BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER: Order/VV/AS/2023-24/28468-28470

Under Section 15-I of The Securities and Exchange Board of India Act, 1992 Read with Rule 5 Of The Securities and Exchange Board of India (Procedure for Holding Inquiry & Imposing Penalties) Rules, 1995

In respect of:

Noticee No	Name of the entities	PAN
Noticee 1	Yatendra Kumar	AFPPK9395C
Noticee 2	Shashi kant Tiwari	AAJPT5411H
Noticee 3	Girish Kumar Jain	AAIPJ6155H

in the matter of Wockhardt Limited

A. Background

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') conducted an investigation in the matter of trading activity in the scrip of Wockhardt Ltd (hereinafter referred to as the "**Wockhardt/Company**") for the period January 07, 2012 to August 07, 2013 (hereinafter referred as "**Investigation Period/ IP**") to find any violation of SEBI (Prohibition of insider trading) Regulations, 1992 (hereinafter referred to as '**PIT Regulations, 1992**') and SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as "**PFUTP Regulations**"), due to trading activity of Noticee 1, Noticee 2 and Noticee 3 (hereinafter referred to as "**Noticees**") in the scrip of the Company during the investigation period. Based upon the same SEBI observed as follows:

1.1. Wockhardt is a global pharmaceutical and biotechnology organization incorporated on July 8, 1999. The company is headquartered in Mumbai, India and involved into research based global healthcare enterprises.

1.2. During the period January 07, 2012 to March 08, 2013, price of the scrip of Wockhardt rose from Rs. 273.25 to Rs. 2065 (*655% increase within 14 months*). On May 24, 2013 Wockhardt made announcement to the stock exchanges regarding a letter issued by USFDA (United States' Food and Drugs Administration) to the Company about *'Import Alert'*. It was observed that price of the scrip fell sharply around the said announcement. The price of the scrip fell from Rs. 1798.30 on May 17, 2013 to Rs. 1229.70 on May 24, 2013. On August 07, 2013, the scrip closed on Rs. 362.25.

1.3. Based on Company's replies dated April 03, 2014, October 21, 2015 and publicly available information, following is the detailed chronology of events related to USFDA visit, form 483, import alert, warning letter and share price of Wockhardt:

Table No 1

Date	Event
14/03/2013	First information regarding possible USFDA inspection of Waluj Factory
15/03/2013	Confirmation of dates of USFDA inspection of Waluj Factory
18/03/2013 – 22/03/2013	USFDA visit to Waluj Factory
22/03/2013	Form 483 issued to Wockhardt
09/04/2013	Clarification letter to USFDA from Wockhardt
10/04/2013 – 16/04/2013	Price fall (close price of Rs. 2020 on 10/04/2013 to Rs 1699 on 16/04/2013. Fall by 15.9% in 5 trading days)
15/04/2013	Press release by Wockhardt on their website confirming receipt of Form 483
16/05/2013 – 29/05/2013	Price fall (close price of Rs. 1848 on 16/05/2013 to Rs 1121 on 29/05/2013. Fall by 39% in 10 trading days)

Date	Event
23/05/2013	Import alert published by USFDA on its website
24/05/2013	Import alert Corporate announcement to BSE and NSE from Wockhardt
15/07/2013	Hard copy letter (import alert) receipt from USFDA
19/07/2013	USFDA warning letter receipt by Wockhardt
20/07/2013	Announcement of warning letter to BSE and NSE from Wockhardt

1.4. USFDA visited the manufacturing facility of Wockhardt at Waluj near Aurangabad, Maharashtra during March 18-22, 2013. The purpose of the visit was to inspect the factory and data pertaining to Abbreviated New Drug Application filed by Wockhardt with USFDA for Zoledronic acid injection. USFDA then issued Form 483 which is regarded as adverse observations on factory facilities. After Form 483, the company offered clarification to the inspecting agency (USFDA), which then considered the clarifications and corrections offered by the Company about the manufacturing and exporting facility under consideration. After considering the submissions, USFDA then issues import alert, if required. Therefore, issuance of Form 483 to Wockhardt on March 22, 2013 was considered as Price Sensitive Information (hereinafter referred to as "**PSI**") in terms of Regulation 2 (ha) of the PIT Regulations, 2015.

1.5. It was observed that the price of the scrip of Wockhardt fell by over 15% during April 10 - April 15, 2013 (4 trading days). Around this time, the form 483 murmurs had started in the market and on April 15, 2013, Wockhardt had confirmed the receipt of form 483.

1.6. The PSI related to Form 483 came into existence on March 22, 2013 i.e., the day of issue of Form 483 and the issuance of Form 483 was confirmed by Wockhardt on April 15, 2013 through a press release on its website. Thus, period from March 22, 2013 to April 15, 2013 is considered as period of unpublished price sensitive information ("**UPSI"**).

1.7. During Investigation, it is observed that Wockhardt did not disclose the information related to Form 483 issuance by USFDA to its Waluj factory to the stock exchanges immediately. Further, Wockhardt vide replies dated November 19, 2014 and October 21, 2015 submitted that no action under code of conduct was taken against any designated employee for any trading activity during investigation period.

1.8. In view of above, it has been alleged that Noticees being employees of the Company traded in the scrip if the Company while having the UPSI.

1.9. In view of the above observations, following violation has been alleged wrt Noticees: -

Table No 2

Noticees	Violation Alleged
Noticee 1 to Noticee 3	Regulation 3(i) of PIT Regulations, 1992 read with regulation 12(2) of SEBI (Prohibition of insider trading) Regulations, 2015 (hereinafter referred to as "**SEBI (PIT) Regulations, 2015**").
Noticee 1	Clause 3.3 and 4.2 in Schedule I, in Part A of the PIT Regulations, 1992 read with regulation 12(2) of SEBI (PIT) Regulations, 2015.
Noticee 2	clause 4.2 in Schedule I, in Part A of the PIT Regulations, 1992 read with regulation 12(2) of SEBI (PIT) Regulations, 2015.

B. Appointment of Adjudicating Officer

2. In view of the above, it was decided to inquire into and adjudicate upon the alleged violations as aforesaid and accordingly, vide communiqué dated August 02, 2022 Ms. Asha Shetty, Chief General Manager was appointed as Adjudicating Officer (hereinafter referred to as "**erstwhile AO**") under Section 15-I (1) of the SEBI Act read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as "**Adjudication Rules**") to inquire into and adjudge under Section 15G of SEBI Act and 15HB of SEBI Act for the aforesaid alleged violations by Noticees. Accordingly, in terms of Rule 4(1) of the Adjudication Rules, the Show Cause Notice dated September 15, 2022 (hereinafter referred to as "**SCN"**) was issued to the Noticees. Thereafter,

pursuant to transfer of erstwhile AO, I have been appointed as the Adjudicating Officer *vide* communiqué dated October 06, 2022. It has been advised that except for the change of the Adjudicating Officer, the other terms and condition of the original orders (whereby the aforesaid Adjudicating Officers was appointed) '*shall remain unchanged and shall be in full force and effect*'. It has also been advised that '*I should proceed in accordance with the terms of reference made in the original orders*'.

3. Pending the instant proceedings commenced by the aforesaid SCN, Noticee 1 has filed Settlement Applications bearing no. 7025/2022, with SEBI in terms of SEBI (Settlement Proceedings) Regulations, 2018 (hereinafter referred to as '**Settlement Regulations**') proposing to settle the pending proceedings, without admitting or denying the findings of fact and conclusions of law, through a Settlement Order. However, the said application has been rejected by concerned department of SEBI and the same has been informed to me *vide* email dated April 11, 2023. Accordingly, present adjudication proceedings resumed with rest to the Noticee 1.

C. Show Cause Notice, Reply, Hearing

4. The SCN was issued through SPAD/digitally signed email and duly delivered to the Noticees in terms of rule 7 of SEBI Adjudication Rules. Noticee 1 vide letter dated October 18, 2022 has requested for inspection of documents relevant to the instant proceeding. Accordingly, the inspection was scheduled and conducted on November 16, 2022 w.r.t. Noticee 1.

5. In response to the SCN Noticees filed their replies to the SCN. Subsequently, on considering material available on record, opportunity of hearing granted to the Noticees and accordingly, the hearing was concluded. The authorized representative("**AR**") of the Noticees along with Noticees had appeared before me and reiterated the earlier submitted submissions. Some of the Noticees has requested for the filing of post hearing submission which was acceded to by me

in the interest of principles of natural justice. Accordingly, Noticees has filed their post hearing submissions and the same has also been taken into account.

6. Further, the whole process of the present adjudication proceeding has been tabulated below:

Table No. 3

Noticee	SCN dated	Replies (letter dated)	Inspection	Hearing Notice	Hearing Concluded
Noticee 1		18/10/2022; 27/01/2023; 07/02/2023; 19/04/2023	16/11/2023	28/11/2022; 12/04/2023	19/04/2023
Noticee 2	15/09/2022	27/09/2022; 07/10/2022; 07/11/2022	NA	21/10/2022	04/11/2022
Noticee 3		27/10/2022; 7/11/2022	NA	21/10/2022	04/11/2022

7. Submission made by Noticees has been given below:

Yatendra Kumar (Noticee 1)

a. *There is delay of more than 9 years in issuance of the SCN, which is in violation of principles of natural justice. Serious prejudice is caused to the Noticee on account of this delay. For this purpose, said Noticee placed reliance on following appellate orders of Securities Appellate Tribunal ("**SAT**"") and Supreme Court*

SAT

i. *Ashok Shivlal Rupani and Ors. Vs Securities and Exchange Board of India (Appeal No. 417 of 2018).*
ii. *ICICI Bank Limited v SEBI (Appeal No. 583 of 2019) dated July 08, 2020.*
iii. *Bharat J Patel vs SEBI dated September 08, 2020.*
iv. *Garware Polyester Limited & Ors. Vs SEBI (Appeal No. 187 of 2021).*
v. *Rajeev Bhanot & Ors. Vs SEBI (Appeal No. 396 of 2018).*
vi. *Ashlesh Gunvantbahi Shah & Ors. V SEBI (Appeal No. 169 of 2019).*

Supreme Court

i. *Adjusticating Officer, Securities and Exchange Board of India vs Bhavesh Pabari (Civil Appeal No. 11311 of 2013), on February 28, 2019*
ii. *SEBI vs Rajeev Bhanot & Ors. (Civil Appeal No. 6441-6443 of 2021.*

b. *Shares sold by the Noticee were all ESOPS allotted by Wockhardt Limited (Company). Shares were sold to reimburse the tax paid and towards purchase of home.*

c. *Issuance of Form 483 was not Price Sensitive information and has no significance. Issuance of Form 483 cannot be Price Sensitive information. In any event information relating to issuance of Form 483 was always in public domain therefore not UPSI. These observations listed in Form 483 cannot be considered as conclusions and therefore cannot be treated as a price sensitive information under PIT Regulations. In support of this contention, I would like to rely upon a Judgment of the Hon'ble SAT dated October 15, 2004 in the matter of Samir Arora vs SEBI, wherein it is held that information that is uncertain cannot be labelled as information.*

d. *It is submitted that information regarding issuance of a Form 483 was insignificant and therefore not likely to materially affect the price of shares. In Civil Appeal No. 363 of 2020 in the matter of **SEBI vs Abhijit Rajan** before the Hon'ble Supreme Court, it is held as under: - "22. Before we proceed to find an answer to the above questions in the context of the present appeal we must take note of one important fact namely, that the price sensitivity of an information has a correlation directly to the materiality of the impact that it can have on the price of the securities of the company. An information may materially affect the price of the security of a company either positively or negatively. The impact may be beneficial or adverse. The information should have the potential either to catapult the price of the securities of the company to a higher level or to make it plunge. The effect can be bullish or bearish. But the effect should be material and not completely insignificant"*

e. *Issuance of Form 483 is a matter of routine and not conclusive. Form 483 calls the Company for information and steps towards compliance and upon considering the information and compliance steps taken by the Company, further steps, if any, are decided by US FDA.*

f. *Issuance of Warning letter is also not significant.*

g. *Form 483 had no impact on price of Wockhardt shares. On April 15, 2013 the closing price was Rs. 1712 on the NSE and price went up thereafter, On May 2, 2013 the price had reached 1916. Therefore, it is clear that information relating to Form 483 had no impact on the share price, which shows that issuance of Form 483 cannot be said to be price sensitive.*

h. *Alleged UPSI period from March 22 to April 15, 2013 is not correct, since the information relating to Form 483 was already in public domain. It was available on US FDA website since March 22, 2013 and was also in the news reports prior to April 15, 2013.*

i. *Noticees trades beyond 4000 shares without taking pre-clearance was inadvertent and because of lack of misunderstanding of Company's code of conduct.*

j. *Noticees intraday trade for 500 shares on March 12, 2013 was inadvertent and on account of an erroneous error. It has nothing to do with the allegation of Insider*

Trading. It was merely an inadvertent intraday trade. It is a matter of record that at the relevant time, Noticee was only selling shares which were allotted to him under ESOPS and he was selling the shares for the reasons stated under para 12 at page no. 8 of the Reply to the SCN.

Shashi kant Tiwari(Noticee 2)

k. *My Job Profile during the period under consideration: I worked as General Manager, in Analytical development in Wockhardt Research Centre (R&D). Wockhardt research Centre (referred as R&D) is located in D-4, MIDC, Chikalthana, Aurangabad which is approximately 17 Km away from the Waluj Site of Wockhardt limited, where the audit happened for period under consideration. My job responsibilities were to manage the activities related to managing the analytical research involving development of analytical methods, method validations, analysis of samples, routine analytical support, analysis of stability samples (R&D samples) and additionally supporting the stability analysis of Plant samples. The team which was supporting the Plant stability samples was located at Plant and all other teams were located in R&D centre Chikalthana and all three teams reported to me.*

l. *My reportees were: 1. Dr. Vinay Saxena: Assistant Director- Team took care of Method development, Validation, analysis and stability (R&D samples) and located at R&D centre, Chikalthana 2. Mr. PLN Sarma: Group Leader, Method development, Validation and located at R&D centre, Chikalthana 3. Mr. Deepak Rastogi: Research Scientist, Stability of Plant samples (Located at Waluj Plant site).*

m. *I reported to Dr. Girish Jain, Senior Vice president who was head of Formulation Development R&D (Located at R&D centre Chikalthana).*

n. *My total profile was not only for plant related work but in R&D also. As I was responsible for Stability study of Plant samples also, I needed to visit the plant during audit days so that if anything related to that is asked by USFDA auditors, I (or my team) shall be able to show it.*

o. *I was having the responsibility of analytical data (related to stability analysis of Plant samples) in terms of audit support. There are many activities which USFDA auditor reviews during their inspection. The activities related to Manufacturing/Operation, Procedures, Utilities, Quality control, Quality Assurance, QMS, Batch analytical data and investigations, Complaints, Documentation, Warehouse, General Maintenance, and cleanliness in addition to stability data of Plant samples, are under the scope of USFDA inspection. My area* *of responsibility in terms of USFDA audit may have been 5-7% or less, which was stability data (of Plant samples).*

p. *After the audit, if USFDA has any observations (called 483's), they give it to site heads. The company must respond/claify these observations in 15 working days and if USFDA is not satisfied with these clarifications/responses, they take further action. As these 483/'s are confidential documents, these are not shared to each employee. And I want to state again that I was not aware of 483's details.*

q. *Trading of shares was done by me as a normal trade without me having any additional information. I traded the shares in early April, so that any Capital gains in these proceedings are to be taken care by me in that financial year for the purpose of income tax calculations and I have money to take care of my financial needs. Some of money was put in my SBI Home loan account to save the interest amount. (statement of SBI Home loan account attached as annexure-1, showing additional pumping of RS. 5.5 Lacs in April/May 2013, to save the interest).*

r. *I also want to clarify the point that I purchased 380 shares (@Rs. 1617.96) on 13.12.2012 and sold these 380 shares on early April, 08.04.2013 settlement (R. 1970.36). I was not aware of opposite trading thing and traded these shares.*

<u>Girish Kumar Jain</u>

s. *I deny that I was in possession of any unpublished price sensitive information (UPSI) during the Relevant Period or otherwise. Without prejudice to the generality of the above, I deny that I was involved in USFDA inspection of Waluj Factory of Wockhardt or that I ever got to know of Form No. 483 issued by USFDA much less the contents thereof, at any time before press release of Wockhardt dated 15.4.2013 on their website confirming receipt of Form No. 483. It is therefore denied that I have or was in a position to make any illegal gain or to avoid any loss for my stock market transactions during the Relevant Period or at all by availing of UPSI as alleged or at all.*

t. *I was not a director or deemed to be a director of Wockhardt at the material time or at any time at all during the course of my employment with the said company.*

u. *I was an employee of the company at the material time but I was not in a position to be reasonably expected to have access to UPSI in relation to the company in the facts and circumstances narrated above.*

v. *I was thus not connected or deemed to be connected with the company in so far as it may relate to Reg 2(c) of PIT Regulations, 1992. I have adduced evidence to* *show that I was not in possession of UPSI and being not connected with the audit in any manner whatsoever, being posted in a totally different premises at a distance of 23 kms from the factory and having no job responsibilities whatsoever qua the factory, I could not be reasonably expected to have access to UPSI in respect of the securities of the company.*

w. *Thus, by no stretch of imagination and simply on the basis of a surmise and imagination that I would have known because my reporting authority had known, could it be alleged that I was an insider for the purpose of UPSI in question. Even the evidence of Yatendra Kumar who was in possession of UPSI has averred that he had not shared the same with any person. The company while issuing warning letters to Noticee 1 and 2 has after due application of mind treated me differently. There was also no unusual trading activity on my part before, during or after UPSI period.*

x. *I joined Wockhardt on 04.11.2004 and relieved from the services of Wockhardt on 15.03.2014. During the Relevant Period I was a designated employee of Wockhardt. I was also a part of top management of Wockhardt during the Relevant Period. However, the same, by itself, did not entitle me to have access to information regarding USFDA inspection.*

y. *I was designated as Senior Vice President – Pharma Research in Research & Development Department of Wockhardt during the Relevant Period. I was heading teams involved in research, development and analysis of formulations for Wockhardt. During the Relevant Period, I was reporting to Dr. Yatendra Kumar, President-Pharma Research, Global IP, QA/QC and Regulatory Affairs. It is submitted that the profile of my reporting authority was much wider and I was heading only one of the verticals supervised by him i.e. Pharma Research.*

z. *The factory of Wockhardt which was the subject matter of inspection by USFDA is located in Waluj, Aurangabad. My office was located at R & D Centre, D-4, MIDC, Chikalthana, Aurangabad at a distance of about 23 kms from the above factory. I had no job responsibilities in respect of the factory at Waluj, Aurangabad.*

aa. *I was not directly or indirectly connected with the audit of the manufacturing facility. I was not included in any audit activity, before, during or after the audit. I had no dealing or meeting with USFDA auditors or any other activity regarding audit. The above submissions can be easily validated by attendance sheet and records of meetings which would have been maintained at the factory. For the sake of clarity I may submit that I had no knowledge of a possible USFDA inspection of the Waluj factory or any further proceedings in respect thereof from any source other than the information available in public domain.*

bb. *It is specifically submitted that* ***I was not aware of issuance of Form No. 483 by USFDA much less the contents thereof at any time during the Relevant Period except through the public announces of Wockhardt****. In this respect, I wish to draw attention to letter dated 3.4.2014 (Annexure 2 to the SCN dated 5.9.2022) of Wockhardt addressed to SEBI. In Annexure C to the said letter, Wockhardt has given a list of its officials who during 18.3.2013 to 10.4.2013 were in possession of information regarding receipt of Form No. 483 for Waluj factory. It may be observed that* ***my name or name of any of my immediate reportees does not appear in the said list****. A copy of the said letter dated 3.4.2014 of Wockhardt is annexed hereto vide* ***Annexure D*** *for ready reference.*

cc. *In letter dated 12.12.2014 of Mr. Yatender Kumar (Annexure 5 to the SCN dated 5.9.2022), he has in Para 6 thereof categorically stated that he did not share information about Form No. 483 with anyone. A copy of the said letter dated 12.12.2014 of Mr. Yatender Kumar is annexed hereto vide* ***Annexure E*** *for ready reference.*

dd. *Further, in letter dated 19.11.2014 of Wockhardt addressed to SEBI (Annexure 4 to SCN dated 5.9.2022), Wockhardt has confirmed that during the period under consideration, Wockhardt had not taken any action against any designated employee for any violation of the Code which prima facie established that there was no violation of the Code. A copy of the said letter dated 19.11.2014 of Wockhardt is annexed hereto vide* ***Annexure F*** *for ready reference.*

ee. *In paragraph 29 of the present SCN itself it is stated that in a reply to SEBI, Workhardt has informed that both Shashikant Tiwari and Yatendra Kumar were warned to restrain from any such activity in future. It is noteworthy that no such warning letter was issued to me as there was found to be no cause or occasion for the same.*

ff. *It is submitted that the details appearing in Para 17 (Table 8) of the present SCN, themselves show that I have had been regularly selling the shares both before the UPSI period i.e. 22.3.2013 to 14.4.2013 as well as after the UPSI period as follows: -*

Period	***Number of Shares Sold (as per SCN under reply)***
1.2012 to 21.3.2013	*3300****
3.2013 to 14.4.2013	*2400*
4.2013 to 31.7.2013	*300*****

****Please note that during this period actually shared sold were 4300 (and not 3300)***

*****Please note that during this period actually shares sold were 1500 (and not 300)***

These shares were vested unto me under Employees Stock Option Scheme. It is clear that there was no unusual trading activity on my part during the UPSI period.

gg. It is respectfully submitted that the allegations of my having received UPSI merely because my reporting authority was in possession of the same in connection with some job responsibilities of the reporting authority with which I was not concerned or connected, is mere wild guess, conjecture and surmise having no factual or legal basis. Kindly appreciate that the present adjudication proceedings have penal consequences and hence, evidence beyond reasonable doubt is required to be adduced. It is held ***in Balram Garg vs SEBI (SC 19.4.2022)*** *at paragraph 25 that* ***it is erroneous to accept a conclusion based only on "preponderance of probability"*** *(acceptable standard of proof in civil proceedings) in extant proceedings.*

hh. In paragraph 40 of the same judgment, the apex court has held that ***Regulation 3 of the PIT Regulations 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*** *(I.e. Yatendra Kumar and myself who was my reporting authority).*

ii. In paragraph 42 of the same judgment, the court has relied upon an earlier judgment of the apex court in the case of ***Chintalapati Srinivasa Raju vs SEBI*** *that the expression "reasonably expected" cannot be a mere ipse dixit – there must be material to show that such person can reasonably be so expected to have access to unpublished price sensitive information. .....A reasonable expectation to be in the know of things can only be based on reasonable inferences drawn from foundational facts.*

jj. In the present case, not only that there is no evidence of my being in possession of UPSI as alleged or at all, there is cogent contemporaneous evidence to show that I was not. In such a circumstance, ignoring evidence on record and relying on conjectures and surmises is patent recipe for a massive miscarriage of justice which needs to be prevented by the Hon'ble Adjudicating Authority with full vigour to preserve the rule of law and for dispensation of justice. Annexed hereto for your ready reference is a copy of the said judgment of the apex court dated 19.4.2022.

D. Relevant Provisions

8. 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; shall be liable to a penalty [1][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].

9. PIT Regulations, 2015

Repeal and Savings.
12. (1) The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 are hereby repealed.
(2) Notwithstanding such repeal,— (a) the previous operation of the repealed regulations or anything duly done or suffered thereunder, any right, privilege, obligation or liability acquired, accrued or incurred under the repealed regulations, any penalty, forfeiture or punishment incurred in respect of any offence committed against the repealed regulations, or any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, shall remain unaffected as if the repealed regulations had never been repealed; and (b) anything done or any action taken or purported to have been done or taken including any adjudication, enquiry or investigation commenced or show-cause notice issued under the repealed regulations prior to such repeal, shall be deemed to have been done or taken under the corresponding provisions of these regulations;
(3) After the repeal of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992, any reference thereto in any other regulations made, guidelines or circulars issued thereunder by the Board shall be deemed to be a reference to the corresponding provisions of these regulations.

10. PIT Regulations, 1992

Prohibition on dealing, communicating or counselling on matters relating to insider trading.
3. No insider shall— (i) either on his own behalf or on behalf of any other person, deal in securities of a company listed on any stock exchange [2][when in possession of] any unpublished price sensitive information.

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[1] Substituted for the words “twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher” by the Securities Laws (Amendment) Act, 2014, w.e.f. 08-09-2014. Prior to substitution, as substituted by the SEBI (Amendment) Act, 2002, w.e.f. 29-10-2002 it read as under: “not exceeding five lakh rupees”.
[2] Substituted for “on the basis of” by the SEBI (Insider Trading) (Amendment) Regulations, 2002, w.e.f. 20-02-2002.

Policy on disclosures and internal procedure for prevention of insider trading code of internal procedures and conduct for listed companies and other entities.

12. (1) All listed companies and organisations associated with securities markets including : (a) the intermediaries as mentioned in section 12 of the Act, asset management company and trustees of mutual funds ; (b) the self-regulatory organisations recognised or authorised by the Board; (c) the recognised stock exchanges and clearing house or corporations; (d) the public financial institutions as defined in section 4A of the Companies Act, 1956; and (e) the professional firms such as auditors, accountancy firms, law firms, analysts, consultants, etc., assisting or advising listed companies, shall frame a code of internal procedures and conduct as near thereto the Model Code specified in Schedule I of these Regulations 45[without diluting it in any manner and ensure compliance of the same].

(2) The entities mentioned in sub-regulation (1), shall abide by the code of Corporate Disclosure Practices as specified in Schedule II of these Regulations.

SCHEDULE I

PART A MODEL CODE OF CONDUCT FOR PREVENTION OF INSIDER TRADING FOR LISTED COMPANIES

1.0 Compliance Officer

1.2 The compliance officer shall be responsible for setting forth policies, procedures, monitoring adherence to the rules for the preservation of “Price Sensitive Information”, pre-clearing; of designated employees’ and their dependents’ trades (directly or through respective department heads as decided by the company), monitoring of trades and the implementation of the code of conduct under the overall supervision of the Board of the listed company.

Explanation: For the purpose of this Schedule, the term ‘designated employee’ shall include: — (i) officers comprising the top three tiers of the company management [3][***]; (ii) the employees designated by the company to whom these trading restrictions shall be applicable, keeping in mind the objectives of this code of conduct.

3.3 Pre-clearance of trades

3.3.1 All directors/officers/designated employees of the company [4][and their dependents as defined by the company] who intend to deal in the securities of the company (above a minimum threshold limit to be decided by the company) should pre-clear the transaction as per the pre-dealing procedure as described hereunder.

[3] The words “and all employees in the finance department” omitted by the SEBI (Prohibition of Insider Trading) (Second Amendment) Regulations, 2002, w.e.f. 29-11-2002.

[4] Inserted by the SEBI (Prohibition of Insider Trading) (Amendment) Regulations, 2008 w.e.f. 19-11-2008

3.3.2 An application may be made in such form as the company may notify in this regard, to the Compliance Officer indicating the estimated number of securities that the designated employee/officer/director intends to deal in, the details as to the depository with which he has a security account, the details as to the securities in such depository mode and such other details as may be required by any rule made by the company in this behalf.

4.0 Other restrictions

4.2 All directors/officers/designated employees who buy or sell any number of shares of the company shall not enter into an opposite transaction i.e. sell or buy any number of shares during the next six months following the prior transaction. All directors/ officers/ designated employees shall also not take positions in derivative transactions in the shares of the company at any time. In the case of subscription in the primary market (initial public offers), the above mentioned entities shall hold their investments for a minimum period of 30 days. The holding period would commence when the securities are actually allotted.] [5]

SCHEDULE II

[CODE OF CORPORATE DISCLOSURE PRACTICES FOR PREVENTION OF INSIDER TRADING]

2.0 Prompt disclosure of price sensitive information

2.1 Price sensitive information shall be given by listed companies to stock exchanges and disseminated on a continuous and immediate basis. 2.2 Listed companies may also consider ways of supplementing information released to stock exchanges by improving Investor access to their public announcements.

3.0 Overseeing and co-ordinating disclosure

3.2 This official shall be responsible for ensuring that the company complies with continuous disclosure requirements. Overseeing and co-ordinating disclosure of price sensitive information to stock exchanges, analysts, shareholders and media and educating staff on disclosure policies and procedure.

E. CONSIDERATION OF ISSUES AND FINDINGS

[5] *Inserted by the SEBI (Prohibition of Insider Trading) (Amendment) Regulations, 2008 w.e.f. 19-11-2008. Prior to its substitution clause 4.2 read as under:- "4.2. All directors/officers/designated employees shall hold their investments in securities for a minimum period of 30 days in order to be considered as being held for investment purposes. The holding period shall also apply to subscription in the primary market (IPOs). In the case of IPOs, the holding period would commence when the securities are actually allotted."*

11. As the inquiry in the matter has been completed, I now proceed to decide the case on the basis of SCN issued, reply made by the Noticees and material available on record. I also note that SCN has made specific charges with respect to the Noticees and for the same Noticees have specifically replied to each allegations. By considering this aforesaid, I note that the issues that arise for consideration in the present case are:

a) **Issue No I Whether Noticees are liable under provision of 15G of SEBI Act?**

b) **Issue II Whether Noticee 1 and Noticee 2 are liable under provision of 15HB of SEBI Act?**

c) **Issue No. III If yes, whether the failure, on the part of the Noticee would attract monetary penalty under Section 15G and 15HB of the SEBI Act?**

d) **Issue No. IV If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act read with rule 5(2) of the SEBI Adjudication rules?**

Issue No I Whether Noticees are liable under provision of 15G of SEBI Act?

12. Before moving forward, it would be relevant to deal with the preliminary objections raised by Noticees in their submissions regarding violation of principles of natural justice. Noticee 1 has submitted that there is a delay of nine years which has caused serious prejudice to the Noticee. In this regard, I note that SEBI initiated investigation pursuant to an internal alert regarding price rise for long period in the scrip of Wockhardt Ltd. during January 07, 2013 to March 08, 2013 which was followed by sharp price fall during May 17, 2013 to May 24, 2013. Investigation was initiated on August 19, 2013 to find any instance of violation PIT Regulations, 1992, due to trading activity of certain entities around three corporate announcements made by Wockhardt during the price fall period and to find any violation of SEBI (PFUTP) Regulations, 2003, due to trading activity in the scrip

during the investigation period. I note that erstwhile AO has been appointed by vide communiqué dated August 02, 2022. Thereafter, due to internal structuring, I have been appointed as Adjudicating officer communiqué dated October 06, 2022.

13. SCN has been issued on September 15, 2022. The SCN was delivered to the Noticees through email and speed post. Thereafter, on November 10, 2022 authorised representative of Notcee 1 has filed settlement application with respect to the present proceedings. Meanwhile, as per the request of the Noticee 1, the inspection was also concluded on the November 16, 2022. The aforesaid settlement application of Noticee 1 was rejected by Competent Authority of SEBI and the same has been communicated to me on April 11, 2023. Accordingly, considering the facts of the case, an opportunity of personal hearing was given and concluded on April 19, 2023 wherein Noticee 1 has made elaborate submissions before me. I note that Noticee 1 has merely contended that delay in the matter has severally prejudiced him, however, neither in his reply nor during the hearing, he could point out any particular document or information which he could not retrieve due to delay in the matter, which has prejudiced his defense. In view of this, I am of the view that no prejudice has been cause to Noticee 1 due to alleged delay in the matter.

14. I note that it has been continuously reiterated by the appellate courts in the catena of cases that SCN would be issued within the reasonable time period and the reasonable time period depends on each case facts and circumstance and no hard and fast rule can be laid down in this regard. The same has been affirmed by the appellate courts in the aforementioned orders cited by the Noticee. The relevant para of the aforesaid orders are as follows:

a) **Ashlesh Gunvantbhai Shah** (supra)

"It is no doubt true that no period of limitation is prescribed in the Act or the Regulations for issuance of a show cause notice or for completion of the

adjudication proceedings. The Supreme Court in Government of India vs, Citedal Fine Pharmaceuticals, Madras and Others, [AIR (1989) SC 1771] held that in the absence of any period of limitation, the authority is required to exercise its powers within a reasonable period. <u>What would be the reasonable period would depend on the facts of each case and that no hard and fast rule can be laid down in this regard as the determination of this question would depend on the facts of each case.</u> This proposition of law has been consistently reiterated by the Supreme Court [..]. (emphasis applied)

b) **Adjudicating Officer, SEBI vs Bhavesh Pabari** (supra)

"There are judgments which hold that when the period of limitation is not prescribed, such power must be exercised within a reasonable time. What would be reasonable time, would depend upon the facts and circumstances of the case, nature of the default/statute, prejudice caused, whether the third-party rights had been created etc."

15. I have considered the cases cited by Noticees and in my humble view I note that cases relied by Noticees *viz* Ashok Shivlal Rupani and Ors. vs Securities and Exchange Board of India (Appeal No. 417 of 2018), ICICI Bank Limited v SEBI (Appeal No. 583 of 2019) dated July 08, 2020., Bharat J Patel vs SEBI dated September 08, 2020. Garware Polyester Limited & Ors. Vs SEBI (Appeal No. 187 of 2021), Rajeev Bhanot & Ors. Vs SEBI (Appeal No. 396 of 2018). Ashlesh Gunvantbahi Shah & Ors. V SEBI (Appeal No. 169 of 2019), Adjusticating Officer, Securities and Exchange Board of India vs Bhavesh Pabari (Civil Appeal No. 11311 of 2013), on February 28, 2019, SEBI vs Rajeev Bhanot & Ors. (Civil Appeal No. 6441-6443 of 2021 can be factually distinguished from the facts and circumstances of the present case.

16. I note that in the present case, Noticee 1 to 3 are alleged to have violated Regulation 3(i) of PIT Regulations, 1992 read with Regulation 12(2) of PIT

Regulations, 2015 by trading in the shares of the Company while in possession of UPSI. Thus, in these proceedings, it has to be determined whether Noticee 1 to 3 have violated Regulation 3(i) of the PIT Regulations, 1992.

17. I further note that the PIT Regulations, 1992, have been repealed by the PIT Regulations, 2015. Regulation 12 of PIT Regulations, 2015 provides for repeal and savings and accordingly, any proceedings for contraventions of provisions of the PIT Regulations, 1992 are saved and, hence, can be proceeded with under the said PIT Regulations, 2015 as if PIT Regulations, 1992 have never been repealed. Considering the foregoing, the instant proceedings initiated against the Noticees for their alleged violations of provisions of the PIT Regulations, 1992 can be continued as such.

18. I note that for the purpose of regulation 3 (i) of PIT Regulation 1992, following 3 component needed to be established:

I. Information is UPSI.

II. Noticee must be insider.

III. Insider/Noticees dealt in securities while in possession of UPSI.

I. Information is UPSI

19. Regulation 2 (ha) of PIT Regulations, 1992 states as under:

"2(ha) "price sensitive information" means any information which relates directly or indirectly to a company and which if published is likely to materially affect the price of securities of company. Explanation. —The following shall be deemed to be price sensitive information: —

i. periodical financial results of the company.

ii. intended declaration of dividends (both interim and final);

iii. issue of securities or buy-back of securities;

iv. any major expansion plans or execution of new projects.

v. amalgamation, mergers or takeovers;

vi. disposal of the whole or substantial part of the undertaking;

vii. and significant changes in policies, plans or operations of the company;"

20. Further Regulation 2(k) of PIT Regulations, 1992 states as under:

> *"2(k) "unpublished" means information which is not published by the company or its agents and is not specific in nature.*
> *Explanation. —Speculative reports in print or electronic media shall not be considered as published information."*

21. I note that as per Regulation 2(ha) of PIT Regulations, 1992, any unpublished information related to the Company or its securities which if published is likely to materially affect the price of the securities is termed as "Price Sensitive Information". I note that Regulation 2(ha) also provides a specific list of information which contains financial results, dividends etc. which shall be deemed as "Price Sensitive Information". Further, Regulation 2(k) of PIT Regulations, 1992 defines "Unpublished" which means information that is not published by Company/ its agent and which is not specific in nature.

22. I note that Noticee 1 contended that Issuance of Form 483 was not Price Sensitive information and has no significance. Issuance of Form 483 cannot be Price Sensitive information. In this regard I note that Wockhardt operated in Pharma business. Bulk of the revenue of Wockhardt comes from overseas market including US and Europe. Inspection, licensing, permissions etc from USFDA is considered to be of very material impact in Pharma business. For majority of the pharma companies, the first approval for any new formula etc is sought from and given by USFDA and only then the companies start distributing medicines or drugs in other countries. Thus USFDA inspection and approval is a major event for a pharmaceutical company operating a manufacturing facility in India and exporting drugs to US.

23. USFDA, in this case, visited the manufacturing facility of Wockhardt at Waluj near Aurangabad, Maharashtra during March 18-22, 2013. The purpose of the visit was to inspect the factory and data pertaining to Abbreviated New Drug Application filed by Wockhardt with USFDA for Zoledronic acid injection. USFDA then issued

form 483 which is regarded as adverse observations on factory facilities. I note that after form 483, the company offers clarification to the inspecting agency (USFDA). The USFDA then considers the clarifications and corrections offered by the pharma company about the manufacturing and exporting facility under consideration. After considering the submissions, USFDA then issues import alert, if required.

24. In view of aforesaid facts and circumstances, I note that though, inspections conducted by US FDA are considered as routine in nature, however, issue of Form 483 which happens after conduct of inspection only in case where US FDA observes any conditions that may constitute violations of the Food Drug and Cosmetic (FD&C) Act and related Acts. Unless duly rectified/addressed, it may ultimately lead to issuance or warning and import alert, which have financial implications for the concerned company. Considering aforesaid, I am of the view that Form 483 is sufficient to give rise to an impression in the mind of general investing public that it has chances of culminating into warning letter or import alert which will have adverse effect on the financials of the company concerned. Thus, news of issuance of Form 483 was an information that was likely to materially affect the price of the securities of Wockhardt.

25. I further note that in terms of Regulation 2(ha) of PIT Regulations, 1992, the information which is likely to materially affect the price upon coming into the public domain is price sensitive information. The regulation provides that there should be a likelihood that the information, on being published, would materially affect the price of the scrip. Whereas in fact the UPSI upon becoming public may or may not affect the price. In the present case, impact of the form 483 has been summarized below:

Table No 4

<table>
<tr><th>Date-Time</th><th>Announcement/News</th><th>Price Impact/Shares Traded</th><th>Remarks</th></tr>
<tr>
<td>April 12-15,2015</td>
<td>News reports regarding rumoured FDA observations in terms of form 483 was published on April 12 and April 13, 2013. News reports also mentioned that market reacted to the news adversely and stock declined on Friday 10% than previous close.

Wockhardt confirmed the rumours of receipt of form 483 vide its press release on its website on April 15, 2013</td>
<td>10/04/2013 Wednesday BSE
<table><tr><th>O</th><th>H</th><th>L</th><th>C</th></tr><tr><td>2015</td><td>2037</td><td>2010</td><td>2018.1</td></tr></table>
No. of shares traded: 2,39,335 (NSE+BSE)

11/04/2013 Thursday BSE
<table><tr><th>O</th><th>H</th><th>L</th><th>C</th></tr><tr><td>2021</td><td>2031</td><td>1930</td><td>1945.2</td></tr></table>
No. of shares traded: 6,48,493 (NSE+BSE)
12/04/2013 Friday BSE
<table><tr><th>O</th><th>H</th><th>L</th><th>C</th></tr><tr><td>1945</td><td>1950</td><td>1750.7</td><td>1750.8</td></tr></table>
No. of shares traded: 7,82,044 (NSE+BSE)
15/04/2013 Monday BSE
<table><tr><th>O</th><th>H</th><th>L</th><th>C</th></tr><tr><td>1738.2</td><td>1814.5</td><td>1577.7</td><td>1708.2</td></tr></table>
No. of shares traded: 4,80,188 (NSE+BSE)</td>
<td>Price of the scrip started falling from April 11, 2013 with market murmurs.
Price closed on 1945.2 on April 11 (3.6% down than previous close)
Price further fell down 10% on April 12 closing at Rs. 1750
Price fall continued on April 15. Price fell to Rs. 1708.2 (down by 2.43%)</td>
</tr>
</table>

26. Noticee contended that Form 483 was not “unpublished” as it was immediately available on US FDA’s on March 22, 2013. I note that Regulation 2(k) of PIT Regulations, 1992 provides that information is “unpublished” if the Company/ its agents have not published it. Thus, in terms of said definition the publication is considered as made when it is made by the authentic source *i.e.* the company itself. In the light of said definition, if an investor was to look for an information pertaining to Wockhardt then in all likelihood such an investor would look for the website of the Company, rather than searching for it on the website of authority in foreign jurisdiction who happens to be regulator of the certain business activities of the Company. Since, in the present case the Company has published the information

relating to issuance of Form 483 only on April 15, 2013, the said information remained "unpublished" in terms of Regulation 2(k) of PIT Regulations, 1992 till April 15, 2013. The fact that issuance of Form 483 to the Company was available on US FDA's website since March 22, 2013 does not make the said information published, as contemplated under PIT Regulations, 1992. Thus, such contention of the Noticee is not tenable.

27. I also note that the Noticee has contended that the information regarding issuance of Form 483 by US FDA to Wockhardt was available over some news reports much prior to April 15, 2013, therefore, it is incorrect on the part of SEBI that the information was unpublished during the period March 22, 2013 - April 15, 2013. Noticee 1 has also submitted copies of media reports dated April 12, 2013 and April 13, 2013 which relate to US FDA inspection of Wockhardt. In this regard, I note from the copy of media reports submitted by Noticee 1 that these reports are not published by the Company or its agents. Further, I note that the explanation added to Regulation 2(k) of PIT Regulations, 1992 clarifies that speculative reports in print or electronic media shall not be considered as published information. Therefore, in view of aforesaid, the contention of the Noticee that information regarding issuance of Form 483 by US FDA to Wockhardt for its manufacturing facility at Waluj near Aurangabad was not "unpublished" in terms of Regulation 2(k) of PIT Regulations, 1992, is not tenable.

28. In view of above facts and circumstances, I find that information related to issuance of Form 483 to the Company on March 22, 2013, by US FDA was a price sensitive information, as it was likely to materially affect the price of the securities of the Company. I also note that in view of aforesaid, Hon'ble Supreme Court judgment SEBI vs Abhijit Rajan (supra) and Hon'ble SAT judgment Samir Arora vs SEBI (supra) can be factually distinguished from the present case. Further, the said information was also unpublished till the time it was published by the Company on April 15, 2013, by hoisting a press release in this regard, on its

website. I also find that period from March 22, 2013 to April 15, 2013 was UPSI period.

II. Noticee must be insider.

29. In terms of Regulation 2(e) of PIT Regulations, 1992 "Insider" means,

(i) "*is or was connected with the company or is deemed to have been connected with the company and who is reasonably expected to have access to unpublished price sensitive information in respect of securities of a company, or*
(ii) has received or has had access to such unpublished price sensitive information".

30. Also, in terms of Regulation 2(c) of PIT Regulations, 1992, connected person means any person who-

(i) is a director, as defined in clause (13) of section 2 of the Companies Act, 1956 (1of 1956, of a company, or is deemed to be a director of that company by virtue of sub-clause (10) of section 307of that Act; or

(ii) occupies the position as an office or an employee of the company or holds a position involving a professional or business relationship between himself and the company and who may reasonably be expected to have an access to unpublished price sensitive information in relation to that company

31. Regulation 2(e) of PIT Regulations, 1992 provides that an insider means any person who is connected with the company or is deemed to have been connected with the company and who is reasonably expected to have access to unpublished price sensitive information in respect of securities of the Company. Further, any person who has received or has had access to such UPSI, is also termed as "insider". Connected person in terms of Regulation 2(c) of PIT Regulations, 1992 means director of the Company; or any person who occupies the position as an officer or an employee of the company or holds a position involving a professional or business relationship between himself and the company and who may reasonably be expected to have an access to UPSI in relation to that company. In the present case, SCN alleges that Noticee 1 to 3 who traded in the scrip of Wockhardt during the UPSI period were the employees of Wockhardt and were holding the post of President Pharma Research, Global IP, QA/QC & Regulatory

Affairs, Senior Vice President Pharma Research and General manager in Analytical Development, respectively. The Noticee 1, 2 and 3 were also designated employees, as per Wockhardt's reply dated November 19, 2014. SCN also alleges that Noticee 2 was reporting to Noticee 1 and Noticee 3 was reporting to Noticee 2. and were connected to Wockhardt as per the connections given in the table below:

Table No 5

Client Name	**Connections of Suspected entities with Wockhardt Ltd and access to UPSI**
Yatendra Kumar	During the IP, worked for Wockhardt as – President – Pharma Research, Global IP, QA/QC & Regulatory Affairs. Further, Yatendra Kumar in his reply dated December 12, 2014, accepted that he came to know of form 483 on March 22, 2013.
Girish Kumar Jain	During the IP, worked for Wockhardt as – Senior Vice President Pharma Research and was also directly reporting to Mr. Yatendra Kumar.
Shashikant Tiwari	During the IP, worked for Wockhardt – General manager in Analytical Development and also reported directly to Mr. Girish Kumar Jain.

32. SCN also alleges that the Noticees were working at the same Waluj factory of Wockhardt which was inspected by US FDA and were involved with US FDA inspection of the said factory. Hence, they were also reasonably expected to have information regarding issuance of Form 483 by US FDA and were thus, insiders in terms of Regulation 2(e) of PIT Regulations, 1992.

33. I note from the records that Noticee 1 was responsible for product development and technology transfer of products. He was providing support to the manufacturing unit for any clarification or data required by US FDA with respect to product development and technology transfer. Further, I note from the Noticee's 1 reply dated December 12, 2014 that he came to know of issuance of Form 483 on March 22, 2013. In view of the above, I find that Noticee 1 was a connected person in terms of Regulation 2(c) of PIT Regulations, 1992 and hence, an insider in terms of 2(e) of PIT Regulations, 1992.

34. I note from the records that Noticee 2 and 3 were also employed with Wockhardt and were working as Senior Vice President Pharma Research and General Manager in Analytical Development, respectively. The SCN has alleged that they were reasonably expected to have UPSI as they were posted at the same Waluj factory of Wockhardt which was under inspection by US FDA. In this regard, Noticee 1 and 2 have denied that they were involved in the US FDA inspection of Waluj Factory of Wockhardt and denied that they were in possession of UPSI during the UPSI period.

35. I note that the it has been alleged in the SCN that Noticee 2 was working at the Waluj factory of Wockhardt which was inspected by US FDA and thus, has the knowledge of the UPSI. However, as per the reply of Noticee 2 his office was located at the R&D Centre of Wockhardt at Chikalthana, Aurangabad which is about 23 Kms away from the Waluj factory. Further, Noticee 2 submitted that he had no responsibility with respect to Waluj factory of Wockhardt and the profile of his reporting authority Mr. Yatendra Kumar (Noticee 1) was much wider and he was heading only one of the verticals supervised by him i.e. Pharma Research. Further, I note from the documents available on record that the Company in its letter dated April 03, 2014 to SEBI has inter alia furnished a list of employees who were in possession of the UPSI pertaining to issue of Form 483. I note that names of Noticee 2 and 3 are not mentioed in the said list. SCN alleged that Notciee 2 was a designated employee of Wockhardt and was directly reporting to Noticee 1. In this regard, I note that it was the Waluj factory of Wockhardt which was under inspection by US FDA and the inspection was not pertaining to the department which was being headed by Noticee 2. Thus, in view of the above facts, I find that Noticee 2 cannot be said to be reasonably expected to have UPSI. Similarly, I note that Noticee 3 has been alleged to be reasonably expected to have UPSI because of his reporting to Noticee 2. Since, it has been found that Noticee 2 himself could not be reasonably expected to have UPSI, therefore, Noticee 3 who was reporting to Noticee 2 also cannot be reasonably expected to have UPSI.

36. In this regard, the following observations of the decision of Hon'ble Supreme Court of India in the matter of **Chintalapati Srinivasa Raju vs Securities and Exchange Board of India** (2018) 7 SCC 443 are relevant:

> "*10. It is important to note that Regulation 2(e)(i) is in two parts. The first part has reference to any person who is connected with the company or is deemed to be connected with the company. There can be no doubt that the definition of "connected person" contained in Regulation 2(c) would rope in the appellant under sub-clause (i) thereof, as the appellant was undoubtedly a director of SCSL upto 2003. However, the second limb of clause 2(e)(i) also has to be satisfied, which is that such person must reasonably be expected to have access to unpublished price sensitive information by virtue of such connection in respect of securities of a company*."

37. In view of the above, I find that that Noticee 2 and 3 cannot be reasonably be expected to have access to UPSI and hence, cannot be termed as an insider in terms of Regulation 2(e) of PIT Regulation, 1992.

III. Insider/Noticee dealt in securities while in possession of UPSI

38. The trading activity of Noticee 1 as pre-UPSI, during UPSI and post UPSI period is presented below:

Table No. 6

Type	Period	Buy Qty	Sell Qty	Net
Before UPSI	November 01, 2012 – March 21, 2013	500	9319	-8819
During UPSI	March 22 – April 14, 2013	0	6841	-6841
Post UPSI	April 15, 2013 – July 31, 2013	0	1041	-1041

39. From the analysis of trading pattern of the Noticee 1, I note that Noticee 1 has sold shares of the Company during the UPSI period. Further, the price was fell after the UPSI become published. Thus, it is clear that Noticee 1 traded in Wockhardt's shares while in possession of UPSI and thus, avoided the illegal loss and benefitted from the selling the shares while having UPSI.

40. I note from the records that Rs 14,23,074/- approximate loss avoided by Noticee 1 by selling shares of the Wockhardt before the announcement related to Form 483. The trading details of the Noticee 1 during UPSI period is provided below:

Table No. 7

Noticee	No of shares sold (X)	Average Price Rs.	Total sale value Rs. (A)	Closing Price of scrip on April 15, 2013 (Rs.) (Y)	Approx Sale value as on April 15, 2013 Rs. (B)=(Y)*(X)	Loss avoided Rs. (A)-(B)
Noticee 1	6841	1920.7	1,31,39,655	1712.7	1,17,16,581	14,23,074

41. I note that the Company confirmed the issuance of Form 483 by US FDA through a press release on its website on April 15, 2013. Accordingly, the closing price of the scrip of Wockhardt Limited on April 15, 2013 *i.e.* Rs.1712.7/-, has been used for computation of the alleged wrongful notional loss.

42. It is contended by Noticee 1 that for the calculation of loss avoided, SEBI has ignored the cost of acquisition for exercising ESOPS while computing the alleged loss. In this regard, I note that the cost of acquisition is irrelevant for computing the loss avoided by Noticee 1 as the loss avoided is calculated by deducting the amount of proceeds of sale of shares which Noticee 1 would have received had he sold the shares on the day when UPSI was published from the amount of actual consideration received by Noticee 1 by selling the shares during the UPSI period. In such a scenario, cost of acquisition of shares is irrelevant for computing the loss avoided by the Noticee 1. Thus, the said contention of the Noticee 1, is not tenable.

43. It is also contended by Noticee 1 that while calculating the loss avoided by Noticee 1, instead of actual price of the shares sold, average price of shares is taken into consideration. In this regard, I note that Noticee 1 has sold 6841 shares during the UPSI period and the SCN takes average sell price for calculating the unlawful gains. I find that whether actual price is taken or average price is taken the ultimate

amount of total sell price remains the same and accordingly, the amount of wrongful loss avoided also remains the same. Therefore, the contention raised by the Notice does not have any merit.

44. In view of above facts and circumstances of the case, I find that Noticee 1 is an insider who has traded in the scrip of the Company while having UPSI and thereby, violated regulation 3(i) of PIT Regulations, 1992 which prohibits any insider from trading in company shares when in possession of any unpublished price sensitive information.

Issue II Whether Noticee 1 and Noticee 2 are liable under 15HB of SEBI Act?

45. I note that SCN alleged that Noticee 1 has violated clause 3.3 of Schedule I of Part A of the PIT Regulations, 1992 read with regulation 12(2) of SEBI (PIT) Regulations, 2015. In this regard, I note that Wockhardt *vide* their letter dated October 07, 2013 had submitted copy of code of conduct of the company for prevention of insider trading as required under SEBI PIT Regulations, 1992. According to the said code of conduct (provision VIII), it was observed that designated employees were required to take pre-clearance for trading in Wockhardt scrip wherein the total no. of shares traded exceeded 4000 in calendar month. In the present case, Noticee 1 who was designated employee during investigation period (Wockhardt reply dated November 19, 2014), had sold 10341 shares in one calendar month – March 2013. Further, Noticee 1 admitted that it had done bonfide mistake and believed that pre-clearance for trades would be required to be taken only when the quantity in the year exceed 40,000 shares.

46. In view of above facts and circumstances, I note that that Noticee 1 was required to have his trades pre-cleared before trading in the scrip of the Company. In the present case, no such pre-clearance was sought by the Noticee 1. Thus, Noticee 1 is liable for the violation of clause 3.3 of Schedule I of Part A of the PIT Regulations, 1992 read with regulation 12(2) of SEBI (PIT) Regulations, 2015.

47. SCN allege that Noticee 1 and Noticee 2 have violated clause 4.2 of Schedule I of Part A of the PIT Regulations, 1992 read with regulation 12(2) of SEBI (PIT) Regulations, 2015. In this regard, I note that provision VIII-3 of code of conduct (stipulated by Wockhardt) prohibited designated employees from entering into opposite transaction in shares of the company within a period of 6 months. In the present case, it has been admitted position that Noticee 1 had bought and sold 500 shares of Wockhardt on March 12, 2013. Noticee 1 did not disclose the buy side of this trade on March 12, 2013 to the Company. Further, Noticee 2, was also a designated employee during the investigation period had bought 380 shares of the Company on December 13, 2012 and sold 943 shares on April 04, 2013.

48. In view of above facts and circumstances, I note that Noticee 1 and Noticee 2 had reversed their position in Wockhardt shares within a period of 6 months and thereby violated provision VIII-3 of code of conduct as mentioned in aforesaid para. Thus, Noticee 1 and Noticee 2 are liable for the violation of clause 4.2 of Schedule I of Part A of the PIT Regulations, 1992 read with regulation 12(2) of SEBI (PIT) Regulations, 2015.

Issue No. III If yes, whether the failure, on the part of the Noticee would attract monetary penalty under Section 15G and 15HB of the SEBI Act?

&

Issue No. IV If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act read with rule 5(2) of the SEBI Adjudication rules?

49. I find it deem fit to deal with aforementioned issues together. I note that with respect to the present issue, it is pertinent to refer to the decision of the Apex Court in the matter of **SEBI vs Shri Ram Mutual Fund** (Appeal Civil 9523-9524 of 2003) dated May 23, 2006, wherein it is held that "*In our considered opinion,*

penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established".

50. Further, in the parallel proceeding under Sections 11(1), 11(4), 11B of the SEBI Act learned WTM held in his order dated June 19, 2023 held that:
"42 In view of the aforesaid findings and observations, I am of the view that by trading in the scrip of the Company while in possession of UPSI during the UPSI period, Noticees no. 1 has violated Regulation 3(i) of PIT Regulations, 1992. In view of the violation of the provisions of the PIT Regulations, 1992 by the Noticees, as noted above, I find that the Noticee no. 1 is liable for issuance of appropriate directions for debarment from accessing the securities market and dealing in securities. Further, I find that as the Noticee no. 1 has averted loss of 14,23,074/- by indulging in insider trading in violation of Regulation 3(i) of PIT Regulations, 1992, Noticee no. 1 which is also liable to be disgorged."

51. I also note that Hon'ble Securities Appellate Tribunal in the matter of **Nirmal N. Kotecha v. Securities and Exchange Board of India** (dated June 08, 2021) held that:
……..We are of the opinion, that a consistent view is required to be taken by SEBI for the purpose of orderly development of the securities market and therefore the quasi-judicial bodies are required to maintain a discipline and ensure that divergent opinions on the same issue are not taken……….

52. In view of above findings of appellate courts, I find that it is a fit case to impose the penalty on the Noticee 1 and Noticee 2. I note that Noticee 1 has traded in the scrip of the Company while in possession of UPSI during the UPSI period and thus, is liable under 15 G of SEBI Act for the violation of Regulation 3(i) of PIT Regulations, 1992. Further, I note that Noticee 1 along with Noticee 2 are liable under 15HB of SEBI for the violation of Compnay's Code of conduct which made

by the company for regulating, monitoring and reporting trading by designated persons under PIT Regulation 1992.

53. I note that having regard to the factors listed in section 15J of SEBI Act read with Rule 5(2) of the Adjudication Rules, which provides that factors while adjudging quantum of penalty, and in the light of Supreme Court's judgment in the matter of **SEBI vs Bhavesh Pabari** (2019) 18 SCC 246, it is noted that from the above para and available on record that Noticee 1 has averted the loss of Rs 14,23,074 by trading in the scrip of the Company while in possession of UPSI. Further, I have taken into account the fact that substantial amount of time has been elapsed in initiating the present proceedings. I also note that information with respect to the Form 483 had not been disclosed to stock exchanges and trading window for dealing in the Shares of the Company was not closed. Further, I note that there is no material on record to indicate that the Noticees have been found to have committed similar violations any time in the past.

54. I also note that in the parallel proceeding learned WTM in his order dated June 19, 20123 has already issued the direction in which he has issued following direction along with other directions and the same has also been taken into consideration:

(i) The Noticee No. 1, is directed to disgorge Rs. 14,23,074/-. The said amount shall be remitted by the Noticee no. 1 along with interest at the rate of 4% per annum from April 15, 2013 till the date of actual payment, to Investor Protection and Education Fund (IPEF) of SEBI, as referred to in Section 11(5) of the SEBI Act, 1992, within 45 days from the date of coming into force of this order;

(ii) Noticee no. 1 is restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities (including units of mutual funds), directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of six months, from the date of this order;

(iii) Noticee No. 1 is restrained from buying, selling or dealing in the securities of the Company i.e. Wockhardt Ltd., directly or indirectly, in any manner whatsoever, for a period of one (1) year, from the date of this order;

(iv) The restraints/ prohibition imposed in paras 44 (ii) and (iii), on Noticee no.1, shall run, concurrently. The obligation of the Noticee restrained/ prohibited by this Order, in respect of settlement of securities, if any, purchased or sold in the cash segment of the recognized stock exchange(s), as existing on the date of this Order, are allowed to be discharged irrespective of the restraint/ prohibition imposed by this Order. Further, all open positions, if any, of the Noticees, restrained/ prohibited in the present Order, in the F & O segment of the recognized stock exchange(s), are permitted to be squared off, irrespective of the restraint/prohibition imposed by this Order.

F. Order

55. After taking into consideration the nature and gravity of the violations established in the preceding paragraphs, along with factors mentioned under 15J of SEBI Act, and the principle pronounced under the judgement of **Bhavesh Pabari** (Supra), and in exercise of the powers conferred upon me under section 15-I of the SEBI Act read with rule 5 of the Adjudication Rules, I hereby impose following penalty on the Noticee 1 and Noticee 2:

Noticees	Name of entities	Established Violation	Penalty under	Amount
Noticee 1	Yatendra Kumar	Regulation 3 (I) of PIT Regulations, 1992 read with regulation 12(2) of SEBI (PIT) Regulations, 2015	15G	10,00,000 (Rupees Ten Lakh Only)
		Clause 4.2 & 3.3 of Schedule I of Part A of the PIT Regulations, 1992 read with regulation 12(2) of SEBI (PIT) Regulations, 2015	15HB	2,00,000/- (Rupees Two Lakh Only)
Noticee 2	Shashi kant Tiwari	clause 4.2 of Schedule I of Part A of the PIT Regulations, 1992 read with regulation 12(2) of SEBI (PIT) Regulations, 2015	15HB	1,00,000/- (Rupees One Lakh Only)

56. I find that aforementioned penalty is commensurate with the violation committed by the Noticee as mentioned in the above paras to meet the ends of justice in the present matter.

57. 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 SEBI website www.sebi.gov.in on the following path by clicking on the payment link.

ENFORCEMENT → ORDERS → ORDERS OF AO → PAY NOW

58. 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.

Date: July 31, 2023	**Vijayant Kumar Verma**
Place: Mumbai	**Adjudicating Officer**