BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER No. Order/SM/AD/2022-23/ 21267-21269

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

In respect of:

Noticee No. 1 **Ms. Shruti Vora** **(PAN - AKZPM7724N)**	**Noticee No. 2** **Mr. Aditya Omprakash Gaggar** **(PAN - AARPG6390G)**
Noticee No. 3 **Mr. Shailendra Mehta** **(PAN – ALGPM2002F)**	**Noticee No. 4** **Mr. Utsav Ajay Kedia** **(PAN –AHJPK1349Q)**

*Noticee No. 1, Noticee No. 2, Noticee No. 3 and Noticee No. 4 collectively referred as Noticees.

In the matter of circulation of unpublished price sensitive information (UPSI) through WhatsApp messages with respect to Tata Motors Limited.

A. BACKGROUND

1. During November 2017, there were certain articles published in newspapers / print media referring to the circulation of Unpublished Price Sensitive Information (hereinafter referred to as "**UPSI**") in various private WhatsApp groups about certain companies ahead of their official announcements to the respective Stock Exchanges. Against this backdrop, Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") initiated a preliminary examination in the matter of circulation of UPSI through WhatsApp groups during which search and seizure operation for 26 entities of Market Chatter WhatsApp Group were conducted and approximately 190 devices, records etc., were seized. The WhatsApp chats extracted from the seized devices were examined further and while examining the chats, it was found that in respect of

around 12 companies whose earnings data and other financial information got leaked in WhatsApp. Apart from the names of 12 scrip mentioned in the aforesaid news articles, SEBI, while examining the chats from the seized device, identified 11 more scrips in which UPSI was in circulation on one to one basis. Tata Motors Limited (hereinafter referred to as '**TML**'), a company having its shares listed on BSE Ltd. ('**BSE**') and National Stock Exchange of India Limited (**'NSE'**), was one of the company among the 11 more scrips identified by SEBI.

2. Accordingly, SEBI carried out an investigation in the matter of circulation of UPSI through WhatsApp messages with respect to TML to ascertain any possible violation of the provisions of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act**") and SEBI (Prohibition of Insider Trading) Regulations,2015 (hereinafter referred to as "**PIT Regulations, 2015**") during the period during the period of March 24, 2017 to April 18, 2017 (hereinafter referred to as "**Investigation Period**").

3. SEBI, during its investigation, observed the following:

3.1. TML announced results (Standalone & Consolidated) for the quarter ended December 31, 2015 on BSE and NSE after the meeting of Board of Directors of the Company held on February 11, 2016. The corporate announcement of financial results for the quarter ended December 31, 2015 was made to the stock exchanges (BSE and NSE) by TML on the same day i.e. February 11, 2016 (at 15:16 Hours on BSE and at 15:13 Hours on NSE). As per the announcement made by TML to the stock exchanges (BSE and NSE) on January 29, 2016, trading window of the company was closed from December 25, 2015 to February 13, 2016 for the declaration of financial results for quarter ended December 31, 2015. Thus, the financial results of TML for quarter ended December 31, 2015 was an Unpublished Price Sensitive Information ('UPSI') which came into existence on December 25, 2015. Therefore, the period from December 25, 2015 to February 13, 2016 is considered as the period of UPSI and February 11, 2016 was taken as the date when TML had made the aforesaid price sensitive information public.

3.2. The impact of announcements of above mentioned financial results made by TML, on BSE and NSE, during the investigation period on the price of the scrip are given as follows:

<table>
<tr><th>Date</th><th>Announcement</th><th>Price movement in the scrip of Tata Motors</th><th>Impact on price</th></tr>
<tr><td>11-Feb-16

On BSE at 15:16 hours</td><td>Tata Motors Ltd. announces Q3 results (standalone and consolidated), Auditor’s report (standalone), limited review report (consolidated) & Result Press Release for the quarter ended December 31, 2015</td><td>BSE
<table><tr><th>Date</th><th>OP</th><th>HP</th><th>CP</th><th>Vol.</th></tr><tr><td>10/02/16</td><td>310.95</td><td>310.95</td><td>291.85</td><td>24,08,421</td></tr><tr><td>11/02/16</td><td>299</td><td>299.25</td><td>275.65</td><td>18,19,951</td></tr><tr><td>12/02/16</td><td>281</td><td>304.35</td><td>298.65</td><td>25,58,034</td></tr></table></td><td>On 12/02/2016 (next day of announcement of result for QE Dec 2015), the scrip closed 8.34% above its previous day’s closing price on BSE.</td></tr>
<tr><td>On NSE at 15:13 hours

On NSE at 15:17 hours</td><td>Tata Motors Ltd. has submitted to the exchange the standalone and consolidated financial results along with the Auditors report for the period ended December 31, 2015

Tata Motors Limited has informed the Exchange regarding a press release dated February 11, 2016 “Consolidated Net Revenue Rs. 72,256 crores, Consolidated Pat Rs. 3508 crores”.</td><td>NSE
<table><tr><th>Date</th><th>OP</th><th>HP</th><th>CP</th><th>Vol.</th></tr><tr><td>10/02/16</td><td>309.85</td><td>309.95</td><td>291.55</td><td>2,17,56,193</td></tr><tr><td>11/02/16</td><td>298.50</td><td>300.00</td><td>276.3</td><td>2,16,32,886</td></tr><tr><td>12/02/16</td><td>281.00</td><td>303.95</td><td>298.35</td><td>2,15,42,152</td></tr></table></td><td>On 12/02/2016 (next day of announcement of result for QE Dec 2015), the scrip closed 7.96% above its previous day’s closing price on BSE.</td></tr>
</table>

(Source – bseindia.com and nse-india.com)

3.3. As mentioned earlier, TML was one of the 11 more scrips identified by SEBI about whom the following chats were found in the WhatsApp Chat of Noticee No. 1, a member of Market Chatter group whose mobile device (Apple iPhone 6s, IMEI: 355767073570777) was seized along with others:

i) February 10, 2016 dated message ("hereinafter referred to as "Message 1"):- *"HoS Tata motors hearing pat 3500 crs..and 15.4% margin".*

ii) February 11, 2016 dated message (" hereinafter referred to as "Message 2"):- This message was image of a hand written note, wherein figures pertaining to results of TML for the quarter ending December 2015 were written. The content of the note is as follows - *"TATA MOTOTRS/Consol/cr TO 72256 EBITDA 10236 Margin 14.20% PBT 4176 PAT 3524 [300 cr insurance claim recd]".*

3.4. Upon perusal of WhatsApp chats of Noticee No. 1, it was observed that:

i) Mr. Aditya Omprakash Gaggar ("Noticee No. 2") sent Message 1 in WhatsApp group named "Market info." on February 10, 2016 at 12:28 pm (timing as per the extracted chat is 06:58:32) to Noticee No. 1 as she was a member of the said WhatsApp group.

ii) Further, Mr. Shailendra Mehta ("Noticee No. 3") sent Message 1 to Noticee No. 1 on February 10, 2016 at 3:13 pm (timing as per the extracted chat is 09:43:35).

iii) Noticee No. 1 forwarded the said message 1 on the same day to Mr. Parikshit Shah at 03:13 pm (timing as per the extracted chat is 09:43:49).

iv) Sender of Message 2 to Noticee No. 1 could not be ascertained from WhatsApp chats retrieved from the mobile phone of Noticee No. 1. From WhatsApp chats of Noticee No. 1, it was observed that Noticee No. 1 sent Message 2 to three entities namely:

- Mr. Neeraj Agarwal on February 11, 2016 at 12:29 pm (timing as per the extracted chat is 06:59:40).
- Mr. Sangmesh Jatti on February 11, 2016 at 12:29 pm (timing as per the extracted chat is 06:59:54).
- Mr. Navjeewan Khosla on February 11, 2016 at 12:30 pm (timing as per the extracted chat is 07:00:19).

The expert agency, Helik Advisory Ltd., hired for retrieval and backup of data from the seized devices, vide its email dated March 12, 2018, informed that their forensic tools generate zero G.M.T timing by default, hence 5:30 hours may be added for Indian G.M.T.

3.5. Thus, it was observed that the financial figures of TML were communicated through WhatsApp prior to their announcement on stock exchanges. In the following table, financial figures circulated on WhatsApp pertaining to TML are compared with actual figures disclosed subsequently on stock exchanges to gauge the deviation between two sets of figures:

***Message 1*:**

WhatsApp Message		**Company Announcement**		**%age difference observed**
Date and Time:	10/02/2016 12:28 pm	Date and Time:	11/02/2016 03:13 pm	
Financial figures	**Values**	**Financial figures**	**Values**	
PAT	3500 crs	PAT	3524.41 cr	0.69%
Margin	15.4%	EBITDA Margin	14.17%	8.68%

PAT- Profit after Tax, EBITDA- Earnings before Interests, Taxes, Depreciation and Amortization

Message 2:

WhatsApp Message		**Company Announcement**		**%age difference observed**
Date and Time:	11/02/2016 12:29 pm	Date and Time:	11/02/2016 03:13 pm	
Financial figures	**Values (Rs. in crore)**	**Financial figures**	**Values (Rs. in crore)**	
TO	72256	Total Income from operations (net)	72,256.40	0.05%
EBITDA	10236	EBITDA	10,236.47	0.004%
Margin	14.20%	EBITDA Margin	14.17%	0.21%
PBT	4176	PBT	4175.59	0.01%
PAT	3524	PAT	3524.41	0.01%
300 cr insurance claim recd		299.30 cr insurance claim received		0.23%

EBITDA- Earnings before Interests, Taxes, Depreciation and Amortization, PBT- Profit before Tax, PAT- Profit after Tax

3.6. The financial figures of TML circulated through WhatsApp i.e. chats retrieved from the device of Noticee No. 1 in Message 1 (viz; PAT) and Message 2 (viz; Turnover, EBITDA, EBITDA Margin, PBT, PAT, insurance claim received) closely matched with those disclosed subsequently by TML on stock exchanges i.e. the deviation in financial figures were within a range of 0.01% to 8.68%. Hence, it was observed that the aforesaid WhatsApp chat messages related to TML would fall under UPSI as per Regulation 2 (1)(n) of the PIT Regulations and such circulation of financial figures through the said WhatsApp messages are allegedly considered as communication of UPSI. Therefore, the Noticee No. 1 to 3 who were in possession of the UPSI were termed as 'Insiders' in terms of regulation 2 (1) (g) of the PIT Regulations.

3.7. In view of the above, after considering the reply from Noticee No. 1 to 3, SEBI observed that Noticee No. 1 to 3 being 'Insiders' had communicated the UPSI relating to TML to WhatsApp group and certain entities on one-to-one basis through Whatsapp messages. Therefore, Noticee No. 1 to 3 were alleged to have violated the provisions of section 12A (d) and (e) of the SEBI Act and Regulation 3(1) of the PIT Regulations.

3.8. In addition to the observations / allegations mentioned above with regard to Noticee No. 1 to 3, upon perusal of the information received from BSE and NSE vide emails dated February 12, 2020 and February 14, 2020 it was observed that one of the members of the Market info. WhatsApp group (wherein Message 1 was circulated on February 10, 2016), namely, Mr. Utsav Ajay Kedia, ("Noticee No. 4') traded in the scrip of TML on February 11, 2016. In this regard, it was observed that during the period between circulation of Message 1 in "Market info." WhatsApp group i.e. February 10, 2016 and announcement of result of TML on stock exchanges between 03:13 pm- 03:17 pm on February 11, 2016, Noticee No. 4 had traded in the scrip of TML. Details of his trades as provided by NSE vide email dated February 17, 2020 is given below:

Name	**Date of trading**	**Instrument**	**Buy Quantity**	**Sell Quantity**	**Buy Value**	**Sell Value**
Utsav Ajay Kedia	11/02/2016	EQ	500	0	1,41,031	0

3.9. Further, from the trade-order log provided by NSE on March 06, 2020, it was observed that 2 buy orders were placed by Noticee No. 4 on February 11, 2016 between 02:34 pm to 02:36 pm.

4. In view of the aforesaid facts, it was alleged that noticee No. 4 was in possession of UPSI relating to results of TML for the quarter ending December 31, 2015 from 12:28

pm on February 10, 2016 (when Message 1 was sent by Aditya in the “Market info.” WhatsApp group) till the time results were announced on stock exchange at 03:13 pm on February 11, 2016, and that his orders were placed between 02:34 pm to 02:36 pm on February 11, 2016. Hence, he was considered as an ‘Insider’ on February 11, 2016 as per Regulation 2(1)(g) of the PIT Regulations.

5. Notional/ unlawful gains made in case of positive news is calculated as No. of shares bought while in possession of UPSI x (Closing price on the day of UPSI becoming public or the closing price on the following trading day, depending upon the timing of notification of UPSI to stock exchange Less (-) Weighted Average buy Price). Applying the said logic in calculation of notional/ unlawful gains, SEBI observed that notional / unlawful gains made by Noticee No. 4 by purchasing 500 shares of TML on February 11, 2016, while being in possession of UPSI was Rs. 8,145/-. The calculation of the same is as under:

Sl. No.	**Particulars**	**Value**
1	No. of shares purchased by Utsav on February 11,2016, while being in possession of UPSI	500
2	Closing price of scrip of Tata Motors on February 12, 2016, at NSE (where Utsav traded in the scrip of Tata Motors on February 11, 2016)	Rs. 298.35
3	Weighted average purchase price	Rs. 282.06
4	Notional unlawful gain	500*(298.35-282.06) = Rs. 8,145

6. Therefore, after considering the reply from Noticee No. 4, it was alleged that Noticee No. 4 had violated the provisions of section 12A (d) and (e) of the SEBI Act and Regulation 4(1) of the PIT Regulations.

7. In view of the observations and allegations as recorded in the preceding paragraphs, it was alleged by SEBI that Noticee No. 1 to 4 (hereinafter collectively referred to as “the Noticees) have violated the following provisions of securities laws:

Noticee	Violations alleged
Noticee No. 1 to 3	i. Section 12A(d) and (e) of the SEBI Act; ii. Regulations 3(1) of the PIT Regulations.
Noticee No. 4	i. Section 12A(d) and (e) of the SEBI Act; ii. Regulations 4(1) of the PIT Regulations.

B. APPOINTMENT OF ADJUDICATING OFFICER

8. Shri B J Dilip was appointed as the Adjudicating Officer (hereinafter referred as “erstwhile AO”) by communiqué dated September 08, 2020, under section 19 read with section 15I(1) of the SEBI Act, 1992 (hereinafter referred to as “**SEBI Act**”) and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as “**Adjudication Rules**”) to conduct adjudication proceedings in the manner specified under Rule 4 of Adjudication Rules read with section 15I (1) and (2) of SEBI Act, and if satisfied that the Noticees are liable, impose such penalty deemed fit in terms of Rule 5 of Adjudication Rules read with Section 15G of SEBI Act. Pursuant to the transfer of erstwhile AO, vide communiqué dated December 31, 2020 the case has been transferred to undersigned. It has been advised that except for the change of the Adjudicating Officer the other terms and conditions of the original orders ‘shall remain unchanged and shall be in full force and effect’ and that the “*Adjudicating Officer shall proceed in accordance with the terms of reference made in the original orders*.”

C. SHOW CAUSE NOTICE, REPLY AND HEARING

9. The Show Cause Notices (hereinafter referred to as “**SCNs**”) dated July 15, 2021 was served upon Noticees under rule 4(1) of Adjudication Rules to show cause as to

why an inquiry should not be held and penalty, if any, not be imposed against them under section 15G of the SEBI Act for aforesaid alleged violations by Noticees. The SCN was issued to Noticees through SPAD as well as through digitally signed email and duly delivered to Noticees.

10. I note that Noticee 4 had filed an application for settlement under SEBI (Settlement Proceedings) Regulations, 2018 during the course of adjudication proceedings and Noticee's application for settlement was rejected. I also note that rejection of his application of settlement was informed to Noticee 4 by the concerned department of SEBI vide email dated January 20, 2022.

11. Subsequently, Noticees filed their reply to the SCN in the matter. The details of the replies submitted by Noticees are as given hereunder:

Noticee	**Date of Reply**	**Mode of Reply**
Noticee No. 1	Reply dated October 04, 2022	Email dated October 04,2022
	Reply/Letter dated November 02, 2022	Email dated November 08, 2022
Noticee No. 2	Reply dated August 08, 2021	Letter dated August 08, 2021
	Reply dated October 06, 2022	Email dated October 07, 2022
	Reply dated November 02,2022	Email dated November 05, 2022
Noticee No. 3	Reply dated July 15, 2022	Email dated July 18, 2022

	Reply dated September 30, 2022	Email dated September 30,2022
Noticee No.4	Reply dated October 06, 2022	Email dated October 06, 2022.
	Reply dated September 23,2022	Email dated September 24,2022

12. Further, in the interest of natural justice, an opportunity of personal hearing was granted to Noticees. The details of the same are as given hereunder:

Noticee	**Hearing Notice (HN) dates**	**Mode of delivery of HNs**	**Date of hearing**	**Status of personal hearings**
Noticee No. 1	June 30, 2022	Through SPAD/ email	July 20, 2022	Due to exigencies on the part of undersigned hearing in the matter was adjourned.
	September 21,222	Through hand delivery	October 12, 2022	Hearing completd. Authorised Representative of Noticee, Mr. Kunal Katariya, appeared for hearing and reiterated contents of earlier reply of Noticee.
Noticee No. 2	June 30, 2022	Through	July 20, 2022	Due to exigencies on the part of undersigned,

		SPAD/ email		hearing in the matter was adjourned.
	September 21,222	Through hand delivery	October 12, 2022	Noticee No.2 did not appear for hearing.
Noticee No. 3	June 30, 2022	Digitally signed Email dated June 30, 2022	July 15, 2022	Hearing was adjourned due to official exigencies on the part of undersigned.
	September 21, 2022	Email dated September 21, 2022	October 12,2022	On the request of Noticee 3, hearing in the matter was adjourned to October 13,2022
	October 11, 2022	Email dated October 11, 2022	October 13, 2022	Hearing completed. Authorised Representative, Mr. Deepak Dhane appeared for hearing and reiterated contents of Noticee's earlier reply.
Noticee No.4	June 30, 2022	Through SPAD/ Digitally signed email	July 20, 2022	Hearing was adjourned due to official exigencies on the part of undersigned

	September 26, 2022	Through email		Hearing completed. Authorised Representative of Noticee, Mr. Saachi Purohit appeared on behalf of Noticee and reiterated contents of Noticee's earlier reply dated September 23, 2022.

D. **<u>Relevant Provisions</u>**

SEBI Act

12A. *No person shall directly and indirectly-*

…………………………………………………..

12A(d) *engage in insider trading**;***

12A(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;*

<u>PIT Regulations, 2015</u>

2(1)(n) *"unpublished price sensitive information" means any information, relating to a company or its securities, directly or indirectly, that <u>is not generally available which</u> <u>upon becoming generally available</u>, 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*

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.*

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

i) a connected person; or

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

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

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

(i) financial results;

(ii)dividends;

(iii)change in capital structure;

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

(v) changes in key managerial personnel.

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.*

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

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.

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

E. CONSIDERATION

13. I have considered the allegations levelled in the SCNs issued to Noticees, the relevant material brought on record, and replies/submissions of the Noticees made during the instant proceedings before the undersigned. Before going into merits of the case, it would be appropriate to consider the order passed by the Hon'ble SAT dated March 22, 2021 (Appeal Nos. 308, 309, 310, 311, 312, 313, 341, 342, 343, 344 and 283 of 2020), in the matter which are similar in terms of facts and circumstances, as found in this case. In the aforesaid order Hon'ble SAT had *inter alia* held that –

"….

12. It is an admitted fact that despite great efforts by the respondent SEBI to find out the source of information or to find out leakage, if any, of the information from the side of financial team, legal team or the audit team of the respective companies, no information could be recovered…

13. It is to be noted that admittedly the respondent SEBI has mined hundreds of similar messages from the devices of the appellants. Out of those numerous messages only in the present six cases the messages matched with the exact figure of the financial results…

14. As regards the estimates of the broker which subsequently matched with the published result, the AO reasoned that it is not the appellant"s claim that the impugned message had arisen from the market research like that of those brokerage houses. However, the learned AO failed to appreciate that the appellants were pleading that the WhatsApp messages might have been originated from the brokerage houses, or from the estimates found on the platform of Bloomberg which were floated and were in the public domain. The learned AO also failed to take into consideration that there were numerous other messages of similar nature received and forwarded by the appellant which did not at all match with the published financial results. Appellant Shruti Vora in the case of Wipro has specifically pointed out that along with the said message similar massage regarding Axis Bank had also reached her which she had also forwarded. The published results, in that case however, were widely different. The learned AO did not give any weightage to the same.

15. The above definitions of the "unpublished price sensitive information" and "insider" would show that a generally available information would not be an unpublished price sensitive information.

16. The information can be branded as an unpublished price sensitive information only when the person getting the information had a knowledge that it was unpublished price sensitive information. Though knowledge is a state of mind of a person, the same can be proved on preponderance of probabilities on attendant circumstances. In the present case, there are no attendant circumstances at all except the possibilities as enumerated by the learned AO. Proximity of time, similarity between the information were the only two factors that weighed with the learned AO to brand the information as unpublished price sensitive information. In the case of Samir Arora vs. SEBI (2004) SCC Online SAT 90 this Tribunal had rejected the arguments of SEBI that there is no need for linkage between the potential source of the unpublished price sensitive *information and the person allegedly in possession of the alleged unpublished price sensitive information.*

18………..in the facts of the case, in our view the respondents failed to prove any preponderance of probabilities that the impugned messages were unpublished price sensitive information, that the appellants knew that it was unpublished price sensitive information and with the said knowledge they or any of them had passed the said information to other parties."

14. By stating the above, Hon'ble SAT had held that no violation has been committed under PIT Regulations. Subsequently, an appeal was filed by SEBI against the aforesaid SAT order dated March 22, 2021 before Hon'ble Supreme Court. Hon'ble Supreme Court in the matter of SEBI vs Shruti Vora & ors. (Civil Appeal Nos. 2252-2262/2021 dated September 26, 2022), while declining to interfere with the aforesaid order of the Hon'ble SAT, had inter alia held that: -

    "3. After considering the factual aspects of the matter, including the statutory provisions, the Tribunal found that in the facts and circumstances of the case no liability could be fastened on said applicants before the Tribunal.

    4. Though, these are the statutory appeals, we see no reason to entertain these appeals."

15. In view of the aforesaid facts and circumstances and the factum of the aforementioned judgements of Hon'ble Apex court and Hon'ble SAT, I note that facts in the instant case with respect to Noticee No's 1-3 is a replica of the case that was decided by Hon'ble SAT vide order dated March 22, 2021 & upheld by Hon'ble Supreme Court vide order dated September 26, 2022, with only difference that the circulation of WhatsApp messages pertain to different scrips.

16. Considering the similar nature of facts and circumstances and the aforesaid judgements of higher courts, I do not find any merit in adjudication of similar set of facts.

17. Further, since allegations regarding communication of UPSI by Noticees 1-3 does not stand established, the question of trading by Noticee 4 on the basis of the aforesaid UPSI communicated by Noticee No.s 1-3 also does not arise. Therefore, allegation in the SCN that Noticee 4 had traded on the basis of UPSI does not stand established. Hence, as such, the SCN alleging the violations of section 12A(d) and (e) of SEBI Act read with Regulation 3(1) of PIT Regulations, 2015 by Noticees 1 to 3 and alleging violation of provisions of section 12A (d) and (e) of the SEBI Act and Regulation 4(1) of the PIT Regulations by Noticee 4 stands disposed of without any consideration.

18. I also note that in almost identical set of facts and circumstances as that of present adjudication proceedings, Adjudicating Officers, SEBI had dropped the adjudication proceedings against their respective Noticees without imposition of penalty on the same grounds.

F. Order

19. In view of above, I find it appropriate to conclude the instant adjudication proceeding by disposing of the Show Cause Notices dated July 15, 2021 *qua* Noticees, without imposition of any monetary penalty.

20. In terms of rule 6 of the Adjudication Rules copies of this order are sent to the Noticees and also to SEBI.

Date: November 16, 2022 **SOMA MAJUMDER**

Place: Mumbai **Adjudicating Officer**