPSI period.

23. I note from the Noticees' submissions that the relation between Rajiv and Nipun pertaining to professional engagements existed much prior to the UPSI period. I further note that Rajiv actively traded in the stock market, and the trades in the scrip of ABC comprised only a small portion of the total trades of Rajiv in the whole FY. For instance, in FY 2017-18, Rajiv's total turnover in the securities

market was more than Rs. 20 Crore as per the Profit and Loss Statement submitted by him. Further, he had investments in multiple small and mid-cap companies, reflected in his Notional loss of around Rs 16.65 Crores. I also note that considering the huge exposure of Rajiv to other scrips, he would have invested more in the scrip of ABC itself if he had access to UPSI, and intended to earn profits using the same.

24. I further note that Rajiv has given detailed explanation explaining the rationale behind his trades. For instance, Rajiv along with his wife Varsha, whose demat account he was operating, had purchased 10,000 and 3,000 shares of ABC respectively, however, when the price of the scrip fell subsequently, a small portion of 3000 shares held by Varsha were sold on June 27, 2017, to prevent accumulation of losses. When the price of ABC started increasing again at the beginning of July, 2017, aforesaid Noticees again purchased 10,000 and 5,000 shares respectively on July 03 and July 04 respectively. Thereafter, Noticees had sold the shares after the announcement of merger, earning profits. Based on the above explanation, I find it difficult to refute the genuineness of the same on the basis of material available on record.

25. In this regard, I would place reliance on the judgment of Hon'ble Supreme Court in the matter of Balram Garg vs SEBI (Civil Appeal No. 7054 of 2021), wherein it was held that

"40. We are also of the opinion that in the absence of any material available on record to show frequent communication between the parties, there could not have been a presumption of communication of UPSI by the appellant Balram Garg. The trading pattern of the appellants in C.A. No.7590 of 2021 cannot be the circumstantial evidence to prove the communication of UPSI by the appellant Balram Garg to the other appellants in C.A. No.7590 of 2021. It would also be pertinent to note here that Regulation 3 of the PIT Regulations, which deals with communication of UPSI, does not create a deeming fiction in law. Hence, it is only through producing cogent materials (letters, emails, witnesses etc.) that the said communication of UPSI could be proved and not by deeming the communication to have happened owing to the alleged proximity

between the parties. In this context, even the show-cause notices do not allege any communication between the Appellant Balram Garg and the other appellants in C.A. No.7590 of 2021..........”

26. I note that the connection between Rajiv and Nipun is based on circumstantial evidence i.e. trading pattern, timing of execution of trades and absence of email communication provided by Noticees pertaining to the UPSI period. However, the said evidences have been rebutted by Rajiv and Nipun, on the basis of rationale provided for their alleged trades and explanation for existence of professional relationship between them. I note that the preponderance of probabilities based on material on record, does not clearly indicate that Nipun had communicated the UPSI to Rajiv, or that Rajiv had traded on the basis of UPSI in the scrip of ABC. Therefore, I am inclined to accept the contentions of Rajiv about not being connected to Nipun and not having access to UPSI.

27. Further, Varsha had been alleged to have executed the trades in scrip of ABC by receiving the UPSI from Rajiv, and earning profits on the basis of the same. However, since the possession of UPSI by Rajiv as a “connected person” is not established, hence, the allegation levelled against Varsha also finds no merit.

Issue No. III: Whether Himanshu and Anirudh violated the provisions of Regulation 3(1) of the PIT Regulations and Section 12A(e) of the SEBI Act and Menal violated the provisions of Regulation 4(1) of the PIT Regulations and Section 12A(d) and (e) of the SEBI Act?

28. In the instant issue, it was alleged that Himanshu, as the partner in P&S and its representative for discussions pertaining to the merger of ABC with TIL, was an insider having access to the UPSI. Further, the UPSI was communicated by Himanshu to Anirudh, who was also a partner in P&S, and subsequently, Anirudh communicated the UPSI to his mother Menal, who had traded on the basis of same to earn profits.

29. I firstly proceed to consider whether Himanshu could be expected to be in possession of UPSI on the basis of material available on record. I note that as per P&S's submissions dated October 22, 2021 made during the course of investigation, its partner i.e. Himanshu had attended the following meetings pertaining to the merger:

29.1 Meeting at the office of Desai and Diwanji on June 01, 2017

29.2 Meeting at the office of J M Financial Pvt Ltd on June 05, 2017

29.3 Audit committee meeting held at the office of ABC on July 04, 2017

30. Further, P&S, vide its reply dated October 27, 2021, had submitted that the meetings attended by Himanshu on behalf of P&S at the offices of Desai and Diwanjji and JM Financial Pvt Ltd as stated above, pertained to *'procedural and taxation aspect of the merger'*. I also note that ABC had, vide its submissions dated July 07, 2021, submitted that Himanshu was in possession of information pertaining to merger of ABC with TIL on May 19, 2017 itself. Based on the above facts, it can be conclusively inferred that Himanshu, who had been representing P&S i.e. the Statutory Auditor of ABC and attending meetings as stated above pertaining to the proposed merger, was in possession of UPSI at most by June 01, 2017, and therefore, was an insider in terms of Regulation 2(1)(g)(ii) of the PIT Regulations.

31. I note that Anirudh was one of the three partners in P&S during the Investigation Period and is currently one of the two partners along with Himanshu as per the information obtained from website of ICAI. He was son of Mr H. S. Parikh, the founding partner of P&S. Further, he had become a partner on January 01, 2017, and had been working in P&S at least for 10 years before 2017. I note from the above that Anirudh held the top management position in P&S, and it is not farfetched to assume that he would be in possession of information or knowledge pertaining to all the major audits P&S was involved in. In this regard, Noticees have submitted that Anirudh was not a 'connected person' as he was not concerned with ABC or TIL, and had become partner of P&S only on January 01, 2017, and therefore, was not involved in meeting with old clients such as ABC,

and that it was general practice in P&S to not discuss and disclose sensitive information of their respective clients. Noticees have further submitted that it is fallacious to assume that merely because Anirudh was a partner of P&S along with Himanshu, he would have access to information about proposed merger of ABC. I note that even though there is no proof of direct communication of UPSI available from Himanshu to Anirudh, the contentions of the Noticees will have to be read in light of the fact that both of them partners/ owners in P&S and the findings pertaining to the trades executed by Menal, i.e. mother of Anirudh, to infer conclusively whether Anirudh was in possession of UPSI, which he then communicated to Menal. In this regard, I place reliance on judgement of the Hon'ble SAT in the matter of Ameen Khwaja & Ors. Vs SEBI (Appeal No. 584 of 2019) dated June 15, 2022,

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.

In view of the above, I proceed to consider whether the 'preponderance of probabilities' i.e. majority of probabilities considered *in toto* indicates that Anirudh was 'reasonable expected' to have access to the UPSI.

32. I note that Menal is the mother of Anirudh, and resides in the same address as Anirudh. Therefore, Menal falls in the definition of 'deemed to be connected persons' as per Regulation 2(1)(d)(ii), which states as follows:

2(1)(d) "connected person" means,-

……….

(ii) Without prejudice to the generality of the foregoing, the persons falling within the following categories shall be deemed to be connected persons unless the contrary is established,-

(a). an immediate relative of connected persons specified in clause (i); or

……….

I note from the above that Menal was a 'deemed to be connected person', and could be reasonably expected to be in possession of UPSI. However, I also note that the aforesaid presumption is rebuttable, and the probability of her being in possession of UPSI needs to be considered vis-à-vis the submissions made by her explaining the reasons behind execution of trades.

33. At the first instance, I note that Menal had bought 7,000 shares of ABC on July 04, 2017 i.e. during the UPSI period and bought and sold 743 (on July 14, 2017) and 7,273 (on July 13, 2017) shares of ABC in post-UPSI period respectively. The profit earned through aforesaid trading was Rs. 4.01 Lakh. I find it relevant to note that the buy trade by Menal was executed on July 04, 2017, that is, after the date of meeting attended by Himanshu at Desai and Diwanji on June 01, 2017 pertaining to the merger. Menal had also not traded in the scrip of ABC in the three months prior to the UPSI period.

34. I further note that SEBI had, interalia, sought the following information from P&S vide email dated July 06, 2021:

Whether you and/or any of its past and/or present promoters/directors/KMPs/partners or any other person as per point 2 above, knows/knew and/or is/was ever associated/related/connected etc., in any capacity whatsoever, whether directly and/or indirectly, to the entities mentioned below? If associated/related/connected, then provide relevant details inter-alia including name in full, PAN, nature of relationship/association/connection etc.

……..

(n) Menal Parikh (PAN – AHBPP5326J)

35. However, P&S vide its reply dated July 13, 2021 had not disclosed the relation of Menal with Anirudh. I also note incidentally that P&S in its earlier reply dated July 13, 2021 had stated that they were not involved at any stage in the process for the Scheme of Merger between ABC and TIL. Only when additional details were sought from P&S, it had submitted vide emails dated October 20, 22 and 27, 2021, that prior to the public announcement of merger, Himanshu had attended two meetings on June 01 and 05, 2017, related to procedural and taxation aspects of the merger.

36. I also note that Investigation has observed that Menal, vide email dated July 22, 2021, had not disclosed her relation with Anirudh when queried about the same. However, Menal has submitted in her reply to the SCN that vide SEBI's email dated July 06, 2023, no query was posed to her with respect to P&S or Anirudh or Himanshu. In this regard, I am inclined to given benefit of doubt to Menal in absence of evidence to the contrary, and accept the contentions made by her.

37. Noticees have further submitted that Menal is an active trader in market, and places her trades on the basis of her own independent research, and had traded in the scrip of ABC after the UPSI period as well. Further, Noticees have submitted that Menal had purchased the shares on the basis of upward movement in the scrip of ABC, and sold the same afterwards to earn profits, and if she had access to UPSI, she could have made larger profits in the scrip of ABC by buying more shares. I note from the trade log for the period of October 01, 2016 to October 01, 2017 on record, that during the said period, all buy trades were carried out by Menal on July 04, 2017, and all sell trades (except one), had been carried out on July 13, 2017. I note that the precise alignment of Noticee's trades with public announcement related to UPSI cannot be a coincidence, and had Menal's trades actually been inspired by research related to the price movement in the scrip, the same would have been reflected in execution of trades in different tranches or different dates as per the price movement in the scrip, rather than being concentrated around the date of publication of UPSI. I

also note the following data from the aforesaid trade log pertaining to the trades executed by Menal:

Nature of trades	Trades executed in scrip	Trade Value (Rs)
Buy	ABC Bearings	18.97
	All scrips	28.12
Sell	ABC Bearings	29.89
	All scrips	37.06

38. I note from the above that in terms of trade value, Menal had executed buy trades worth 67.46%, and sell trades worth 80.65% in the scrip of ABC out of the total trades executed during the period October 01, 2016 to October 01, 2017 at BSE. The aforesaid observation indicates that Menal had made substantial majority of her investments in the scrip of ABC during the said one-year period, which goes contrary to the assertion that she was actively trading in the market, and further adds to probability that Menal traded on the basis of UPSI received from Anirudh to make undue profits in the scrip.

39. Noticees have also submitted that while Menal had bought 7000 shares, she had eventually sold 7743 shares i.e. had sold 743 extra shares, which indicates she had been owner of ABC shares since a considerable period of time. I note from the trade log that while she had executed 34 sell trades in 7273 shares on July 13, 2017, she had executed one buy trade for 743 shares on July 14, 2017, apparently with her husband, Mr Rasesh H. Parikh. I note that the aforesaid buy trade appears to be an aberration, and does not indicate *ipso facto* that Menal had been trading for a considerable period of time in the scrip of ABC.

40. Noticees have submitted that the news of merger might have already been in public domain, such that the news was not UPSI at all. In this regard, I note that there is no material on record to indicate that the news had already reached public domain, and further, the significant rise in price of ABC's scrip after announcement of merger shows that the contention of information not being a UPSI is devoid of merits.

41. Noticees have contended that if Himanshu/ Anirudh had to share the UPSI, they would have done so in May 2017 or June 01, 2017 itself, and not waited as late as July 04, 2017. Further, Noticees have also explained that the meeting of Audit Committee of ABC was held on July 04, 2017 at 04:00 PM, which implies that Himanshu could not have shared UPSI during the market hours of July 04, 2017 for anyone to take advantage of the same. I note from the material on record that UPSI was in possession of Himanshu at most by June 01, 2017, and that trades were executed by Menal on July 04, 2017. Based on the probabilities inferred from the material on record, I note that the date of communication of UPSI by Himanshu to Anirudh, and then to Menal was between the aforesaid dates, and further, Menal traded on the basis of same to execute buy trades on July 04, 2017.

42. Further, Noticees have submitted that there was no proof of communication of UPSI by Himanshu to Anirudh, and further by Anirudh to Menal, and that merely because a person was related or working together in the firm with the connected person could not be a foundational fact to draw an inference. I note from the observations made in paragraph 28, and the judgement of the Hon'ble SAT in the matter of Ameen Khwaja (supra) that the inference about whether it can be reasonably expected that Menal traded on the basis of UPSI depends on the preponderance of probabilities based on the material available on record. I note that the probabilities which indicate that Menal had access to UPSI outweigh the probabilities that Menal had traded independently to earn the profits by executing trades in ABC. I note that such probabilities include, interalia, the close relation of Menal with Anirudh, who himself was professionally in close relation with Himanshu who had access to UPSI and the trading pattern of Menal close to the date of public announcement of UPSI. I also note, as regards the connection between Himanshu and Anirudh, and Anirudh and Menal, that there is no fact on record or submitted by the Noticees which could indicate absence or breakdown of communication, and could constitute facts countering the probability of Menal having access to the UPSI.

43. Noticees have submitted that Provision to Regulation 4 of PIT Regulations provides that when no UPSI was communicated by the individuals possessing the information to the individuals taking trading decisions and there is no evidence of such arrangements have been breached, it could not be said that Regulation 4 has been violated. I note that that the said Provision to Regulation 4 lists the conditions, which are not exhaustive, under which the insider might prove his/ her innocence by demonstrating that the trades were not executed on the basis of UPSI, by offering the actual reason or explanation behind execution of the trades. I note that Menal has not been able to give a credible explanation behind execution of her trades in a distinct pattern close to the date of public announcement, to satisfy the burden of proof put on her. The trades resulted in a profit of Rs 4.09 Lakh, which brings out the motivation behind execution of trades, and establishes that Menal traded 'on the basis of', and not merely in possession of UPSI, in the scrip of ABC.

44. Therefore, I note that from the facts available on record, and preponderance of probabilities inferred from the findings made above, that Himanshu had access to UPSI through his professional engagement pertaining to the merger of ABC with TIL. It can be 'reasonably expected' that Himanshu further communicated the said UPSI to Anirudh, who communicated the same to Menal, who in turn executed the trades on the basis of UPSI in the scrip of ABC.

45. In light of the above, it is established that Himanshu and Anirudh violated the provisions of Regulation 3(1) of the PIT Regulations and Section 12A(e) of the SEBI Act and Menal violated the provisions of Regulation 4(1) of the PIT Regulations and Section 12A(d) and (e) of the SEBI Act.

Issue No. IV: Whether Hitesh violated the provisions of Regulation 4(1) of PIT Regulations and Section 12A(d) and (e) of the SEBI Act?

46. In the instant issue, it has been alleged that Hitesh had received UPSI from Sahir, who was an insider, and he had traded on the basis of same to earn profits. I note that Sahir was a director in ABC, and part of the meetings and negotiations

pertaining to the merger of ABC with TIL since January 25, 2017, when the letter of intent was signed between ABC and TIL. I note that as a director in ABC, he can be expected to be cognizant of the major corporate decisions since an early stage. Therefore, it is undisputed and beyond doubt that he was in knowledge of the merger since the date of signing of letter of intent on January 25, 2017, and thus, was an insider having access to the UPSI in terms of Regulation 2(1)(g)(ii) of the PIT Regulations.

47. I further note that Hitesh had bought 5,000 shares of ABC on July 04, 2017 i.e. during the UPSI period and sold 5,000 shares of ABC post UPSI period on July 14, 2017, at BSE. The profit earned through aforesaid trading by Hitesh was Rs. 2.38 Lakh. I note that the aforesaid trade pattern of Hitesh invokes suspicion, as the buy trades were executed just prior to the date of publication of the UPSI, and the sell trades were executed a short while later to earn profits. Further, Hitesh had not executed any trades in the three months' period prior to the UPSI period. I now proceed to examine on the basis of aforesaid trading pattern, and material available on record, whether it can be 'reasonably expected' on the basis of majority of probabilities, that Sahir had communicated the UPSI to Hitesh, and Hitesh had traded 'on the basis of' said UPSI in the scrip of ABC.

48. I note that the SCN states the following to allege that Hitesh was a connected person:

48.1 On December 05, 2016, Hitesh had transferred Rs 3,00,000/- to Sahir. In this regard, Sahir had submitted that the said amount had been transferred to Hitesh through his erstwhile realtor Manu Patel, in lieu of purchase of a property investment which did not fructify eventually. Sahir had also submitted that he did not have any other transfer or communication with Hitesh during the period January 01, 2017 to July 31, 2017.

48.2 In reply to SEBI's email dated November 02, 2021 pertaining to the connection with Sahir, Hitesh had submitted his reply vide two emails dated November 08, 2021. Out of the two emails, the first email was having a word document, in which following comments were recorded as part of interim drafting:

i. Don't think good idea to say he knows me as that goes against what was stated earlier?

ii.Should say that he doesn't know me but manu wanted to invest in property and had investors like me

On basis of the above, it was alleged that Hitesh was trying to hide his connection with Sahir, and was providing false reference of Manu Patel for his fund transfer with Sahir.

48.3 Hitesh and Sahir both had denied any relationship initially, and only when Sahir was queried about the fund transfer with Hitesh subsequent to the analysis of bank statements of Hitesh, Sahir informed that the said fund transfer was an advance for a property investment. However, Sahir had not provided any other documentary evidence with respect to property investment except the copy of passbook showing transfer of funds.

49. I proceed to consider firstly the probability of connection between Hitesh and Sahir on the basis of fund transactions between them. I note that the said fund transactions had happened much before the UPSI period. Further, the nature of transactions was in the form of transfer and receipt of an equal amount of Rs 3,00,000/-, which *ipso facto* does not indicate any persistent and continuous relation, professional or otherwise, between them.

50. Further, the contention by Sahir that the said transfers were brokered by one Manu Patel, have been rebutted by Investigation on the basis of comments recorded by Hitesh in the word document received by SEBI, as a reply to explain his connection with Sahir. I note that the said evidence is in the form of comments recorded during the course of drafting the documents by Hitesh. However, I find it difficult to make objective and conclusive inference on the basis of solely the said comments, in absence of further evidence adducing to the same. The said comments can at best serve as a probability, which is needed to be supported

by further major probabilities, to infer expectation of Sahir communicating the UPSI to Hitesh.

51. I am inclined to place reliance on the judgement of the Hon'ble Supreme Court in the matter of Balram garg vs SEBI (supra) and note that merely trading pattern along with two fund transfers prior to the UPSI period, cannot comprise the necessary evidence to indicate expectation of communication of UPSI. The material on record also does not indicate any evidence of frequent communication between Hitesh and Sahir, either during UPSI period or otherwise, to indicate the probability of close relation between them, such that the expectation of communication of UPSI to Hitesh could be affirmed. The available material on record does not strongly inspire confidence or lead to a 'reasonable expectation' of the trading by Hitesh on the basis of UPSI.

52. Therefore, I note that the cumulative reading of probabilities in the instant issue is not sufficient to bring out the expectation of communication of UPSI, and trading by Hitesh on the basis of said UPSI to earn profits. In absence of such majority of probabilities, I find no merit in the allegation of insider trading levelled against Hitesh.

Issue No. V: Whether Sudhir violated the provisions of Regulation 3(1) of the PIT Regulations and Section 12A(e) of the SEBI Act, and Jaisingh violated the provisions of Regulation 4(1) of the PIT Regulations and Section 12A(d) and (e) of the SEBI Act?

53. I note that it has been alleged in the instant issue that Sudhir was an insider who had access to UPSI as the CFO of ABC, and that he communicated the UPSI to his son viz. Jaisingh. Further, Jaisingh traded on the basis of same in the scrip of ABC to earn profits.

54. I note that Sudhir was working as General Manager/ CFO in ABC during the Investigation Period. I further note from the available records that vide email dated May 19, 2017, Sudhir, had forwarded details related to valuation of ABC

such as balance sheet, history of ABC, contingent liabilities pertaining to the Business and proposed to be transferred etc. to JMFL (Financial Advisor to the merger). Further, email dated May 19, 2017 from CNK Associates having subject line valuation requirement, was forwarded to Sudhir by Sahir, director in ABC and an insider as held in Issue No. III. In this regard, Sudhir has contended that he was not part of any meetings with TIL, and was not aware of the merger till the public announcement of the news. He has also contended that his work location was in Bharuch, Gujarat, while all merger related corporate transactions were handled in Mumbai office. Further, he has contended that ABC itself had denied that Sudhir had access to the UPSI. Noticee has also submitted that the information forwarded by him on May 19, 2017 to JMFL/ CNK Associates was in routine course; however, the same does not imply that he was aware of the merger.

55. In this regard, I note that Sudhir was CFO of ABC during the Investigation Period, during which the discussions of ABC's merger with TIL were held. In terms of provisions of the Companies Act, 2013, CFO is a Key Managerial Personnel who is obligated to sign the financial statements, as he/ she is responsible for overseeing the financial activities of the entire company on a day to day basis. In this context, it seems farfetched that Sudhir, as CFO of ABC, was not aware of the merger at all. In order to prove that he was not aware of the merger despite his capacity as the CFO, the standard of proof should be higher, which has not been brought on record by him. I also note that Noticees have not brought any evidence on record, to corroborate the contention that Sudhir's work location was Bharuch, even though the same was also sought during the course of personal hearing. Accordingly, I find that it is reasonable to expect that Sudhir was in possession of information pertaining to the proposed merger, since the time of initiation of discussions pertaining to it, and at most when the Letter of Intent was signed on January 25, 2017. The contention that Sudhir was not aware of the proposed merger till its public announcement, appears to be false and misleading. Therefore, I note that Sudhir was an insider in terms of Regulation 2(1)(g)(ii) of the PIT Regulations.

56. Further, I note that Jaisingh had bought 6,300 shares during the UPSI period and sold 6,300 shares of ABC post the UPSI period on July 13, 2017. The profit earned through aforesaid trading was Rs 7.42 Lakh. I note that the number of shares bought and sold were identical, and that Jaisingh had sold the shares a short while after the public announcement of UPSI. I note the peculiarity of the aforesaid trading pattern, however, the same needs to be substantiated with other probabilities to infer whether Jaisingh had received the UPSI from Sudhir, and was trading on the basis of the same to earn the aforesaid profits.

57. I firstly note that Jaisingh was son of Sudhir, and therefore was a deemed to be connected person in terms of Regulation 2(1)(d)(ii) of the PIT Regulations. Based on the aforesaid provisions, Jaisingh had a direct connection with Sudhir and an indirect connection with ABC, which was 'expected to put him in possession of UPSI'. However, I also note that the Supreme Court in the matter of Chintalapati Srinivasa Raju vs SEBI (Civil Appeal No 16805 of 2017), had held, interalia, that merely because a person was related to the connected person cannot by itself be a foundational fact to draw an inference. Accordingly, I note that the presumption of connection needs to be buttressed with other probabilities, to conclusively arrive at the finding of insider trading by Jaisingh on the basis of UPSI.

58. I firstly note the trading pattern of Jaisingh for the period of October 01, 2016 to October 31, 2017. I note that during the said period, Jaisingh had traded only in three scrips, and the details of trade value pertaining to trades executed in scrip of ABC vis-à-vis other scrips is as below:

Nature of trades	Trades executed in scrip	Trade Value (Rs in Lakh)
Buy	ABC Bearings	10.58
	All scrips	20.14
Sell	ABC Bearings	25.95
	All scrips	37.11

59. I note from the above that in terms of trade value, Jaisingh had executed buy trades worth 52.53%, and sell trades worth 69.92% in the scrip of ABC, out of

the total trades executed during the period October 01, 2016 to October 01, 2017 at BSE. Jaisingh has contended that he had executed trades in normal course, based on the profits made by his sister Ms. Poonam Nirat Patel in the scrip during 2016. I note in this regard that Jaisingh's trading pattern does not indicate any correlation with the said trades to the price movement. Instead, the trading pattern comprises of only buy trades on February 14, 15 and 16, 2017 and March 6, 9 and 10, 2017, and sell trades on July 13, 2017. Even though the price of the scrip of ABC fluctuated during the UPSI period, Jaisingh kept buying shares, only to offload them once the UPSI was made public.

60. I further note that the Noticees have relied upon the judgement of Hon'ble Supreme Court in the matter of Balram Garg vs SEBI (supra). I note that in the first instance, facts of the instant matter appear to be comparable to the facts in the referred case, wherein the charges of insider trading against one entity viz. Shivani Gupta was not upheld despite sharing relation with the insider. However, upon close examination, I note that the facts in the instant matter comprise certain probabilities which distinguish it from the referred matter. I note that in the referred matter, there was personal and professional estrangement between the family members and further, the entity i.e. Shivani Gupta had traded earlier in the scrip as well. In the instant matter, even though Sudhir and Jaisingh live separately without any proof of financial dependence, there is no proof of estrangement between them, and further Jaisingh had not traded in the scrip of ABC in the duration prior to UPSI period.

61. I note that the separate residence of Jaisingh and Sudhir, and Jaisingh's prolonged employment in a foreign country comprises a possibility that Jaisingh did not have access to UPSI. However, the test herein, as held by the Hon'ble SAT in the matter of Ameen Khwaja vs SEBI (supra) is that of majority of probabilities. I note that the probabilities when considered in totality, indicate that Jaisingh can be reasonable expected to be in possession of UPSI, which he received from this father, who was an insider.

62. I further note on the basis of material available on record that Noticees have undisputedly sold the shares only to earn profits, and that there was no other reason in the form of a distress sale, investment etc, to prove that the trades were not motivated by UPSI. The aforesaid fact when read with the reasonable expectation of connection of Jaisingh with Sudhir along with his trading pattern, can be relied upon to infer that Jaisingh traded on the basis of, and not merely in possession of UPSI, to earn profits to the tune of Rs 7.42 Lakh.

63. Noticees have contended, interalia, that the SCN is vague and ambiguous, as besides stating that the Jaisingh was connected to Sudhir, who was the then CFO of ABC and had received or sent some emails, there was no evidence given on how the information contained in the said emails was relevant. In this regard, I note that the instant allegations rely on the connection of Sudhir with ABC as its CFO, who was in frequent communication with the director of ABC and other stakeholders in the merger, and further the connection of Jaisingh with Sudhir as his son along with his trading pattern. I note that the aforesaid connections, along with the considerations made in preceding paragraphs, bring out the probabilities pertaining to the charges as alleged, and accordingly, there is no element of 'vagueness' as contended by the Noticees. Therefore, the contentions made by the Noticees are rejected.

64. Noticees have contended that the buy trades by Jaisingh were executed prior to the date of the emails i.e. May 19, 2017, which have been relied upon to show access of Sudhir to the UPSI. Noticees have also contended that in case SEBI chooses to rely upon the aforesaid emails dated May 19, 2017, authenticity of the same must be proved. Further, the Annexures to SCN, including the aforesaid emails, provided to Noticees in soft copy format was being shown as modified on "September 17, 2021", and accordingly, cross examination of relevant parties and a certificate under Section 65B of the Evidence Act, 1872 was necessary. Further, cross examination of all the entities who had sent or received the emails dated May 19, 2017 should have been provided, to ascertain whether Noticee was aware of the information pertaining to the merger.

65. I note that two emails dated May 19, 2017, one sent by Sudhir to JMFL, and the other received by him from Sahir, have been relied upon as a circumstantial evidence to infer that Sudhir and Sahir had frequent communications. However, I also note that the buy trades in the scrip were undertaken by Sudhir before the aforesaid date of emails, and that the expectation of access of Sudhir to UPSI relies primarily on his connection with the company as CFO, while the aforesaid emails merely indicate presence of frequent communication pertaining to the merger, which is otherwise also evident considering position of Sudhir as CFO. I also note the two emails dated May 19, 2017, whose veracity is being questioned by Sudhir, had been either received or forwarded by Sudhir himself, and that he has not denied sending or receiving the said emails in his submissions. Incidentally, I note that the last modified date indicates the date when the relevant folder was moved/ added to the given location, and does not indicate tampering of evidence *ipso facto*. Further, I note that as no statement of parties has been relied upon, need of cross examination does not arise. I also note that Section 1 of the Indian Evidence Act, 1872 categorically mentions that the Indian Evidence Act, 1872 applies to *"all judicial proceedings in or before any Court"*. I note that the present Adjudication Proceedings are quasi-judicial in nature and hence, Section 65B of the Indian Evidence Act,1872 which pertains to 'Admissibility of electronic records' before a Court of Law, is not applicable. Considering the above, I do not find any merit in the aforesaid contentions of the Noticees and reject the same.

66. Noticees have also contended that they should have been provided with the copies of communication of Desai & Diwanji (legal advisors of ABC) with Sudhir till July 31, 2017, which had been sought by SEBI during the course of investigation in instant matter. I firstly note that emails dated September 22, 2021 received from Desai & Diwanji during the course of investigation were already provided as Annexure 53 to the SCN. I further note that vide Hearing Notice dated July 31, 2023, Noticees were advised to communicate the request for documents or annexures, which were not accessibly, and collect the same in person from SEBI office in Mumbai. Accordingly, vide email dated August 18,

2023, Noticees had submitted list of a few annexures to the SCN which they were not able to access, and the same were provided to the Noticees vide email dated August 21, 2023. Further, vide aforesaid email dated August 21, 2023 and email dated August 22, 2023, Noticees were also advised that in case of difficulty in accessing any other document or requirement of any other document, they could collect the same in person from SEBI office in Mumbai before the date of hearing. However, Noticees did not seek any further documents in this regard, and availed the opportunity of personal hearing on September 05, 2023. Accordingly, I note that ample opportunity had been provided to the Noticees to collect documents as desired, and accordingly, the contentions made by the Noticees are not tenable. Also, Noticees have sought cross examination of employees of Desai & Diwanji. In this regard, I note that no statement of Desai & Diwanji had relied upon, and the information received from the said firm was already provided to the Noticees as Annexure 53 to the SCN. Hence, I note that the request for cross examination does not hold ground.

67. Therefore, on the basis of test of preponderance of probabilities, I note that Jaisingh could be reasonably expected to have access to UPSI in relation to the scrip of ABC, obtained from Sudhir, and that he had traded on the basis of same to earn profits.

68. In light of the above, it is established that Sudhir violated the provisions of Regulation 3(1) of the PIT Regulations and Section 12A(e) of the SEBI Act, and Jaisingh violated the provisions of Regulation 4(1) of the PIT Regulations and Section 12A(d) and (e) of the SEBI Act.

Issue No. VI: If yes, whether the violations, if any, attract monetary penalty under the provisions of Section 15G of the SEBI Act? If so, what quantum of monetary penalty should be imposed on the Noticees, as applicable, after taking into consideration the factors mentioned in Section 15J of the SEBI Act?

69. It has been established in the foregoing paragraphs that Himanshu, Anirudh and Sudhir violated the provisions of Regulation 3(1) of the PIT Regulations and Section 12A(e) of the SEBI Act; Menal and Jaisingh violated the provisions of Regulation 4(1) of the PIT Regulations and Section 12A(d) and (e) of the SEBI Act. Therefore, the aforesaid violations committed by the Noticees attract monetary penalty under Section 15G of the SEBI Act:

SEBI Act

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 any body 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.

70. 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: -

SEBI Act

Factors to be taken into account by the adjudicating officer.

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

a) *the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
b) *the amount of loss caused to an investor or group of investors as a result of the default;*
c) *the repetitive nature of the default.*

71. The consequences of violations committed by the aforesaid Noticees are grave in nature and are prejudicial to the interests of the investors in the securities market. I note that there is a need to deal with such kind of violations seriously with a firm hand.

72. Further, as per the available record, while Menal had made a profit of Rs 4.01 Lakh, Jaisingh had made a profit of Rs 7.42 Lakh by trading on the basis of UPSI in the scrip of ABC. However, it is not possible from the material on record to the consequent loss caused to investors as a result of the aforesaid default. With respect to the repetitive nature of the default, I find that there is nothing on record to indicate any past violations committed by the Noticees viz. Himanshu, Anirudh, Sudhir, Menal and Jaisingh.

ORDER

73. After taking into consideration the facts of the matter, responses of the Noticees, violations established against the Noticees, the profits earned by the Noticees, and the time elapsed since the said profit is earned, I impose the following penalty:

S No	Noticees (PAN)	Violation of provisions	Penalty u/s	Penalty
1	Menal Rasesh Parikh (AHBPP5326J)	Regulation 4(1) of the PIT Regulations and Section 12A(d) and (e) of the SEBI Act	Section 15G of the SEBI Act	Rs. 15,00,000 (Rupees Fifteen Lakhs Only)
2	Jaisingh Sudhirkumar Choudhary (AMSPC2415K)			Rs. 20,00,000 (Rupees Twenty Lakhs Only)

3	Himanshu K Desai (AADPD1640C)	Regulation 3(1) of the PIT Regulations and Section 12A(e) of the SEBI Act		Rs. 10,00,000 (Rupees Ten Lakhs Only)
4	Anirudh R Parikh (AADPP2391N)			Rs. 10,00,000 (Rupees Ten Lakhs Only)
5	Sudhirkumar Choudhary (ABPPC9845B)			Rs. 10,00,000 (Rupees Ten Lakhs Only)

I find that the said penalty is commensurate with the violations committed by the Noticees in this case.

74. 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

75. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings under Section 28A of the SEBI Act for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

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

Place: Mumbai **AMIT KAPOOR**

Date: September 18, 2023 **ADJUDICATING OFFICER**