BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER No. Order/VV/AK/2022-23/19843-19844

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	Noticee no. 2
Mr. Neeraj kumar Agarwal	**Ms. Shruti Vora**
(PAN - ADBPB5444R)	**(PAN - AKZPM7724N)**

*Noticee No. 1 and Noticee No. 2 collectively referred as Noticees.

In the matter of circulation of unpublished price sensitive information (UPSI) through WhatsApp messages with respect to Tata Consultancy Services Ltd.

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During November 2017, there were certain articles published in newspapers / print media referring to the circulation of Unpublished Price Sensitive Information (hereinafter referred to as "UPSI") in various private WhatsApp groups about certain companies ahead of their official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.

2. Accordingly, SEBI carried out an investigation in the matter of circulation of UPSI through WhatsApp messages with respect to Tata Consultancy Services Ltd. (hereinafter referred to as “**TCS/Company**”), 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. It was observed that TCS had made announcement on BSE and NSE on April 18, 2017 with respect to its financial results for quarter / year ended March 2017. Copy of the aforesaid corporate announcements of TCS available on BSE and NSE website.

<table>
<tr><th>Date-Time</th><th>Announcement/News</th><th>Price Impact/Shares Traded</th></tr>
<tr><td>18/04/2017

NSE@17:02

BSE@17:04</td><td>Tata Consultancy Services Limited has submitted to the Exchange, the financial results for the period ended March 31, 2017</td><td>On BSE:
<table>
<tr><th>Date</th><th>O</th><th>H</th><th>L</th><th>C</th><th>No. of shares traded</th></tr>
<tr><td>17-04-17</td><td>2332.50</td><td>2333.05</td><td>2300.00</td><td>2320.85</td><td>47801</td></tr>
<tr><td>18-04-17</td><td>2325.00</td><td>2338.95</td><td>2302.50</td><td>2308.65</td><td>77726</td></tr>
<tr><td>19-04-17</td><td>2285.00</td><td>2348.45</td><td>2255.00</td><td>2301.75</td><td>217145</td></tr>
</table>
On NSE:
<table>
<tr><th>Date</th><th>O</th><th>H</th><th>L</th><th>C</th><th>No. of shares traded</th></tr>
<tr><td>17-04-17</td><td>2330.40</td><td>2332.90</td><td>2295.15</td><td>2314.85</td><td>1135441</td></tr>
<tr><td>18-04-17</td><td>2330.00</td><td>2334.20</td><td>2302.05</td><td>2308.80</td><td>865310</td></tr>
<tr><td>19-04-17</td><td>2263.50</td><td>2348.70</td><td>2252.80</td><td>2299.15</td><td>28,13,406</td></tr>
</table>
</td></tr>
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4. The chronological events related to the financial results for quarter / year ended March 2017, as furnished by TCS vide letter dated August 23, 2018, is tabulated below:

S. No.	Date	Chronology of Events
1	23-Mar-17	Intimation to Designated Persons by Compliance Officer informing about closure of Trading Window with effect from March 24, 2017

S. No.	Date	Chronology of Events
2	1-Apr-17 to 10-Apr-17	Closing of books of accounts and compilation of financials
3	10-Apr-17	Submission to the Auditors of the draft unconsolidated financial statements
4	11-Apr-17	Submission to the Auditors of the draft consolidated financial statements
5	11-Apr-17	Sharing of the draft summary of consolidated financial results with CEO and COO
6	11-Apr-17	Intimation to the Stock Exchanges regarding date of Board Meeting
7	11-Apr-17	Agenda (excluding financials) uploaded on Board Application (iPad)
8	11-Apr-17 to 18-Apr-17	Audit Process of financial statements
9	16-Apr-17	Submission to the Auditors of final draft of the unconsolidated (at 2.58 am) and consolidated financial statements (at 3.36 am), for their report thereon
10	16-Apr-17	Sharing summary of consolidated financials with senior management team and Investor Relations (4 p.m.)
11	18-Apr-17	Audited financials uploaded on Board Application (iPad) prior to the meeting of the Audit Committee at 8.29 a.m and to Board at 9.42 a.m.
12	18-Apr-17	Audit Committee Meeting held for, inter alia, consideration of financial statement and auditor report (9.00 a.m to 10.50 a.m)
13	18-Apr-17	Board Meeting held for, inter alia, consideration of audited financial results (11.30 am. to 4.45 p.m.)
14	18-Apr-17	Outcome of Board Meeting filed with Stock Exchanges (on NSE and BSE at 5.02 p.m. and 5.04 p.m. respectively)

5. From the chronology of events as tabulated above, information relating to financial results of TCS for quarter / year ended March 2017 was a Price Sensitive Information (PSI). The trading window was closed from March 24, 2017 and therefore the UPSI was observed to have come into existence on March 24, 2017. The corporate announcement of audited financial results for the quarter / year ended March 2017 was made to the stock exchanges on April 18, 2017 (17:04 hours on BSE, 17:02 hours on NSE) by TCS. Hence, TCS had made the aforesaid price sensitive information public on April 18, 2017 at 17:04 hours on BSE and 17:02 hours on NSE.

6. The investigation *inter alia* revealed that Mr. Neeraj kumar Agarwal (hereinafter also referred to as "**Noticee no. 1**") and Ms. Shruti Vora (hereinafter also referred to as "**Noticee no. 2**") communicated the UPSI related to Income/Revenue, EBIT and PAT of TCS for quarter / year ended March 2017 through WhatsApp messages. From the WhatsApp chat of the Shruti Vora (retrieved from her device – Apple iPhone 6s, IMEI: 355767073570777). the following chat was observed on April 18, 2017 - "*TCS hos 4452 USD INR-29641cr EBIT-7626 PAT-6620".* In the following table, financial figures

circulated on WhatsApp pertaining to TCS are compared with actual figures disclosed subsequently on stock exchange to gauge the deviation between two sets of figures.

<u>Abbreviations format used</u>:

Figure1 in WhatsApp (F1W)   Figure1 in Actual (F1A)   Figure1 Deviation (F1Dev)

Figures in WhatsApp message	**Date and time of disclosure on Exchange**	**Actual figures disclosed on Exchange**	**F1W**	**F1A**	**F2W**	**F2A**	**F3W**	**F3A**	**%ge Deviations observed in Figures**		
									F1Dev	**F2Dev**	**F3Dev**
Income INR 29641 cr EBIT 7626 PAT 6620	18/04/2017 17:07	Income 29642 EBIT 7627 PAT 6622	29641	29642	7626	7627	6620	6622	0.00	0.01	0.03

7. From the above table, it was observed that the financial figures of TCS were communicated through WhatsApp prior to their announcement on stock exchanges. The timing of the said message as per extract chat from her device was 06:53:12. However, the expert agency hired for retrieval and backup of the data from the instruments/devices seized (Helik Advisory Ltd.), vide email dated March 12, 2018, informed SEBI that their forensic tools generate zero G.M.T. timing by default, so add +5.30 hours as our Indian G.M.T in all the report generated'.

8. The details of communication of WhatsApp message related to TCS as observed from WhatsApp Chat retrieved from Shruti Vora's device are tabulated below:

Entity from whom Shruti Vora (SV) received the message		**Date and Time of receipt of message by SV (After adding 5.30 hours)**		**Entities to whom SV forwarded the message**		**Date and Time of forwarding of message by SV (After adding 5.30 hours)**	
Name	Tel. Number	Date	Time	Name	Tel. Number	Date	Time
Neeraj Agarwal	9004089401	18/04/2017	12:23:12	Sumit Hinduja	9819227915	18/04/2017	12:24:37
				Sunil Kumar	9820808438	18/04/2017	12:24:23
				Only Trade, No Bakwas (WhatsApp group)	-	18/04/2017	12:25:21

9. It was observed from the WhatsApp chats retrieved from the Shruti Vora's device that the aforesaid message was received by Shruti Vora from the Noticee no. 1 on April 18, 2017 at 12:23:12. The said WhatsApp message was forwarded by Shruti Vora on April 18, 2017 as per time mentioned in above table to several other entities namely, Sumit Hinduja, Sunil Kumar and certain members (mobile numbers available in chat) of one WhatsApp group named "Only Trade, No Bakwas".

10. Vide email dated March 06, 2019**,** Mr. Neeraj kumar Agarwal intimated SEBI that he might have received the message from someone else and forwarded the same to Noticee no. 2 because she was once his colleague yet as per his submission, he did not have details of the person who sent such information to him as there was a change in his mobile handset in the month of September 2017.

11. Vide email and letter dated February 08, 2019, Ms. Shruti Vora intimated SEBI that she worked with Antique as Vice-President, Institutional Equity Sales Team and her work profile inter-alia entailed acting as an intermediary between in-house research team and various clients of Antique and purpose of communicating the said message to various entities was to highlight various estimates that market was looking at in anticipation of the forthcoming results.

12. WhatsApp vide email dated December 27, 2018, expressed its inability to search for given messages in its database citing reasons that WhatsApp users being protected with end-to-end encryption protocol, third parties and WhatsApp cannot read such messages or search for such messages. Further, WhatsApp also submitted that WhatsApp does not store information regarding the sender and recipient of a message.

13. Name and PANs of Noticee no. 1 and 2 were shared with the Company seeking details of any association with the Company. Vide an email dated July 12, 2019, the company submitted that as per its internal verification, none of the employee(s)/director(s)/promoter(s) of TCS are/were in any manner whatsoever associated/related/connected with Shruti Vora/ Neeraj Agarwal (i.e. persons who communicated unpublished financial figures related to the company) and that the

company had no adverse findings with regard to announcement pertaining to quarterly result of QE March 2017.

14. It was noted that the financial figures of TCS (viz; Income/Revenue, EBIT and PAT) circulated through WhatsApp closely matched with those disclosed subsequently by TCS on Exchanges (deviation in financial figures was within a range of 0.00% to 0.03%). Hence, it was alleged that the aforesaid message related to TCS would fall under UPSI and such circulation of financial figures through WhatsApp was considered as communication of UPSI. It was alleged that the Noticee no. 1 and 2 being insider as they were in possession of UPSI and had communicated the UPSI related to Income/Revenue, EBIT and PAT of TCS for quarter / year ended March 2017 through WhatsApp messages to other person(s) through Whatsapp messages. Accordingly, it was alleged that the Noticees had communicated UPSI related to Bata India Ltd. viz; Sales, PAT and EBITDA for quarter / year ended March 2017, to other person (s) through WhatsApp message, which is prohibited and thereby acted in violation of the provisions of Section 12 A (d) & 12 A (e) of the SEBI Act, 1992 read with Regulation 3 (1) of PIT Regulations, 2015.

B. APPOINTMENT OF ADJUDICATING OFFICER

15. Shri B J Dilip was appointed as the Adjudicating Officer (hereinafter referred as "erstwhile AO") by communiqué dated January 22, 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 Noticee no 1 and 2 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

16. The Show Cause Notices (hereinafter referred to as "**SCNs**") bearing no. EAD-6/BJD/AA/17058 /2020 and EAD-6/BJD/AA/17059/2020 dated October 13, 2020 was served upon the Noticee no. 1 and 2 respectively under rule 4(1) of the SEBI Adjudication Rules to show cause as to why an inquiry should not be held and penalty not be imposed against them under section 15G of the SEBI Act for the alleged violation of 12A(d) and 12A(e) of SEBI Act and Regulation 3(1) of PIT Regulations, 2015. The SCN was issued through SPAD and duly delivered to the Noticee no. 1 via email and 2 via email and SPAD in terms of Rule 7 of Adjudication rules.

17. Subsequently, Noticee no. 1 and 2 vide their letters dated September 16, 2022 have submitted their reply to SCN. Summary of the Submissions made by them are as follows:

    i. *No Connection established between company and Noticee no. 1& Noticee no. 2 or between Noticee no. 2 and the sender (Noticee no. 1) of the message.*

    ii. *Noticee no. 1 and 2 submitted that SEBI made observations in the IR that none of the persons from the Company or from its statutory auditor who were in possession from UPSI know me. Moreover, SEBI was unable to find the origin of the HOS being circulated on WhatsApp which is alleged to be UPSI. Whatsapp Inc. vide email dated 27.12.2018 informed SEBI that information on message (alleged UPSI) sought by SEBI could not be searched by WhatsApp. SEBI in the IR thus observed "In view of above and observations made in preceding paragraphs, unearthing the trail of messages to reach originator of the WhatsApp message could not be effectuated". Thus, no leak from the Company is established by SEBI.*

    iii. *Noticee no. 2 submitted that My whatsapp chats contained several HOS ("Heard on Street") messages which did not closely match with the results. Similarly, Noticee no. 1 stated that he has sent many HOS messages to Noticee no. 2 which did not closely match with the results.*

    iv. *Noticee no. 1 and 2 submitted that HOS forwarded by them closely matching with the actual numbers does not make it UPSI. The SCN fails to consider numerous instances where estimates did not match.*

v. *Noticee no 2 submitted that she merely forwarded the same to clients/market groups/acquaintances who actively track the securities market without application of mind. Had she has known the fact that the information been UPSI, she would not have widely circulated the same. Further, no trades were done by any family member or individulas, she forwarded the alleged message to. Similarly, Noticee no 1 submitted that, as also expressly stated in the IR that on investigation, it was found that no trades were done by his family members or him or Shruti or her family members in the scrip of the company.*

vi. *Noticee no. 2 submitted that there has been no pattern / no arrangement established from my phone available with SEBI which suggests that any insider kept sharing any UPSI with her or that she was soliciting the same from any person.*

vii. *Noticee no. 1 and 2 submitted that SCN, on a plain reading, does not establish any breach of law/rules. Regulations by them and merely makes a bald allegation.*

18. The hearing was finally conducted on September 20, 2022. The hearing was scheduled through video conferencing on WebEx platform. On the scheduled date of hearing, the authorized representative of the Noticee no. 1 and 2 appeared before me through video conference and reiterated the earlier submission made before me. The process of adjudication proceeding has been mentioned below:

Noticee	**SCN**	**Inspection**	**Hearing Concluded**
Mr. Neeraj kumar Agarwal	October 13, 2020	July 07, 2022	September 20, 2022
Ms. Shruti Vora			

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;*

PIT Regulations, 2015

2(1)(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.*

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.*

E. CONSIDERATION

19. I have considered the allegations levelled in the SCNs issued to Noticee no. 1 and 2, the relevant material brought on record, and replies/submissions of the Noticee no. 1 and 2 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."

By stating above, Hon'ble SAT had held that no violation has been committed under PIT Regulations, 2015.

20. Subsequently, an appeal filed by SEBI with reference to 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.*"

21. 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 are 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.

22. 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. Hence, as such, the SCN alleging the violation of section 12A(d) and (e) of SEBI Act read with Regulation 3(1) of PIT Regulations, 2015, as being disposed of without any consideration.

F. Order

23. In view of above, I find it appropriate to conclude the instant adjudication proceeding by disposing of the Show Cause Notices dated October 13, 2020 *qua* Noticee No. 1 *viz*. Mr. Neeraj Kumar Agarwal (PAN - ADBPB5444R) and Noticee no. 2 *viz*. Ms. Shruti Vora (PAN - AKZPM7724N), without imposition of any monetary penalty.

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

Date: September 29, 2022 **Vijayant Kumar Verma**

Place: Mumbai **Adjudicating Officer**