BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. RA/JP/ 288 - 292 / 2018]

UNDER SECTION 15-I (2) OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 AND RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995 AND UNDER SECTION 23-I (2) OF THE SECURITIES CONTRACTS (REGULATION) ACT, 1956 READ WITH RULE 5 OF THE SECURITIES CONTRACTS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 2005.

In respect of:-

1. Jubilant Life Sciences Limited (PAN: AABCV0200H)
2. Jubilant Stock Holding Private Limited (PAN: AACCJ1402G)
3. Mr. Shyam Sunder Bhartia (PAN: ADYPB3391G)
4. Mr. Hari Shankar Bhartia (PAN: ADRPB6359B)
5. Mr. Amit Arora (PAN: ADLPA6544R)

(In the matter of Jubilant Life Sciences Limited)

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') during the course of examination had *prima - facie* observed that the following entities viz. (1) Jubilant Life Sciences Limited (hereinafter referred to as "**Noticee No. 1)** had violated of clause 36 of Listing Agreement read with Section 21 of the Securities Contracts (Regulations) Act, 1956 (hereinafter referred to as **'SCRA'**), (2) Jubilant Stock Holding Private Limited (hereinafter referred to as "**Noticee No. 2)** had violated regulation 3 and 3(A) of SEBI (Prohibition of Insider Trading) Regulations,

1992 (hereinafter referred to as '**PIT Regulations'**) read with regulation 12 of the SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as "**PIT Regulations of 2015"**), (3) Mr. Shyam Sunder Bhartia (hereinafter referred to as "**Noticee No. 3)**, (4) Mr. Hari Shankar Bhartia, (hereinafter referred to as "**Noticee No. 4**) and (5) Mr. Amit Arora (hereinafter referred to as "**Noticee No. 5**) had violated regulation 3 of PIT Regulations read with regulation 12 of PIT Regulation of 2015. The aforesaid Noticee(s) may also be collectively referred as **'Noticees')**. The Noticee No. 1 is the Listed Company. Noticee No. 2 is the Promoter / subsidiary of the Noticee No. 1. The Noticees No. 3 & 4 are the directors of the Noticee No. 2 and are the Chairman / Co-Chairman & Managing Director respectively of the Noticee No. 1. The Noticee No. 5 is the Senior Vice President, FP&A of Noticee No. 1.

APPOINTMENT OF ADJUDICATING OFFICER

2. SEBI had initiated adjudication proceedings and appointed the undersigned as the Adjudicating Officer vide order dated August 17, 2015 under section 15 I of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **'SEBI Act'**) and section 23 I of the SCRA read with rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 and rule 3 of the Securities Contracts (Regulations) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005 (hereinafter referred to as **'Adjudication Rules'**) to inquire into and adjudge under section 15 G of the SEBI Act and under section 23 A (a) and 23 E of the SCRA read with rule 5 of the aforesaid Adjudication Rules, the violations of aforesaid provisions of Listing Agreement, PIT Regulations, alleged to have been committed by the Noticees.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. A common Show Cause Notice No. EAO/RA/DPS/29278/2015 dated October 16, 2015 (hereinafter referred to as **"SCN"**) was served upon the Noticees under rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be held and penalty be not imposed against them under sections 15G of the SEBI Act and under section 23 A (a) and 23 E of the SCRA for the aforesaid alleged violations. The allegations levelled against the Noticees are briefly mentioned hereunder.

i. During examination it was observed that Noticee No. 1 announced that one of its manufacturing facility, Jubilant HollisterStier General Partnership (JHS) located at Kirkland, Quebec, Canada has been issued a Warning Letter (WL) dated February 20, 2013 by US Food and Drug Administration (FDA) identifying significant violations of current Good Manufacturing Practices (cGMP) Regulations, which was received by Jean Francois Hebert, who was Vice President-Operations, Jubilant HollisterStier General Partnership, Canada, on February 22, 2013. In turn, Jean Francois Hebert informed Marcelo Morales, CEO of the business located at the other site, namely Spokane in USA, on February 23, 2013. Marcelo Morales vide email dated 24th February, 2013 informed Corporate Office addressed to Chairman & Managing Director, Co-Chairman & Managing Director, Executive Director-Finance and Sr. Vice President FP&A (Noticee No. 5) and also CFO of the unit in Canada. The press release inter - alia stated that US FDA specified in the Warning Letter that until all corrections have been completed and compliance to cGMPs is made, US FDA may withhold approval of new applications or supplements listing JHS as the drug product manufacturer. It was revealed during examination that as a result, there was a spike in volume of shares traded at Stock Exchanges along with a price fall on the day the announcement was made. The details of Price / Volume data of NSE has been shown / tabulated at para 4 of the SCN.

ii. *Thus, it was alleged that although the Noticee No. 1 was served with warning letter on February 22, 2013, but, it has made delayed announcement of such information to BSE Ltd. (BSE) only on February 27, 2013 at 12:19 hrs. in violation of clause 36 of the Listing Agreement.*

iii. *That the Noticee No. 5, being the Senior Vice President, FP&A of Noticee No. 1 had sold 830 shares of the Noticee No.1 / Jubilant Life Sciences Ltd. on February 25, 2013 (being in possession of said e-mail dated February 24, 2013) before the news regarding the US FDA warning letter was made public on February 27, 2013, as he was informed by Mr. Marcelo Morales vide email dated February 24, 2013. It was alleged that said information was Price Sensitive Information (PSI) and the Noticee No. 5 had dealt /sold such shares in violation of regulation 3 of the PIT regulations.*

iv. *That on May 28, 2013, based on a preliminary determination, Ministry of Commerce (MOFCOM) China, announced the provisional duties of 24.6% against Noticee No. 1 / Jubilant Life, 57.4% against all other Indian producers and 47.9% against Japanese producers by way of a public notice. It was alleged that MOFCOM's decision on May 28, 2013 was expected to have an impact on the business of Noticee No. 1 / Jubilant Life. However, the Noticee No. 1 has announced the same to the Stock Exchanges only on July 25, 2013 with a delay of around 2 months and thus had allegedly violated Clause 36 of the Listing Agreement.*

v. *That the Noticee No. 1 had announced that one of its manufacturing facilities, Jubilant HollisterStier, LLC (JHS) located at Spokane, Washington State, US has been issued a Warning Letter (WL) dated November 27, 2013, by US Food and Drug Administration (FDA), which was received by Marcelo Morales, CEO of the business at Spokane in USA, on December 1, 2013. Marcelo Morales vide email dated December 3, 2013, informed Corporate Office addressed to Chairman & Managing*

Director, Co-Chairman & Managing Director, Executive Director-Finance, Sr. Vice President FP&A (Noticee No. 5) and Head HR. The press release inter-alia stated that US FDA specified in the Warning Letter that until all corrections have been completed and compliance to cGMPs made, US FDA may withhold approval of new applications or supplements listing JHS-Spokane as the drug product manufacturer. It was alleged that as a result of this announcement there was a significant dip in the price coupled with high volume in the shares on 5th and 6th December of 2013. The details of Price /Volume data from NSE has been shown / tabulated at para 8 of the SCN.

vi. *Thus, it was alleged that although the Noticee No. 1 was served warning letter on December 1, 2013, but, it has made belated announcement of such information / warning letter on December 5, 2013 at 11:05 hrs to BSE and thereby had violated clause 36 of the Listing Agreement.*

vii. *Further, examination revealed that the Noticeee No. 1 had announced that it has received inspection report dated February 21, 2014 from the U.S. (FDA), classifying its pharmaceutical manufacturing facility at Montreal, Canada as 'Acceptable', which was received by Marcelo Morales, CEO of the business on February 25, 2014. Marcelo Morales vide e-mail dated February 25, 2014, informed Corporate Office addressed to Chairman & Managing Director, Co-Chairman & Managing Director, Executive Director-Finance and Sr. Vice President FP&A (Noticee No. 5) and also Global Head of Quality in Canada. The press release inter - alia stated that this resolves all issues raised by the FDA on the facility in February 2013 and subsequent communications. It was revealed that as a result there was a spike in volume of shares on February 28, 2014 and March 03, 2014 the following days. The details of Price / Volume data at NSE has been shown / tablulate at para 10 of the SCN.*

viii. *Thus, it was alleged that although the Noticee No. 1 had received communication on February 25, 2014 from US FDA, classifying its pharmaceutical manufacturing facility at Montreal, Canada as 'Acceptable', but, it has made belated announcement on February 27, 2014 regarding such information and thereby the Noticee No. 1 had violated clause 36 of the Listing Agreement.*

ix. *That the Noticee No. 5, being the Senior Vice President, FP&A of the Noticee No. 1 had purchased 450 shares of the Noticee No. 1 on February 26, 2014 before the news regarding the US FDA, classifying Jubilant Life, pharmaceutical manufacturing facility at Montreal, Canada as 'Acceptable' become public as the same was made public only on February 27, 2014 upon publishing at the BSE. It was alleged that such information was a PSI and dealing into shares of Noticee No. 1 before such PSI becomes public, and hence, allegedly, the Noticee No. 5 had violated regulation 3 of the PIT regulations.*

x. *That the Noticee No. 2 is a promoter of Noticee No. 1 and held 2,96,76,992 shares (18.63%) as on September 30, 2014. It was revealed that Noticee No. 2 had purchased 1,25,000 shares for ₹1,55,00,000 on February 28, 2014 at NSE at time 15:11:39 hrs and disclosure to Stock Exchanges were under regulation 13(4A) of PIT Regulations. However, during such period, two corporate announcements from Noticee No. 1 were observed to have been made at BSE website which are as under:-*

a. *28-Feb-2014, 08:58, Friday: Jubilant Life Sciences Ltd has informed BSE regarding a Press Release dated February 27, 2014 titled "Jubilant Life Sciences announces successful resolution to FDA Warning Letter for Montreal Facility".*

b. *03-Mar-2014, 18.32 hrs Monday : Jubilant Life Sciences Ltd has informed BSE regarding a Press Release dated March 03, 2014 titled "Jubilant First Trust Healthcare sells its hospital business to Narayana Health".*

xi. *Thus, it was revealed that the Noticee No. 2 had purchased shares of the Noticee No. 1 before the announcement regarding Jubilant's subsidiary*

selling its hospital business. The Noticee No. 3 and 4 who are the Directors of the Noticee No. 2 were the authorized signatories on behalf of Noticee No. 2. The chronology of events leading to the sale of Hospital Business of Jubilant First Trust Healthcare ("JFTH") is given below–

Event	***Date***
MOU signed between Jubilant First Trust Healthcare and Narayana Health	*24th Dec 2013*
Business Transfer Agreement Signed	*3rd March 2014*
Share Purchase Agreement Signed	*3rd March 2014*
Receipt of Money	*3rd March 2014*
Intimation to Stock exchanges	*3rd March 2014*

xii. *It is revealed under examination that Memorandum of Understanding (MOU) dated December 24, 2013 was signed by Aashti Bhartia (Director – JFTHL). Board meeting of the Noticee No. 1 for the sale of Hospital Business of JFTHL was discussed on February 6, 2014 and the agenda was circulated to directors on January 31, 2014. The Minutes of the meeting showed that Noticee No. 3 being the Chairman & Managing Director and the Noticee No. 4 Co-Chairman / Director had both attended the meeting. From the minutes of the board meeting, it was observed that Noticee No. 3 and Noticee No. 4 both were aware that talks were going on between Jubilant's subsidiary (i.e. JFTHL) and Narayana Hrudalaya Pvt. Ltd. regarding sale of hospital business by JFTHL and the binding offer was executed on December 24, 2013. It was observed that the binding offer was to remain valid for a period of 60 days from the date of signing (i.e. December 24, 2013). It was also discussed in the meeting that the healthcare being specialized service business does not fit into the medium term strategy of the company and it was desirable to exit the business and the sale will also unlock funds to the tune of ₹44 crores.*

xiii. *Thus, it was alleged that both Noticee No. 3 and Noticee No. 4 were aware of such PSI and being the directors / authorized signatories of the Noticee No. 2, they have purchased 1.25 lacs shares for ₹1.55 crores on February 28, 2014, just before conclusion of the deal between JFTHL and*

NHPL on March 3, 2014. Hence, it was alleged that Noticee No. 2 – 4 have violated regulation 3 and 3 A of the PIT Regulations. The alleged provisions are mentioned below;

PIT Regulations

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 when in possession of any unpublished price sensitive information;*

(ii) *communicate counsel or procure directly or indirectly any unpublished price sensitive information to any person who while in possession of such unpublished price sensitive information shall not deal in securities :*

Provided *that nothing contained above shall be applicable to any communication required in the ordinary course of business or profession or employment or under any law.*

3A *No company shall deal in the securities of another company or associate of that other company while in possession of any unpublished price sensitive information.*

Listing Agreement

36 *Apart from complying with all specific requirements as above, the Company will keep the Exchange informed of events such as strikes, lock-outs, closure on account of power cuts, etc. both at the time of occurrence of the event and subsequently after the cessation of the event in order to enable the shareholders and the public to appraise the position of the Company and to avoid the establishment of a false market in its securities. In addition, the Company will furnish to the Exchange on request such information concerning the Company as the Exchange may reasonably require. The Company will also immediately inform the Exchange of all the events, which will have bearing on the*

performance/operations of the company as well as price sensitive information. The material events may be events such as:

(1) …….

(2) …….

(3) …….

(4) Developments with respect to pricing/realisation arising out of change in the regulatory framework.

The Company will promptly inform the Exchange of the developments with respect to pricing of or in realisation on its goods or services (which are subject to price or distribution control/restriction by the Government or other statutory authorities, whether by way of quota, fixed rate of return, or otherwise) arising out of modification or change in Government's or other authority's policies provided the change can reasonable be expected to have a material impact on its present or future operations or its profitability.

(5) Litigation/dispute with a material impact.

The Company will promptly after the event inform the Exchange of the developments with respect to any dispute in conciliation proceedings, litigation, assessment, adjudication or arbitration to which it is a party or the outcome of which can reasonably be expected to have a material impact on its present or future operations or its profitability or financials.

(6) ……..

(7) Any other information having bearing on the operation/performance of the company as well as price sensitive information, which includes but not restricted to;

i. Issue of any class of securities.

ii. Acquisition, merger, de-merger, amalgamation, restructuring, scheme of arrangement, spin off or selling divisions of the company, etc.

iii. Change in market lot of the company's shares, sub-division of equity shares of company.

iv. Voluntary delisting by the company from the stock exchange(s).

v. *Forfeiture of shares.*

vi. *Any action, which will result in alteration in, the terms regarding redemption/cancellation/retirement in whole or in part of any securities issued by the company.*

vii. *Information regarding opening, closing of status of ADR, GDR, or any other class of securities to be issued abroad.*

viii. *Cancellation of dividend/rights/bonus, etc.*

The above information should be made public immediately.

xiv. *It was stated in the SCN that aforesaid alleged violations, if established, would make the Noticees liable for monetary penalty under sections 23A(a) and 23E of SCRA and under section 15G of the SEBI Act.*

4. In respect to the SCN, the Noticee No. 1 - 4 made submissions/reply dated November 06, 2015. The Noticee No. 5 vide letter dated November 03, 2015 requested additional time of 30 days to respond the SCN and thereafter vide letter dated November 27, 2015 made submissions towards the SCN.

5. Vide notice of hearing dated December 21, 2015, an opportunity of hearing was provided to the Noticee No. 1-4 on January 06, 2016 and to the Noticee No. 5 on January 07, 2016. In respect to the said hearing notice, the Noticee No. 1 (vide letter dated January 05, 2016), the Noticee No. 2-4 (vide letter dated January 04, 2016) and Noticee No. 5 (vide e-mail dated January 04, 2016) had requested for an adjournment of hearing due to unavailability of their counsel / representative.

6. Thereafter, second and final opportunity of hearing was provided to the Noticee No. 1 - 4 on January 27, 2016 and to the Noticee No. 5 on January 14, 2016 vide hearing notice dated January 05, 2016. In respect to said hearing notice, the Noticee No. 5 vide e-mail dated January 12,

2016 again sought adjournment of hearing. The Noticee No. 1 vide letter dated January 13, 2016 and Noticee No. 2-4 vide e-mail dated January 15, 2016 confirmed their presence for the hearing. A last opportunity of hearing was provided to the Noticee No. 5 on February 08, 2016 vide hearing notice dated January 13, 2016.

7. Meantime, Noticee No. 1-4 vide e-mail dated January 25, 2016 requested for inspection of documents in the matter. An opportunity of inspection was communicated / provided to the Noticee No. 1-4 vide e-mail dated January 25, 2016 to avail inspection of documents on or before February 05, 2016 and also advised them to appear for hearing on February 10, 2016. Inspection of documents was conducted by the Noticee No. 1-4 on February 05, 2016.

8. The aforesaid scheduled hearing was postponed to March 10, 2016 for Noticee No. 1-4 and to March 09, 2016 for Noticee No. 5 which was communicated to the Noticees vide hearing notice dated February 01, 2016.

9. The hearing on 9th and 10th March 2016 was attended by the authorized representatives **(ARs)** of the Noticees and during the course of hearing they agreed to file additional reply. Additional reply was submitted by the Noticee No. 5 vide e-mail dated March 10, 2016 and additional replies dated March 26, 2016 were submitted by the Noticee No. 1-4.

10. The During the period of instant proceeding, the Hon'ble Supreme Court of India vide judgment dated November 26, 2015 in the case of *SEBI vs. Roofit Industries Ltd*. held that Adjudicating Officer has no discretion in deciding quantum of penalty under Chapter VI A (except in u/s 15F (a) and 15HB of the SEBI Act). The issue involved in *Roofit* case was differently interpreted in case of *Sidharth Chaturvedi* (decided on March 14, 2016) and accordingly, the legal issue / matter was pending for Larger Bench of Hon'ble Supreme Court of India. Meantime, as per "The Finance Act 2017"

(Notified for Part VIII of Chapters VI came into effect from April 26, 2017) following has been *inter - alia* clarified in respect of adjudication under SEBI Act-

147. In section 15J of the principal Act, the following Explanation shall be inserted, namely:-

"Explanation- For the removal of the doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under section 15A to 15E and clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section."

11. Consequent to the clarity brought into the Finance Act, 2017, an opportunity of hearing was provided to the Noticees on September 06, 2017 vide notice of hearing dated August 14, 2017. In respect to said hearing notice, the Noticee No. 1-5 vide e-mail dated August 25, 2017 sought adjournment of scheduled hearing.

12. Thereafter, taking into account the principle of natural justice at larger extent, a final opportunity of hearing was provide to the Noticees on September 20, 2017 vide hearing notice dated August 28, 2017. The hearing was attended by Authorized representative of the Noticees on September 20, 2017 and during the course of hearing they agreed to submit their additional reply by September 29, 2017.

13. Additional reply dated September 26, 2017 was submitted by the Noticee No. 2-4 and additional reply dated September 28, 2017 was submitted by the Noticee No. 1 and 5.

14. Since, the hearing / inquiry is concluded in the matter, therefore, the matter needs to be proceeded further on the basis of material available on records. The core submissions made by the Noticees towards the SCN

vide their aforesaid replies / additional written submissions are mentioned below;

Reply of Noticee No. 1

i. It is denied that we have violated the provisions of the Listing Agreement as alleged in the SCN. Further, the Noticee believes that the SCN is merely tentative and perfunctory in nature and is a result of conjectures which have been put together in a rushed manner. Furthermore, the stock exchanges i.e. the National Stock Exchange of India Limited (**"NSE"**) and the BSE Limited (**"BSE"**) have until date not considered it relevant to seek the details of the impugned disclosures made by us.

ii. It is submitted that the allegations in the SCN prima facie appear to be perfunctory in nature and the Noticee is not in a position to determine whether SEBI has indeed found any concrete findings against the Noticee or has conducted a detailed investigation (if any), which forms the basis of the SCN. The SCN does not state as to what is the advantage/benefit gained to Jubilant by allegedly delaying making of disclosures to the stock exchanges. The SCN does not provide any details as to the exact charges levelled against the Noticee. Further, it would appear that SEBI has arbitrarily restricted its examination to particular days and specific disclosures without taking into account a holistic view of the situation to the detriment of the Noticee.

iii. JHSGP is a Canada-based partnership managed by two subsidiaries of Jubilant – Jubilant HollisterStier Inc. and Draxis Pharma LLC. The Noticee indirectly through its subsidiaries wholly owns JHSGP. This partnership provides contract manufacturing services.

iv. It is submitted that JHSGP's revenues (Canada) for the financial year ended March 31, 2013 contributed 5.9% to the consolidated revenue of the Noticee and JHSGP had no operating profits for the financial year ended March 31, 2013 and contributed losses of approximately (-0.1%) to the consolidated operating profits of the Noticee. In addition, it is submitted that JHSGP's revenue for the financial year ended March 31, 2014 contributed 6.1% to the consolidated revenue of the Noticee and JHSGP had no operating profits for the financial year ended March 31, 2014 and contributed losses of approximately (-0.1%) to the consolidated operating profits of the Noticee.

v. It is submitted that since JHS' revenues (Spokane) contributed less than 10% to the consolidated revenue of the Noticee and its operating profits contributed less

than approximately 0.2% to the consolidated operating profits of the Noticee in the financial year ended March 31, 2014, a proceeding against JHS cannot be reasonably expected to have a material impact on the Noticee's present or future operations or its profitability or financials and is not price sensitive in nature.

vi. In light of the above, a proceeding against JHSGP cannot be reasonably expected to have a material impact on the Noticee's present or future operations or its profitability or financials and is not price sensitive in nature. Accordingly, the Warning Letters prima facie could not have been said to be a proceeding, "the outcome of which can reasonably be expected to have a material impact on its present or future operations or its profitability or financials".

vii. In addition, it is submitted that the Warning Letters in respect of JHSGP and its impact on the present or future operations of the Noticee or the Noticee's profitability or financials was not material, since the Warning Letters restricted the ability of JHSGP to file for approvals for new products manufactured at the site, but did not affect products which were currently being produced at JHSGP's site.

viii. In light of the above, given that a proceeding at JHSGP is not material in the context of the Noticee, it is also submitted that the Canada Warning Letter cannot be said to have impacted the price of the Noticee's shares since a general downward trend in the market price of the Noticee's shares on the NSE was observed on several days and since such a trend is a function of several market parameters.

ix. It is submitted that the Canada Warning Letter was the first warning letter ever received by JHSGP or any of the Noticee's subsidiaries and therefore, the Noticee required time to understand and absorb the contents of the Canada Warning Letter.

x. Furthermore, there is an inherent time lag in the communication of information from overseas subsidiary to the Noticee in India, since the flow of information from the Noticee's subsidiaries to the Noticee involves hierarchical reporting which involves co-ordination across time zones (in the instant case, with a delay of nine and a half hours between India and US/Canada).

xi. In this regard, it would be incorrect to impute or assume that a matter which comes to the attention of a subsidiary come to the knowledge of the holding company contemporaneously, since these are separate legal entities under law.

xii. Without prejudice to the above and without admitting any liability, it is also submitted that the rigor of none of the factors provided for in Section 23-J of the SCRA, which are to be considered for the purposes of imposing of penalty under Section 23-I of the SCRA are applicable to the present case.

xiii. The Noticee, by way of abundant caution, made an announcement to the stock exchanges clarifying the impact of the MOFCOM Public Notice on the Noticee's business on July 25, 2013.

xiv. It is submitted that as stated in the Noticee's response by way of e-mail dated July 30, 2013, the MOFCOM Public Notice was available in the public domain and was accessible to the public on a non-discriminatory basis, and consequently, no need was felt by the Noticee to disseminate this information to the stock exchanges under Clause 36 of the Listing Agreement since the MOFCOM Public Notice applies to all exporters of pyridine from India.

xv. It is submitted that the imposition of the provisional duty by MOFCOM was not expected to have a bearing on the performance / operations of Jubilant, was not price sensitive in nature and was not reasonably be expected to have any material impact on Jubilant's present or future operations or its profitability.

xvi. Further, since part of the pyridine exports by Jubilant was being used for exports by Chinese manufactures and the prices of pyridine had increased by approximately 25% in the Chinese market due to strong demand, the imposition of the provisional duties by MOFCOM did not have any negative impact on Jubilant in the financial year 2013-14. Given the above and that Jubilant did not expect any negative impact on account of the imposition of the provisional duties by MOFCOM was not expected to have a bearing on the performance / operations of Jubiliant, was not price sensitive in nature and was not reasonably be expected to have any material impact on Jubilant's present or future operations or its profitability.

xvii. It is submitted that the Noticee was receiving requests for clarifications on the impact of the MOFCOM Public Notice on the Noticee's business. Accordingly, by way of abundant caution, in order to avoid any speculations, the management of the Noticee, suo moto decided to issue a clarification to the stock exchanges and to intimate the same to the public, despite there being no requirement to make such disclosure under Clause 36 of the Listing Agreement.

xviii. Some of the media, which published this news, include Tribune, an Indian English language daily newspaper (dated May 30, 2013) and website CCM Data and

Business Intelligence (dated June 19. 2013). Immediately when the event happened, i.e. much before the Noticee disclosed the same to the stock exchanges as a matter of abundant caution. Hereto annexed and marked as "Annexure F" is the copy of the announcement avai on the MOFCOM website and such news items that were available in the public domain at the relevant period of time.

xix. Object and purpose of Clause 36 is to inform. If some information is already in the public domain, there is no requirement to make the same information available in the public domain since there would be no value addition.

xx. It is submitted that the communication in relation to the Withdrawal Letter was received by the Noticee after close of business hours on Tuesday, February 25, 2014 and was taken up for consideration by the Noticee during working hours on February 26, 2014 and the disclosure to the stock exchanges on February 27, 2014 at 7.47 PM IST, i.e. after 1 working day from the working day on which the Noticee received the communication regarding the Withdrawal Letter.

xxi. It is submitted that the Noticee has not been provided copies of the documents relied upon by your good self which have been relied on for preparation of the SCN.

xxii. Noticee has an impeccable track record, and no history of non-compliance. Save and except the matter under reference, Noticee has never received any show-cause notice from SEBI.

xxiii. The Noticee has over the years, built up a very strong professional reputation with sustained good work, conduct and sound integrity. It has acted in a transparent and ethical manner in making timely disclosures to the market and has complied with the relevant rules and regulations laid down by SEBI.

xxiv. The violations as alleged in the SCN are technical, venial and unintentional. Noticee conduct has all along been bona fide. All the disclosures were made bona fide, de hors sinister intent or design in a timely manner.

xxv. There are no complaints against the Noticee either by the shareholders of Jubilant or any investors or by anybody else in respect of the matters set out in the SCN.

xxvi. The first part of Clause 36 of the Listing Agreement relates to closures of the company due to strike, lockout, closure on account of power cut, etc. We are not concerned with this part as it deals with events with which we are not concerned in the present matter.

xxvii. The second part requires the company to furnish to the exchange on request such information concerning the company as the exchange may reasonably require. We are not concerned with this part either as the stock exchanges have not requested for any information nor has the company delayed in giving any information.

xxviii. The third part requires that the company should immediately inform the exchange of all events which have a bearing on the performance/operation of the company as well as price sensitive information. The said third part goes on to particularize or give examples of such material events.

xxix. The fourth part is set out in sub clause 7, which deals with any other information having bearing on the operation/performance of the company as well as price sensitive information. Sub clause 4 deals with developments with respect to pricing/realisation arising out of change in the regulatory framework.

xxx. None of the disclosures alleged to have been belatedly made by the company would be covered under sub clause 4 as none of the said disclosure is related to pricing/realisation arising out of change in regulatory framework.

xxxi. Further assuming without admitting that clause 4 relating to pricing/realisation arising out of change in regulatory framework does apply to one or more of the disclosures, which the SEBI alleges were made by the company belatedly were in any event not likely to have any material impact on its present or future operations or profitability of the company.

xxxii. Sub clause 5 deals with litigation/disputes with a material impact. None of the disclosures alleged to have been belatedly made by the company were required to be made under the provisions of sub clause 5.

xxxiii. Therefore, any other price sensitive information which falls under this clause would obviously relate to the same kind of information set out in points (i) to (viii) of clause 7. The principle of ejusdem generis suggests that where the law lists specific classes of persons or things and then refers to them in general, the general statements only apply to the same kind of persons or things specifically listed

xxxiv. Without prejudice to the aforesaid submissions, it is respectfully submitted that on reading of the SCN it would appear that SEBI has been reading and interpreting the words "immediately" and "promptly" appearing in Clause 36 of the Listing Agreement in very narrow and restricted manner.

xxxv. The term "immediately", therefore, must be construed having regard to the aforementioned principles. The term has two meanings. One, indicating the relation of cause and effect and the other, the absence of time between two events. In the former sense, it means proximately, without intervention of anything, as opposed to "immediately" In the latter sense, it means instantaneously. The term "immediately, thus, required to be construed as meaning with all reasonable speed, considering the circumstances of the case. In the given situation, the term "immediately" may mean "within reasonable time". Where an act is to be done within reasonable time, it must be done immediately.

xxxvi. The Case laws relied upon by the Noticee No. 1 in support of the same are - Siddeshwari Cotton Mills (P) Ltd. vs. Union of India and Another - (1989) 2 Supreme Court Cases 45, Rosali V. vs. Taico Bank and Others - (2009) 17 Supreme Court Cases 690, Abdul Majeed vs. State by Food Inspector - 1981 LW (Crl) 1979, Madhya Pradesh High Court in Rantnarayan v. State of Madhya Pradesh MANU/MP/0034/1962: A.I R. 1962 M.P. 93, Kesliav Nilkanth Jaglakav v. Commissioner of Police MANU/SC/OO13/1956: A.l.R. 1957 S.C. 28 : 1956 S.C.R. 653, Keshava v. Ramchandra A.l.R. 1981 Kar. 97, Gopal Maitdal v. State of West Bengal MANU/SC/0122/19 75: A.l.R. 1975 S.C. 1807, Food Inspector, Grama Panchayat, Nuzvid v. Golla Nageswara Rao 1979 M.L.J. Cri. 62, M. A. Sathar Sayeed, J., in Perumal and Ramanarayanan v. Kumbakonam Municipality 1981 L. W. Cri. 109, Sebastian v. State etc.

xxxvii. To describe the word "immediately' which usually means within a reasonable time various reference of lexicon / Dictionary has been referred i.e. Dictionary of English Law by Earl Jowitt, 1959 Edition Vol.2, Wharton's Law Lexicon, Fourteenth Edition, it is defined at page 493 , Mitra's Legal and Commercial Dictionary, Second Edition, (1976), Halsbury's Laws of England, Third Edition, Vol.3 7, page 103, John B. Saunders II Edition, Vol. Ill, page 4, Corpus Juris Secondum (1944 Edition), Volume XLII, interprets the word at page 390 etc.

xxxviii. Without prejudice to the aforesaid, it is respectfully submitted that none of the events in issue relating to the said subsidiaries were likely to or had any material impact on the performance or operation of that subsidiary or the company or any material impact on the present or future operations or profitability of the company or the subsidiary. Consequently, the said events in issue relating to the said two subsidiaries of the company could not be categorised as price sensitive information nor could the same have any impact on the price of the shares of the company.

xxxix. Without prejudice to the aforesaid, it is respectfully submitted that it is the prerogative of the companies to decide on materiality of an event. Clause 36 specifies an indicative list of certain 'material events' and leaves it to the discretion of the listed company to determine whether a particular event would have a material bearing on the performance of such listed company or whether particular information is price sensitive, thereby, making requirements of Clause 36 voluntary in nature.

xl. SEBI has not alleged nor set out the number of days by which the said disclosures, were belatedly made. Since the penalty is levied for each day's delay, it is incumbent upon SEBI to allege that the company has delayed the disclosure by exact number of days.

xli. It is only after the Company had detailed discussions with the persons in know of the facts in the subsidiary and with persons who had knowledge of how to deal with such an event that the Company and its management were able to understand, assess the situation and decide on the course of action, necessary to be taken in respect of the same. The first reaction of the Company is not to make the disclosure of the event but to understand the event, assess it and decide as to how to react to the same before it can even think of taking a decision as per its set procedure as to whether the event required disclosure or not. Since the said event did not have any material impact on the Company, the Company was in a quandary as to whether the same was required to be disclosed. The Company thought it prudent to make a disclosure as abundant caution even though the said event did not pass the materiality test nor was the said information price sensitive as it related not to itself but to a non-material subsidiary.

xlii. Noticee has nothing to do with any change in price or volume of the shares listed on the stock exchanges as the Noticee is not responsible for this in any manner towards any change in volume or price, which is an outcome of various market factors.

xliii. In Hindustan Steel Limited v. State of Orissa, the Hon'ble Supreme Court held that "under the Act penalty may be imposed for failure to register as a dealer: Section 9(1) read with Section 25(1)(a) of the Act. But the liability to pay penalty does not arise merely upon proof of default in registering as a dealer.

xliv. In Cabot International Capital Corporation v. Adjudication Officer, SEBI, the Securities Appellate Tribunal held that "on a perusal of section 151 it could be seen that imposition of penalty is linked to the subjective satisfaction of the Adjudicating Officer.

xlv. Further, the Securities Appellate Tribunal held that "as already stated above, in terms of section 15I whether penalty should be imposed for failure to perform the statutory obligation is a matter of discretion left to the Adjudicating Officer and that discretion has to be exercised judicially and on a consideration of all the relevant facts and circumstances. Further in case it is felt that penalty is warranted the quantum has to be decided taking into consideration the factors stated in section 15J. It is not that the penalty is attracted perse the violation. The Adjudicating Officer has to satisfy that the violation deserved punishment."

xlvi. In SEBI v. Cabot International Capital Corporation, the Hon'ble Bombay High Court held that "… though looking to the provisions of the statute, the delinquency of the defaulter may itself expose him to the penalty provision yet despite, that in the statute minimum penalty is prescribed, the authority may refuse to impose penalty for justifiable reasons like the default occurred due to bona fide belief that he was not liable to act in the manner prescribed by the statute or there was too technical or venial breach, etc."

xlvii. In Electro Optics (P) Ltd. v. State of Tamil Nadu, Hon'ble Supreme Court relied upon the ratio laid down by it in Hindustan Steel Limited v. State of Orissa and held that "in M/s Hindustan Steel Ltd. in paragraph 8 it was held that although the Statute permitted imposition of penalty but still the authority concerned had the judicial discretion to consider.

xlviii. In Escorts Mutual Funds v. P. Sri Sai Ram, Adjudicating Officer, SEBI, the Securities and Appellate Tribunal held that "on a perusal of section 15I it could be seen that imposition of penalty is linked to the subjective satisfaction of the Adjudicating Officer. The words in the section that "he may impose such penalty" is of considerable significance, especially in view of the guidelines provided by the legislature in section 15J.

xlix. The Hon'ble Supreme Court in Chairman, SEBI v. Shriram Mutual Fund, inter alia, overruled the ration laid down in Hindustan Steel Limited v. State of Orissa and the Cabot judgements only with respect to the AO's not having to establish mean rea before a penalty could be imposed. The judgment in Chairman, SEBI v. Shriram Mutual Fund does not deal with the findings relating to the discretion to be exercised by the AO in Hindustan Steel Limited v. State of Orissa and the Cabot judgements, which are still good law.

l. Clause 36 of the Listing Agreement itself provides for discretion to be exercised by a company relating to:
(a) Materiality of an event and whether it qualifies for a disclosure;

(b) the time at which such a disclosure is to be filed with the stock exchanges, and
(c) the details that may be provided in the disclosure to be made to the stock exchange.

li. In this context, it is pertinent to mention that the Hon'ble Supreme Court in Gorkha Security Services v. Govt. of NCT of Delhi, held that "the Central issue, however, pertains to the requirement of stating the action which is proposed to be taken. The fundamental purpose behind the serving of Show Cause Notice is to make the noticee understand the precise case set up against him which he has to meet. This would require the statement of imputations detailing out the alleged breaches and defaults he has committed, so that he gets an opportunity to rebut the same."

lii. Without prejudice to the aforesaid, Section 23E of the SCRA will have no application to the facts of the present case as it deals with breach of conditions of listing or delisting. Whereas the provisions under Clause 36 of the Listing Agreement, not being a condition of listing, but merely deals with the obligation of a listed company to make disclosures relating to the events set out therein, Section 23E of the SCRA will have no application.

liii. It is submitted that, at the relevant time, Clause 36 of the Listing Agreement was a part of a listing agreement executed between the stock exchange and the Noticee No.1. In other words, Clause 36 of the Listing Agreement is merely a clause in a contract, breach of which cannot be equated to a breach of provisions under the SEBI Act, SCRA or any rules and regulations issued thereunder.

Reply of the Noticees No. 2 - 4

i. The Noticees state that the fact that Noticee No. 2 had purchased 1,25,000 shares on February 28, 2014 ("2014 Share Purchase") is not in dispute. However, it would be highly erroneous to impute motive to the bonafide transaction conducted by the Noticees based on incorrect appreciation of events/facts/circumstances under which the said shares were purchased.

ii. Noticee No. 2 is a private limited company incorporated on December 15, 2008 and is an investment company and is part of the promoter group of Jubilant Life. As on September 30, 2015, Noticee No. 2 held 2,96,76,992 equity shares of Jubilant Life equivalent to 18.63% stake in Jubilant Life. The promoter holding of Jubilant Life together with Noticee No. 2 stands at 54.02% as on September 30, 2015.

iii. Noticee No. 3 and Noticee No. 4 were the directors of Noticee No. 2 at the relevant time.

iv. It is submitted that Noticee No. 2 has been increasing its shareholding in Jubilant Life consistently over the past few years in line with creeping acquisition provisions under SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, which inter alia, provides a window to promoters to acquire additional shares of a listed company up to 5% in a financial year. In consonance with the same, Noticee No. 2 increased its shareholding in Jubilant Life from 11.79% in March 2011 to 18.63% in March 2014.

v. On December 24, 2013, Jubilant First Trust Healthcare Limited ("JFTH"), one of the 48 subsidiaries of Jubilant Life entered in a memorandum of understanding (MoU) with Narayana Hrudayalaya Private Limited ("NHPL") to sell its hospital business. Subsequently, on January 31, 2014, an agenda item pertaining to sale of hospital business of JFTH was circulated to the Board of Directors of Jubilant Life, including Noticee No. 3 and Noticee No 4, in their capacity as Directors of Jubilant Life. Subsequently, during the meeting of the Board of'Directors of Jubilant Life on February 6, 2014, the Board was informed of the proposed sale of hospital business of JFTH for a consideration of INR 44 crore to NHPL and the same was discussed and noted by the Board of Directors of Jubilant Life.

vi. On February 28, 2014 at 15:11:39 hours 1ST, Noticee No. 2 purchased 1,25,000 equity shares of Jubilant Life at the rate of INR 124 per share from the open market platform of stock exchange.

vii. On March 3, 2014 at 15:53:00 hours, the relevant disclosures to the stock exchanges were made under the applicable PIT Regulations by Noticee No. 2.

viii. Thereafter, on March 3, 2014 at 18:32:00 hours, Jubilant Life made the disclosure to the stock exchanges regarding “Jubilant First Trust Healthcare sells its hospital business to Narayan Health

ix. It is denied that the Noticees have violated the provisions of PIT Regulations as alleged. It is submitted that allegations of violations against the Noticees prima facie appear to be perfunctory and tentative in nature, and the Noticees are not in a position to determine whether SEBI has indeed found any concrete findings against the Noticees or has conducted a detailed investigation (if any), which forms the basis of the SCN.

x. It is respectfully submitted that the trading window of Jubilant Life, as prescribed under the code of conduct of PIT Regulations, was not closed on February 28, 2014 and there was no requirement for obtaining any pre-clearance for purchase of shares in the instant case. Therefore there were no restrictions on the Noticees to purchase shares of Jubilant Life on that date. The same also demonstrates that Jubilant Life did not consider information relating to the hospital sale to be material or price sensitive to have any bearing on its shares.

xi. The quantum of shares involved in the impugned transaction is only 0.08% of the total equity share capital of Jubilant Life, which is exceedingly insignificant to even warrant such allegations against the Noticees.

xii. It is submitted that if the Noticees indeed had any ulterior motive to benefit from the price fluctuations in the stock market, they would have placed orders to purchase shares on the previous day itself i.e. before the announcement was made to stock exchanges on February 27, 2014, pertaining to the withdrawal of the warning letter dated February 20, 2013 issued by the US Food and Drug Administration (FDA) to Jubilant HollisterStier General Partnership (an indirect subsidiary of Jubilant Life), which was not the case since the 2014.

xiii. The SCN fails to appreciate that the sale of hospital business was not in the nature of windfall gains to Jubilant Life. The existence of hospitals and its intrinsic value has already been factored in the valuation of Jubilant Life. Various assets of the subsidiary are already part of Jubilant Life's balance sheet. The fact that Jubilant Life held these hospitals under one of its 48 subsidiaries was already in the public domain and the sale of these entities for a consideration of INR 44 crore does not constitute as unpublished price sensitive information.lt is submitted that JFTH's revenues form a miniscule part of the consolidated revenue of Jubilant Life. In this regard, set out below is a comparison of Jubilant Life and JFTH in terms of their consolidated financials for the financial year 2013-14.

Particulars	**Revenue from operations**	**Fixed assets (including goodwill)**	**Capital employed**
Jubilant Life	58033.63	55711.74	74167.96
JFTH	188.68	37.38	689.62
JFTH % of Jubilant Life	0.33%	0.07%	0.93%

xiv. Accordingly, any sale or disposal of assets at JFTH's level cannot be said to be material in the context of Jubilant Life and such sale or disposal cannot be said to be price sensitive in nature.

xv. Further, it is submitted that Jubilant Life has protocols relating to press releases to the public at large. The press releases issued by Jubilant Life may be broadly categorised as disclosures of material and price sensitive information and general business releases for the information of its shareholders and public at large. One of the key distinctions between the aforementioned categories of releases is that, as is evidenced by past practice within Jubilant Life, the release of information which is material in the context of Jubilant Life and/or price sensitive is accompanied by a statement by the Jubilant Life's Chairman (i.e. Noticee No. 3) and/or Co-Chairman and Managing Director (i.e. Noticee No. 4.) On the other hand general business releases do not have any statements from Chairman (i.e. Noticee No. 3) and/or Co-Chairman and Managing Director (i.e. Noticee No. 4.) since they are issued only for the information of the shareholders and the public at large. In the instant case, given that neither of Noticee No. 3 nor Noticee No. 4 were quoted in the press release/disclosure made to the stock exchanges on March 03, 2014, shows that Jubilant Life did not consider the hospital sale transaction to be material or price sensitive in nature. Given the overall nature and size of Jubilant Life's business, the transaction was in the ordinary course of business and did not even require shareholders' approval since JFTH is not a material subsidiary of Jubilant Life within the meaning of Clause 49 of the listing agreement with stock exchanges.

xvi. Furthermore, it is submitted that while Noticee No. 3 and Noticee No. 4 attended the Board meeting of Jubilant Life on February 6, 2014, neither the Noticee No. 3 and Noticee No. 4 are Directors on the Board of Directors of JFTH. Accordingly, Noticee No. 3 and Noticee No. 4 were not involved in the day to day operations of JFTH and were not actively participating in discussions relating to the sale of the hospital business and the implementation of the sale of the hospital business.

xvii. Furthermore, it is submitted that even though the shares of Jubilant Life were received in the demat account of Noticee No. 2 on March 4, 2014, the shares were never sold or offloaded post the announcement or even any time after that, which is generally the case in matters pertaining to trading in violation of PIT Regulations, where the second leg of the transaction is executed once the unpublished price sensitive information becomes public so as to unjustly enrich oneself by trading on the information asymmetry. In this case, Noticee No. 2 continues to hold the shares till date i.e. even after more than one and a half years.

xviii. It is denied that Noticees have violated any provisions of PIT Regulations, SEBI Act or the rules or regulations made thereunder and Noticees are not liable for any

penalty. Furthermore, the allegations in the SCN are not supported by any evidence or material on record and accordingly, no inquiry is warranted and SCN should be forthwith withdrawn or cancelled.

xix. The Noticees undertake that consistent with their past conduct, the Noticees shall continue to deal in securities in a fair and transparent manner and remain committed to ensuring that the Jubilant group maintains the highest standards of transparency and corporate governance.

xx. As regards the said MOU of 24.12.2013 (Annexure B hereto) executed between Jubilant health and Narayana, it is pertinent to note that the same in fact did not amount to any UPSI inter alia for the following reasons :

a) The same is only an agreement to sell. It created no right title or interest in the properties. The actual transfer admittedly took place only by the sale agreements of 3.3.2014.

b) The relevant clause of the said MoU are inter alia as follows: -

CI. 4.1 - Which clarifies that the same is only an "indicative intent to purchase."

CL.5.3- Which inter alia provides that the "...actual consideration and structure of payment shall be discussed and finalized after completion of satisfactory due diligence"

CL.7.2- Which clearly provides that Narayana was yet to make an offer of the "final consideration amount" and that if the same was less than ₹ 44 crores, then Jubilant Healthcare would be free to reject the same and terminate the negotiations.

CI. 8.1 - Which stipulates that Narayana was to do the due diligence and then ".convey willingness or unwillingness and the actual consideration NHPL is willing to pay." This makes it clear that even the price was still not final or fixed.

CL.10.3 - stipulated that the MOU would expire and stand cancelled if the parties did not agree upon the "actual consideration and the final terms and conditions for sale"

CI. 13 - stipulated that "if the parties mutually agree to the price after due diligence, a definitive agreement on such terms as may be agreed between the parties shall be executed..."

xxi. Thus, while the MoU states that it is a "binding offer", its terms make it clear that in fact, there was no final agreement, even the price stipulated was only tentative and was yet to be negotiated, and that as on the date thereof, the sale was uncertain and may or may not have actually happened at all. Therefore, the said MOU was only an

agreement to enter into another agreement, which in law is not capable of specific performance, and in law, the said MOU was not an enforceable agreement at all

xxii. Annexure "D" hereto is a list of the quantities and dates of purchase of shares of Jubilant Life by Jubilant Stock. The same proves that the quantities of shares purchased on other dates prior to the impugned trades were much more than the impugned quantities of shares purchased on 28.2.2014. The impugned trades were only the balance quantity of the shares already acquired from the 5% creeping acquisition window available during the financial year. This by itself proves that Jubilant Stock did not trade on the basis of any UPSI.

xxiii. It is most pertinent to note that Jubilant Stock only bought and never sold any shares. In fact, it is still holding the shares. No profits have been made. This pattern of trading also proves that the impugned purchase of shares was not on the basis of any UPSI and was not "insider trading" at all. In this regard it is pertinent to note the following judgment:-

a) SAT Appeal No. 209 of 2011 - Mrs. Chandrakala V/s. SEBl.

b) SAT Appeal No. 64 of 2012 - Mr. Mctnoj Gaur V/s. SEBl.

xxiv. In the view of aforesaid conflicting judgment in the Roofit and Chaturvedi matters, a clarification " Explanation" was added to section 15J of the SEBI Act, 1992, by way of Finance Act, 2017 stating that the power of the adjudicating officer to adjust the quantum of penalty" shall be and shall always be deemed to have been exercised under the provisions of this section…" The aforesaid amendment to the statue adopts the ratio laid down by the Hon'ble Supreme Court in the Chaturvedi judgement and puts the controversy at rest. It is now within the discretion f he learned adjudicating officer to decide (a) whether any violation at all has been established, and (b) if so, whether any penalty ought to be levied at all, and (c) if so, how much, if however, there is still any doubt in this regards, then correctly the present matter ought to be kept in abeyance pending the judgment/ decision of the larger bench of the Hon'ble Supreme Court on the issue.

xxv. Additionally, it is submitted that it is most pertinent to note the provisions of paragraph 3.2-1 and 3.2-3 of the "Model Code of conduct for prevention of Insider Trading for Listed Companies". As contained in schedule 1 of the SEBI (Prohibition of Insider trading) Regulations, 1992, the relevant extracts of which are as follows:

> "3.2-7 The Company shall specify a trading period to be called the "Trading Window" for trading in the company's securities. The trading window shall be closed during the time the information referred to in para 3.2-3 is unpublished"

"3.2-3 The trading window shall be inter-alia, closed at the time:-

(f) Disposal of whole or substantially the whole of the undertaking"

xxvi. It is therefore clear that merely the disposal of one or two assets does not amount to "price sensitive information", unless the same constitutes "disposal of whole or substantially the whole of the undertaking". As set out in our Reply and Written Submissions, the sale of the hospital business to"Narayana" by Jubilant Healthcare Limited(one of the 48 subsidiaries of Jubilant Life Sciences Ltd.), could not have amounted to any price sensitive information for Jubilant Life Sciences Ltd. since the same constituted only about 0.37% of the consolidated fixed assets of Jubilant Life Sciences Ltd. The same has also been certified by our chartered accountants, and a copy of their certificate is annexed as "Annexure A" to the Written Submissions.

xxvii. Consequently, Jubilant Life Sciences Ltd had correctly not even closed its trading window as the said sale of hospital business was totally insignificant in comparison to its total consolidated business and assets i.e., as consolidated between itself and all its 48 subsidiaries which are all over the world as enlisted in "Annexure F" the Written Submissions.

Reply of Noticee No. 5

i. It is denied that I have violated any provisions of PIT Regulations as alleged or that I am liable for any penalty under section 15G of the SEBI Act as alleged. I understand that I sold 830 shares of Jubilant Life Sciences Limited on February 23, 2013 and bought 450 shares of Jubilant on February 26, 2014.

ii. During my entire tenure with Jubilant, including my current role as Business Head – CMO and the role I was managing over the past 5 years before I moved into current role, I have held positions which required me to comply with the strictest standards of corporate governance and professional ethics. I would like to bring to your attention that in the many years that I have been working with listed companies including Jubilant I have had an unblemished and exemplary record and that no allegations of insider trading have ever been made out against me.

iii. The trades mentioned in the SCN have been done by me inadvertently and the intention has never been to violate any regulation(s) or make short term gains. Also, in the instant case, I was under the bona fide impression that any proceedings at Jubilant Hollister Steir General Partnership (**"JHSGP"**) were not material or price sensitive in the context of Jubilant as a whole.

iv. The allegation of violating the provisions of PIT Regulations is based on the premise that the information regarding (1) issuance of warning letter by FDA and (2) classification of the facility as acceptable by FDA, constitutes price sensitive information. In this context, I vehemently deny that the trades executed by me were due to any such information as alleged as it was not a material information in the context of Jubilant Life Sciences Limited ("**Jubilant Life/Company**") and the trades were executed in the normal course of making investments in the stock market.

v. I joined Jubilant Life in August 2010 as part of its strategy team and assisted the Company to review and maximize the performance of its businesses on a continuous basis and to measure performance against goals/budgets and work along with business teams to measure deviations, enhance key business drivers, identify and implement improvement measures and generate monthly financial reporting and analytics pack.

vi. During the month of June 2012, I moved into a new house and need some funds for its renovation over the period of next one year. Therefore, I sold 830 shares on February 25, 2013 after holding these shares for around two years after these shares were purchased by me in June-July 2011.

vii. Regarding the second impugned transaction, please note that I had purchased 450 shares on February 26, 2014 as I had some spare funds left to invest in the stock market after investing some funds in the bonds of public sector entities. Further, the basis of information, for which I am alleged to have trades is not price sensitive information, being non-material in nature. Without prejudice to the aforesaid, contrary to allegation, there was no insider trading or benefit derived by me by way of selling these shares in the market immediately after the information was made public by disseminating it to the stock exchanges. In fact, these shares were sold by me several weeks after the information was disclosed to the stock exchanges.

viii. During the year 2012, 2013 and 2014, I have purchased shares in several other blue-chip companies including Reliance Industries, Tata Teleservices, Indian Hotels, TCS, Coal India, HCL Infosystems and Power Grid etc. This shows that my investment in Jubilant Life is also based on a normal investment pattern and not actuated by any information, which was allegedly price sensitive in nature.

ix. I am a conservative investor and do not believe in speculative trades. This is evident from my portfolio which comprises mostly of bonds from public sector entities like HUDCO, IDFC, IIFCL, IRFC, NHAI, NTPL and REC among others. Annexed hereto is the list of various such instruments held by me as on date.

x. Further, in this regard, since part of the charges related to disclosure of some events pertain to the Company in the SCN, I understand that the Company has filed a detailed reply in response to the allegations contained against it in the SCN. I adopt the submissions of the Company made in this regard inter-alia refuting the allegations in the SCN and further crave leave to refer to the same and/or any further submissions made by the Company in future in this matter in order to avoid repetition.

xi. Without prejudice to the aforesaid it is reiterated that the information alleged to be price sensitive by you does not fall within the definition of price sensitive information. Even if SEBI construes that such information falls within the definition of price sensitive information, following be noted:

a) That the alleged violations are at the highest a technical, procedural and venial breach.

b) That the alleged violations are not deliberate and intentional and in contumacious disregard of provisions of law.

c) That the alleged violations pertain to an old period and the same have not caused any loss to any investor and have also not adversely affected the shareholders of Jubilant Life or the securities market in any manner. Further, it may be noted that there are no shareholder/investor complaints in this regard.

d) That as result of alleged violations, I have not made any gain or gained any unfair advantage. I had transacted in the shares in normal course as an investor based on the availability of surplus funds and sold when I required these funds for my personal usage.

e) The quantum of shares involved in the impugned transaction is meagre i.e. a total of 1280 shares (450 + 830), which constitutes merely 0.0008%, which is exceedingly insignificant to have any kind of impact on price or volume of shares of Jubilant Life.

f) That I have a clean track record in terms of compliance. Till date my conduct has never been found to be violative of any of the provisions of SEBI Act or regulations and no action has been taken against me by SEBI, save and except the matter under reference.

g) That I have already suffered a lot both financially and otherwise. For the past few months, I and my family have been undergoing severe stress due to my ill-health and depressed mental condition.

h) That, it is assured that I will continue to scrupulously abide by the provisions of the SEBI Act, Rules and Regulations.

xii. In terms of paragraph 3.2.1 of the Code of Conduct, the trading window shall be closed during the time the information referred to in paragraph 3.22.3 of the Code of Conduct is unpublished. It is submitted that neither on the issuance of warning letters by FDA nor on the classification of the facility as acceptable by the FDA, the trading window was closed by the Jubilant Life Sciences Limited. As the information was material in nature, it is respectfully submitted that the trades were executed in the normal course of making investments in the stock market and cannot be said to be violative of the provisions under PIT Regulations 2015.

xiii. In the facts and circumstances, any imposition of penalty on me would be unjustified and unwarranted. In view of the foregoing submissions, it is humbly prayed that the Notice be discharged and no penalty be imposed.

xiv. Since this was done inadvertently by me and was a very small/ immaterial transaction, may I request you to kindly accept my apology and pardon me for the unintentional mistake?

xv. I assure you that I would not make any trades in Jubilant stock before disclosure of any information by the company to the public (whether or not I consider such information to be price sensitive or not) again.

15. After taking into account the allegations, replies / additional submissions of the Noticees and material available on records, I hereby, proceed to decide the case on merit.

CONSIDERATION OF ISSUES AND FINDINGS

16. The issues that arise for consideration in the present case / SCN are :

a) Whether the informations as shown in the SCN (viz. regarding to 'warning letters' / 'acceptance letter' issued by Us-FDA against Jubilant HollisterStier General Partnership (**JHS**) -a manufacturing Facility of the Noticee No. 1 and

the 'Provisional Duties' announced by Ministry of Commerce, China, with respect to Noticee No.1) were the PSI to have impact on the business/operation of Noticee No. 1 and required disclosure of the same under clause 36 of the Listing Agreement read with section 21 of the SCRA?

b) If yes, then, whether Noticee No. 1 had belatedly disclosed to the Stock Exchange the aforesaid PSI / material information?

c) If yes, then, whether such belated disclosure is in violation of clause 36 of the Listing Agreement read with section 21 of the SCRA?

d) If yes, then, whether the monetary penalty can be attracted against the Noticee No. 1 under section 23 A (a) and 23 E of the SCRA?

e) Whether the Noticee No. 2 – 5 are the "Insider" of the Noticee No. 1 in terms of PIT Regulations?

f) If yes, then, whether trading by 'insider' during Unpublished Price Sensitive Information (**UPSI**) period as alleged in the SCN, is in violation of regulation 3 and 3 A of the PIT Regulations?

g) If yes, then, whether the Noticee No. 2 – 5 are liable for monetary penalty under section 15 G of the SEBI Act?

h) If yes for above, then, what would be the monetary penalty that can be imposed upon the Noticee No. 1 under section 23 A (a) / section 23 E of the SCRA and upon Noticee No. 2-5 under section 15 G of the SEBI Act, taking into consideration the factors stipulated in section 15J of the SEBI Act and section 23 J of the SCRA read with rule 5 (2) of the Adjudication Rules?

ISSUE No. 1

Whether the informations as shown in the SCN (viz. regarding to 'warning letters' / 'acceptance letter' issued by Us-FDA against JHS - a

manufacturing Facility of the Noticee No. 1 and the 'Provisional Duties' announced by Ministry of Commerce, China, with respect to Noticee No.1) were the PSI to have impact on the business/operation of Noticee No. 1 and required disclosure of the same under clause 36 of the Listing Agreement read with section 21 of the SCRA?

17. The fact of warning letters dated February 20, 2013 and dated November 27, 2013 issued by US - FDA identifying significant violations of current Good Manufacturing Practices (cGMP) Regulations against JHS – a manufacturing facility of Noticee No. 1, inspection report dated February 21, 2014 from the U.S. (FDA) classifying manufacturing facility at Montreal, Canada as 'Acceptable' and the announcement dated May 28, 2013 made by Ministry of Commerce (MOFCOM) China imposing Provisional Duties of 24.6% against the Noticee No. 1, are not in dispute. Further, the fact of belated disclosures of aforesaid warning letters/provisions duties etc. made to the Stock Exchange, are also not in dispute.

18. In respect of the violation of clause 36 of the Listing Agreement read with section 21 of the SCRA, the Noticee No. 1 made core submissions / contentions as shown in above part of this order and same are not reproduced for sake of brevity.

19. As regards to the PSI, regulation 2 (ha) of the PIT Regulation defines the PSI 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. From the above definition is its clear that "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" is considered to be the PSI. Apparently, apart from certain events which are specifically shown as PSI under above Explanation, 'other' event/information can be considered as PSI which 'directly' or 'indirectly' relate to the company. Therefore, said definition stipulating 'PSI" is inclusive in nature depending upon any event / information which can materially affect the share price of the company.

21. Also, clause 36 of the Listing Agreement clearly states that-

*Apart from complying with all specific requirements as above, the Company will keep the Exchange informed of events such as ……. The Company will also immediately inform the Exchange of all the events, **which will have bearing on the performance/operations of the company as well as price sensitive information**. The material events **may be** events such as:*

(1)…….

(2)…….

(3)…….

(4)Developments with respect to pricing/realisation arising out of change in the regulatory framework.

*The Company will promptly inform the Exchange of the developments with respect to **pricing of** or in realisation on its goods or services (which are subject to price or distribution control/restriction by the Government or other statutory authorities, whether by way of quota, fixed rate of return, or **otherwise**) **arising out of modification or change in Government's or other authority's policies provided the change can reasonable be expected to have a material impact on its present or future operations or its profitability.***

(5) Litigation/dispute with a material impact.

The Company will promptly after the event inform the Exchange of the developments with respect to any dispute in conciliation proceedings, litigation, ***assessment****, adjudication or arbitration to which it is a party or the outcome of which can reasonably be expected to have a material impact on its present or future operations or its profitability or financials.*

(6) ……..

(7) ***Any other information*** *having bearing on the operation/performance of the company as well as price sensitive information,* ***which includes but not restricted to;***

i. ……..

viii……..

The above information should be made public ***immediately.***

22. From the above clause 36, it is clear that the Company will keep the Stock Exchange informed of all the events, which will have bearing on the 'performance' / 'operations' of the company as well as 'PSI'. Especially, clause 36(7) is inclusive in nature which requires disclosure of any other information having bearing on the operation / performance of the company or the PSI; and is not restricted to only events as specified therein. The aforesaid clause clearly indicates certain events as PSI and other events / information can be considered as PSI / material information depending upon the nature involved. From aforesaid regulation 2(ha) of the PIT Regulations and clause 36 of the Listing Agreement, it is clear that PSI can be identified or it depends upon the nature of event / information that may happens in a company and is not limited to only the instances / explanations given therein.

23. Moreover, it is the submission of the Noticee No. 1 that clause 36 of the Listing Agreement provides discretion to be exercised by a company relating to materiality of an event and whether it qualifies for disclosure to the Stock Exchange. Such explanation / submission of the Noticee No. 1 itself clearly indicates that there are no exhaustive specific indicative list of PSI under PIT

Regulations and Listing Agreement, but, other event / information can become PSI depending upon the nature of event / information involved.

24. Therefore, the plea of the Noticee No. 1 that PIT Regulations / Listing Agreement are very specific to the events as indicated therein and hence the warning letters / provisional duties does not fall within the ambit of PSI, is without any merit.

25. As it is well established that clause 36 of Listing Agreement requires the disclosure of material information / PSI to be made to the Stock Exchange by the company, therefore, now the question that arises for consideration is whether the events / instances of "warning letters / acceptable letter" by FDA and "imposition of provisional duties" by MOFCOM, China as alleged in the SCN, falls within the category of PSI or not.

26. It is an undisputed fact that JHS is a manufacturing unit as well as a subsidiary of Noticee No.1 which is located at Kirkland Quebec, Canada and at Spokane Washington State, USA. Being a subsidiary / Manufacturing Unit of the Noticee No.1 and contributing 7 % and 10% respectively of the total revenue of the Noticee No.1 at both Canada/Spokane site for the financial year ended March 31, 2013 and March 2014, clearly indicates that JHS is an important subsidiary and has a bearing on the operation / profitability of the Noticee No.1.

27. Further, in my opinion, generation of profit in particular financial year(s), cannot be the sole criteria for measuring the subsidiary being materially related to the holding company or in other words any material information/development relating to subsidiary, is totally independent from the issue of profit earned. Any PSI if so established to have taken place in respect of subsidiary company, then, certainly, same has an impact upon the operation / performance / profitability of the holding Company.

28. In my opinion the warning letters issued by FDA (dated February 20, 2013 and dated November 27, 2013) to the JHS identifying significant violation of current

Good Manufacturing Practice Regulations as indicated therein specifying *inter – alia* {viz. untill all corrections have been completed, US FDA may withhold approval of new applications or supplements listing JHS as the drug product manufacturer and further specifying that failure to correct these violation may result in FDA refusing admission of articles manufactured at JHS, Kirkland, Quebec, Canada into the United States under section 801 (a) (3) of the Act USC 381 (a) (3)}, is a kind of event / information which certainly has the impact / bearing upon the business / operation / profitability of the JHS and of the Noticee No. 1. Also, acceptance report of FDA dated February 21, 2014 has the same bearing upon the JHS and Noticee No. 1.

29. Similar kind of observations was made by the FDA in warning letter dated November 27, 2013 which *inter-alia* states –

"It is apparent that ***you have not implemented a robust quality system at your firm***. ***Be advised that corporate management is responsible for ensuring the quality, safety and integrity of drug manufactured by Jubilant HollisterStier, LLC.*** *FDA strongly recommend that your corporate management immediately undertake a comprehensive evaluation of global manufacturing operations to ensure compliance with CGMP regulations.*

You should take prompt action to correct the violations cited in this letter. Failure to promptly correct these violations may result in legal actions without further notice including, without limitation, seizure and injunction. ***Other federal agencies may take this warning letter into account when considering the award of contract***. *Additionally, FDA may* ***withhold approval of request for export certificates****, or approval of pending drug applications listing your facility, until the above violations are corrected."*

30. From the above observations made by the FDA, it is clear that several violations were revealed and same were having serious impact on the current operation of the JHS at both locations. Therefore, the submission of the Noticee No. 1 that Warning Letters were restricted only to approvals for new products manufactured at the site, is not acceptable. Moreover, the said

warning letters clearly pertained to operations that were currently going on at the both site of the JHS at the relevant point of time and there was specific observation regarding lack of robust quality system at the firm's end and prompt action to correct the violations was directed in the said letter. It was clearly stated in warning letters that failure to promptly correct the violations may result in legal actions and other federal agencies may take this warning letter into account when considering the award of contract.

31. I am of the view that any adverse observations having impact on the business / operations of JHS was likely to have a cascading / material adverse impact directly / indirectly on the holding company / Noticee No. 1. Also, there is high level of probabilities of serious challenges for a holding company upon adverse finding against subsidiary / associate company if such findings are disclosed to public. Needless to say that such impact / serious findings may also lead to a loss of reputation to the Group of "Jubilant".

32. Further, I note that the said subsidiary / JHS and the Holding Company / Noticee No. 1 are involved in similar kind of business / production (viz. manufacturing of drugs / pharmaceuticals) and by virtue of similar business, any adverse findings or warning letters pointing out various irregularities on the part of JHS/subsidiaries (especially when the name of subsidiary starts with common brand name "Jubilant") will certainly have impact upon the Noticee No. 1 / holding company. It would not be out of place to mention that consequent to such observations of FDA, high probabilities of investor's/public concern get triggered with respect to affairs of holding company as well as to all of its subsidiaries involved in similar kind of production / pharmaceuticals which may indirectly affects the operation / business of the holding company / Noticee No. 1.

33. I am of the view that such serious observations by FDA which directly relates to the manufacturing facility / product made therein, undoubtedly creates

serious concern in the minds of investors and also have negative impact upon further operation of the JHS which in turn causes impact upon the operation / performance / profitability on the Noticee No. 1. Needless to say that subsequent acceptable letter by FDA removing hurdles, may also have positive impact upon the operation of for JHS and accordingly becomes a PSI which in turn has bearing upon Noticee No. 1. Therefore, said development of warning letter / acceptable letters are the PSI in respect to the operation / business and the price of security of Noticee No. 1.

34. Further, the 'imposition of Duties of 24.6% upon the Noticee No. 1 by the MOFCOM China, is also an important / material PSI having impact upon operation / performance / profitability of the Noticee No.1. Interestingly, it is noted that said imposition of duties was against the Noticee No.1 itself and not against its subsidiary; and therefore, this has a direct impact upon the business / operation / profitability of Noticee No. 1. I cannot ignore that any restriction or condition / Tariff / Duties imposed by any Government Agency (anti-dumping policy adopted by MOFCOM, China in present case) has a direct effect upon the pricing of such product while exporting and certainly has the impact upon profitability on the company / Noticee No. 1 when compared to previous pricing. Therefore, any such development which affects the pricing of company / Noticee No. 1, is certainly a PSI.

35. In my opinion, such event (which directly affects the profitability of company) is material to the investor's point of view in taking informed decisions in the shares of Noticee No.1. It may not be possible to pragmatically demonstrate the investor's reaction on such events, but, same is of such a nature that may raise concern for the investors in the Company.

36. Here, I cannot loose sight that due to aforesaid events (warning letters / imposition of provisional duties and acceptable letter) there was considerable price fluctuation (fall / rise) in the shares of the Noticee No. 1 (details of such price fluctuations are clearly shown in the SCN) which itself demonstrate about

the importance of such information. From the records, it is seen that upon disclosure of such warning letter to the Stock Exchange, the price of the share of Noticee No.1 came down considerably and upon removal of such findings by FDA in subsequent letter dated February 21, 2014, the price of shares of Noticee No. 1 went up considerably.

37. Further, I cannot loose sight that imposition of 24.6 % provisional duties by MOFCOM, China falls in the category of PSI by virtue of clause 36 (4) of the Listing Agreement which states that "*the Company will promptly inform the Exchange of the developments with respect to* ***pricing of*** *or* ***in realisation on its goods or services*** *(which are subject to* ***price or distribution control/restriction by the Government or other statutory authorities****, whether by way of quota, fixed rate of return, or* ***otherwise****) arising out of modification or* ***change in Government's or other authority's policies*** *provided the change can reasonably be expected to have a material impact on its present or future operations or its profitability".* I am of the view that since the imposition of duties by Government of China which has the impact / development with respect to pricing on pharmaceuticals product, therefore, such imposition becomes the material information / PSI and needs to be disclosed to the stock exchange by the Noticee No. 1.

38. Further, clause 36 (5) of the Listing Agreement litigation which states that- "*The Company will promptly after the event inform the Exchange of the developments with respect to any dispute in conciliation proceedings, litigation,* ***assessment****, adjudication or arbitration to which it is a party or the outcome of which can reasonably be expected to have a material impact on its present or future operations or its profitability or financials".* In my opinion, the inspection carried out by the FDA in respect of JHS (subsidiary of the Noticee No. 1) and observations/ violations revealed by the Authority/FDA after taking into account the response of the JHS and informing the JHS/firm the consequences if corrective steps are not taken, clearly falls within the ambit of "assessment" / 'adjudication' and outcome of which can reasonably be expected to have a material impact on company's present or future operations / profitability.

39. Further, the fact that said four events / information are the PSI, can be seen from the conduct of the Noticee No. 1 itself as upon receipt of such information (viz. warning letter / acceptable letter / imposition of duties) the Noticee No. 1 had analyzed these events and when found to be of such nature having importance / material PSI, then, it had made disclosures (belatedly) to Stock Exchange. Here, it is relevant to mention that disclosure for 'any other event/information' can be made after considering the aspect as to whether such event / information is a PSI; and if it is so determined considering its impact on the operation / performance / profitability on the Company, then, disclosures under clause 36 of Listing Agreement needs to be made. In fact, such analysis was made by the Noticee No. 1, but, the disclosures were made belatedly (issue of belated disclosures would be discussed in later part of this order).

40. In my view, since the Noticee No. 1 had analysed such event / information as PSI and thereafter had and made belated disclosures under said clause 36, therefore, subsequently it would not be open for the Noticee No. 1 to take plea that such disclosure were made as a matter of abundant caution only though it was not bound to make such disclosures. Such contradictory / alternative defense cannot be accepted as the same are made to escape from the statutory liability of timely disclosures. Moreover, the plea of abundant caution cannot be accepted on the ground that had there been a case of abundant caution, then, why the disclosure regarding 'imposition of provisional duties' by MOFCOM China, was made with a considerable delay of around 2 months.

41. Accordingly, in my opinion, any material development in respect of the company itself / Noticee No. 1 (viz. imposition of duties) or any adverse finding against its subsidiary (JHS), certainly has a bearing in the minds of investors / shareholders and has impact upon the operation / business of Noticee No. 1.

42. The submissions of the Noticee No. 1 that clause 36 of the Listing Agreement provides for discretion to be exercised by a company relating to materiality of

an event, time at which and the details that may be provided in the disclosure, has already been examined at pre paras and therefore, keeping in view the facts and circumstance of the case in totality, the contention of the Noticee No. 1 that JHS (being a subsidiary) does not have an impact on the operation / profitability of Noticee No. 1, is not acceptable.

43. Therefore, it is amply established that the event / information (viz. the warning letter / Acceptable report / imposition of duties etc.) were the PSI / material and were required to have been disclosed to the Stock Exchange by the Noticee No.1 under clause 36 of the Listing Agreement read with section 21 of the SCRA.

ISSUE NO. 2 & 3

Whether Noticee No. 1 had belatedly disclosed to the Stock Exchange the aforesaid PSI / material information? AND

If yes, then, whether such belated disclosure is in violation of clause 36 of the Listing Agreement read with section 21 of the SCRA?

44. The question as to whether the aforesaid alleged events / PSI / material informations were made without any delay or made belatedly by the Noticee No. 1 in violation of clause 36 of the Listing Agreement read with section 21 of the SCRA, is being examined as under.

45. I have noted from the undisputed records that first warning letter was issued on February 20, 2013 which was received by Jean Francois Hebert (who was Vice President-Operations) of JHS, Canada, on February 22, 2013, who in turn informed to Marcelo Morales (CEO of the business located at Spokane in USA) on February 23, 2013. It is noted that the same was informed by Marcelo Morales vide e-mail dated 24th February, 2013 to Corporate Office / Noticee No. 1 etc. and such information was ultimately announced by Noticee No. 1 to BSE Ltd. (BSE) only on February 27, 2013 at 12:19 hrs. (i.e. the disclosure was made after 3 days of receipt of information on 24/02/2013).

46. The second warning letter dated November 27, 2013 issued by FDA was received by Marcelo Morales on December 1, 2013 and the same was e-mailed on December 3, 2013 to Corporate Office / Noticee No. 1 etc. The information of second warning letter was disclosed by the Noticee No.1 to the Stock Exchange on December 05, 2013 (i.e. the disclosure was made after 2 days of receipt of information on 03/12/2013).

47. As regard to 'Acceptable Report/Letter' dated February 21, 2014 of FDA, the said report was received by Marcelo Morales on February 25, 2014 and the same was e-mailed on same day to Corporate Office / Noticee No. 1 etc. However, the Noticee No. 1 had made announcement to the stock exchange on February 27, 2014 (i.e. the disclosure was made after 2 days of receipt of information on 25/02/2014).

48. It is also noted that on May 28, 2013, Ministry of Commerce (MOFCOM) China, announced the imposition of provisional duties of 24.6% against Noticee No. 1 and this information was disclosed by the Noticee No. 1 to the Stock Exchanges only on July 25, 2013 (i.e. delay of around 2 months in making disclosures).

49. Now, I am dealing the submission of the Noticee No. 1 regarding delay on said disclosures. The Noticee No. 1 had contended that SCN has narrowly considered the word 'immediately' as the term "immediately, requires to be construed as meaning with all reasonable speed, considering the circumstances of the case; and in the given situation, the term "immediately" shall mean "within reasonable time". The Noticee No.1 had relied upon various case laws in its support as shown in the above part of this order. The Noticee No. 1 had also submitted that upon receipt of such warning letters, it had first took time to analyse the nature of such events as to whether the same requires disclosure or not and after analyzing the same, it had made disclosure to the Stock Exchange only as a matter of abundant caution, though the same did not require disclosure.

50. I have gone through the records / facts of case / case laws as relied upon and after taking into the account the totality of circumstances, it is agreeable to the extent that the word “immediately” should be construed as within the reasonable time. As no particular time line (number of days / number of minutes/hours) has been stipulated under clause 36 of Listing Agreement for making disclosure to Stock Exchange unlike some other provisions of the securities law (e.g. PIT Regulations / Listing Agreement which clearly specifies time lines for making disclosures). Therefore, in absence of any time lines, the word “immediately” would ideally conveys a meaning that the disclosure needs to be made within a reasonable time considering the nature / importance of the events involved and taking into account the continuous / immediate efforts took by the Company for such disclosure.

51. In respect to delay in making disclosure of first warning letter (first instance), the plea of Noticee is acceptable to the extent that upon receipt of such information / PSI, it had analyzed such event within the Group / Management / Committee etc. and after considering the importance of such information, it could made disclosure to the Stock Exchange with a few days delay only.

52. However, the aforesaid plea of analyzing the event and then to take a decision of making disclosure, is not acceptable in respect of second Warning Letter and Acceptable Report / Letter, as the Noticee No.1 had already analyzed the similar nature of information at the first instance only. If the aspect has already been analyzed/examined, then, the subsequent warning letter / acceptable letter should have been disclosed to the stock exchange immediately upon receipt of the same without any delay. In my view, since the nature of event / information (Warning letter / acceptable letter) was in the nature of PSI and has an impact on the operation / performance / profitability of Noticee No. 1 as discussed in above part of this order. Therefore, the disclosure should have been made on the same day / immediately upon receipt of the letter / information in conformity with the provision of clause 36 of the Listing Agreement.

53. Further, aforesaid plea of analyzing event to take a decision of making disclosure and the case laws relied upon, would not be helpful / applicable on the event of imposition of Provisional Duties by MOFCOM China as there was considerable delay of around two months in making such disclosure which was a PSI / material information as established above. Certainly, the delay of around two months in not disclosing to Stock Exchange, is not a 'reasonable delay' and is against the provision of clause 36 of the Listing Agreement.

54. The Noticee No. 1 contended that the information regarding MOFCOM was already in public domain as some of the media {viz. Tribune, an Indian English language daily newspaper (dated May 30, 2013) and website CCM Data and Business Intelligence (dated June 19. 2013} had published this news and therefore, if some information is already in the public domain, there was no requirement to make disclosures as it does not add further value.

55. I do not agree with aforesaid contention as clause 36 of the Listing Agreement stipulates the disclosures of PSI to be made to the Stock Exchanges only and therefore, newspaper/website publication of such information would not meet the statutory requirement. Moreover, it would not be appropriate to rely that the domestic investors / general public / shareholders of Noticee No. 1 would have easily come to know of such information which in fact was at the website of extra territorial agency. As regards to the newspaper publication (viz. Tribune, an Indian English language daily newspaper dated May 30, 2013) copy of which is enclosed by the Noticee No. 1 as Annexure F along with its reply dated March 26, 2016, it is noted that said newspaper merely indicates about levy of anti-dumping duties by the China on pyridine imported from India and Japan, but, no where it refers the name of the Noticee No. 1. In view of the aforesaid and especially taking into account the requirement of disclosure to Stock Exchange only under clause 36 of the Listing Agreement, the aforesaid contention of the Noticee No. 1 bears no merit.

56. Here, in the context of disclosure, I would also like to refer the observation of the Hon'ble Securities Appellate Tribunal (**Hon'ble SAT**) in the matter of ***Premchand Shah & Others*** v. ***SEBI*** (Appeal No. 192 of 2010) *decided on February 21, 2011*, wherein, it was held-

"..... ***When law prescribes a manner in which a thing is to be done, it must be done only in that manner or not at all***. *Both sets of regulations prescribe formats in which the disclosures are to be made and those are then put out for the information of the general public through special window(s) of the stock exchange which did not happen in this case".*

57. Another plea of the Noticee No.1 that SCN does not set out the number of days by which the disclosures were made belatedly, is not acceptable as the chronology and communication of event/information has been clearly shown in the SCN which reveals the number of days delayed in making disclosure.

58. Further, the Noticee No. 1 contended that provisions under Clause 36 of the Listing Agreement, is not being a condition of listing, but, merely deals with the obligation of a listed company to make disclosures relating to the events set out therein. It has also contended that Clause 36 of the Listing Agreement was a part of a listing agreement executed between the stock exchange and the Noticee No.1 which is merely a clause in a contract, breach of which cannot be equated to a breach of provisions under the SEBI Act, SCRA or any rules and regulations issued thereunder.

59. The aforesaid contention do not bear any merit as the listing agreement is being entered into between the Listed Company and Stock Exchange pursuant to the statutory requirement only. Needless to say that section 21 of the SCRA clearly imposes an obligation to comply with condition of listing agreement and such listing agreement are entered into between the stock exchange and the company following the statutory requirement.

60. At this juncture, I would like to refer a judgment of Hon'ble SAT in case of *M/s. Helios and Matheson Information Technology Limited Vs. SEBI (Appeal No. 69/2011) decided on 16/11/2011* wherein it was inter- alia held -

*"……**The requirement of making necessary disclosures to the stock exchanges and through them to the investors is contained in clause 36 of the listing agreement** that is executed between the stock exchange(s) and the issuer company. **This agreement is executed by every listed company with the stock exchange(s) where its securities are listed and it has a statutory force**. **There is a format prescribed by SEBI which is contained in its manuals and every listing agreement has to be in that format.***
……

*A reading of the aforesaid clause makes it clear that a **company has to immediately inform the stock exchange(s) of the events which would have a bearing on its performance / operations as well as price sensitive information** …….. Price sensitive information when published is likely to materially affect the price of the securities of a company and it is for this reason that clause 36 of the listing agreement mandates that **such information should be made public at the earliest.** ……"*

61. In view of the aforesaid, it is clear that listing agreement is not only a mere contract between Stock Exchange and the Listed Company, but, the same is a statutory requirement by efflux of law.

62. The issue raised by the Noticee No. 1 that the SCN does not provide evidence in support and there is lack of principle of natural justice, is not accepted at all as the Noticee No. 1 had availed the inspection of documents / records and collected the copies of required documents. Moreover, the factual position as alleged in the SCN are not disputed by the Noticee No. 1.

63. From the aforesaid observations, it is established that the Noticee No. 1 had made belated disclosures to the Stock Exchange regarding aforesaid PSI /

material information (especially the “Provisional Duties imposed by MOFCOM, China and 2nd Warning Letter / Acceptable Letter of US-FDA) and thereby had violated clause 36 of the Listing Agreement read with section 21 of the SCRA.

ISSUE No. 4

If yes, then, whether the monetary penalty can be attracted against the Noticee No. 1 under section 23 A (a) and 23 E of the SCRA?

64. Since the violation of clause 36 of the Listing Agreement read with section 21 of the SCRA has been established, therefore, the next issue as to whether the monetary penalty can be attracted against the Noticee No. 1 under section 23 A (a) and 23 E of the SCRA, is being examined as under.

65. The Noticee No. 1 in respect of imposition of penalties, had cited several case laws as indicated in above part of its submission which are not repeated for sake of brevity. The Noticee had also stated that section 23A (a) of the SCRA is a special provision and Section 23E of the SCRA is a general provision and in the given case section 23A (a) of the SCRA will prevail over section 23E of the SCRA; and therefore section 23E of the SCRA will have no application.

66. I have carefully perused section 23A (a) & section 23E of the SCRA which are produced as under;

SCRA:

Penalty for failure to furnish information, return, etc.

23A. *Any person, who is required under this Act or any rules made thereunder,—*

to furnish any information, document, books, returns or report to a recognized stock exchange, fails to furnish the same within the time specified therefor in the listing agreement or conditions or bye-laws of the recognised stock exchange, shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less for each such failure.

Penalty for failure to comply with provision of listing conditions or delisting conditions or grounds.

23E. *If a company or any person managing collective investment scheme or mutual fund, fails to comply with the listing conditions or delisting conditions or grounds or commits a breach thereof, it or he shall be liable to a penalty not exceeding to twenty-five crore rupees.*

67. It is noted that in the instant case (clause 36 of Listing Agreement read with section 21 of SCRA) pertains to the requirement of making disclosures to the Stock Exchange as part of compliance of listing condition. Upon bare perusal of aforesaid provision of section 23 A (a) of the SCRA, it is clear that on account of failure to provide the information / report to a recognized Stock Exchange within the time line specified in the listing agreement, a penalty can be attracted therein. Whereas section 23 E of the SCRA can be attracted only in case if a company or any person managing collective investment scheme or mutual fund, fails to comply with the listing conditions or delisting conditions. In the present case, the Noticee No. 1 is neither shown as a collective investment scheme nor mutual fund, therefore, section 23 E of SCRA will have no operation.

68. From the aforesaid, I am of the view that only section 23 A (a) can be precisely applicable towards the violation established and therefore, the Noticee No. 1 is liable for the monetary penalty under section 23 A (a) of the SCRA for failure / belated disclosures to the stock exchanges.

ISSUE NO. 5 - 6

Whether the Noticee No. 2 – 5 are the "Insider" of the Noticee No. 1 in terms of PIT Regulations? AND

If yes, then, whether trading by insider during Unpublished Price Sensitive Information (UPSI) period as alleged in the SCN, is in violation of regulation 3 and 3 A of the PIT Regulations?

69. Here, it would be relevant to refer the definition of 'insider' as stipulated under regulation 2 (e) of the PIT Regulations as under-

2(e) "insider" means any person who,

(i) is or was connected with the company or is deemed to have been connected with the company and is reasonably expected to have access to unpublished price sensitive information in respect of securities of company, or

(ii) has received or has had access to such unpublished price sensitive information.

70. In order to examine whether a person is or was 'connected' or 'deemed to be connected' with the company, the following definition under the PIT Regulations is taken into consideration.

Reg. 2 (c) "connected person" means any person who,-

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

(ii) 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 whether temporary or permanent and who may reasonably be expected to have an access to unpublished price sensitive information in relation to that company:

Explanation :—For the purpose of clause (c), the words "connected person" shall mean any person who is a connected person six months prior to an act of insider trading;

Reg. 2(h) "person is deemed to be a connected person", if such person—

(1) is a company under the same management or group, or any subsidiary company thereof within the meaning of sub section (1B) of section 370, or sub section (11) of section 372, of the Companies Act 1956 (1 of 1956), or sub clause (g) of section 2 of the Monopolies and restrictive Trade Practices Act, 1969 (54 of 1969), as the case may be;

(vi) is a relative of any of the aforementioned persons;

(vii) is a banker of the company.

(viii) relatives of the connected person; or

71. It is undisputed fact the Noticee No. 2 is the promoter as well as a subsidiary of the Noticee No. 1 and the Noticee No. 3-4 are the directors of the Noticee No. 2 and are the Chairman / Co-Chairman & Managing Director respectively of the Noticee No. 1. It is undisputed that the agenda for Board meeting of Noticee No. 1 / Jubilant Life regarding sale of Hospital Business of Jubilant First Trust Healthcare Limited (JFTHL) was circulated to Directors on January 31, 2014 and same was discussed on February 6, 2014. It is also undisputed that said meeting was attended by the Noticee No. 3 (Chairman & MD) and Noticee No. 4 (Co-Chairman & MD).

72. It is also undisputed that the Noticee No. 5 is the Senior Vice President, FP&A of Noticee No. 1 and admittedly was the Business Head-CMO / part of strategy team assisting the Noticee No.1 to review and maximize the performance of its business on a continuous basis etc. Undoubtedly, being so, the Noticee No. 5 is reasonably expected to have access to UPSI.

73. From bare perusal of regulation 2 (c) & 2 (h) of the PIT Regulations, and the position held by the Noticee No. 2-5 in the Noticee No. 1 as stated above (viz. Group or Subsidiary / Director / Officer occupies important position in the company), I am of the opinion that the Noticee No. 2-5 are the 'connected person' / 'person deemed to be connected person' with the Noticee No. 1.

Certainly, by virtue of being the 'connected person' or 'deemed to be connected person' to the Noticee No. 1, the Noticee No. 2-5 are reasonably expected to have access to UPSI and falls within the definition 'insider' within the meaning of PIT Regulations. Moreover, the concept of 'reasonably expected to have access to UPSI' is not applied to Director, because, the Director is part of the company's board and hence responsible for all the deeds/ acts of the company during the period when he is a Director.

74. Here, it is relevant to mention that the Hon'ble SAT in case of *SRSR Holdings (supra) at* para 11 held that - "*It is relevant to note that the concept of 'reasonably expected to have access to UPSI' is not applied to Director/deemed Director, because, unlike other connected persons, Director/ deemed Director constitute part of the company's board and hence responsible for all the deeds/ acts of the company during the period when they were Director/ deemed Director'....*

75. Since, it is established that the Noticee No. 2-5 are the 'insider' within the meaning of PIT Regulations, therefore, another core issue whether their trading during the UPSI period, is in violation of regulation 3(i), 3 (ii) and 3A of the PIT Regulations, is being examined as under.

In respect of Noticee Nos. 2 to 4

76. The SCN alleged two major instance / information / development which were PSI in nature which are shown as below;

a. 28-Feb-2014, 08:58, Friday: Jubilant Life Sciences Ltd has informed BSE regarding a Press Release dated February 27, 2014 titled "Jubilant Life Sciences announces successful resolution to FDA Warning Letter for Montreal Facility".

b. 03-Mar-2014, 18.32 hrs Monday : Jubilant Life Sciences Ltd has informed BSE regarding a Press Release dated March 03, 2014 titled "Jubilant First Trust Healthcare sells its hospital business to Narayana Health".

77. As regards to the first instance, the information regarding acceptable letter / report of FDA dated February 21, 2014 was announced to Stock Exchange on 28th February 2014 (before market hours) or made public on February 27, 2014; and the alleged trades were executed by the Noticee No. 2-4 on February 28, 2014 at time 15:11:39 hrs. (i.e. after the PSI became public). Since, the trades were executed by the Noticee No. 2-4 after the UPSI was made public, therefore, for the first instance, no fault can be found on their part.

78. For the second instance, it is noted from the records that hospital business of JFTHL (which is admittedly a subsidiary of the Noticee No. 1) was decided to be sold to Narayana Hrudalaya Pvt. Ltd (**Narayana Health**). The chronology of events leading to the sale of Sale of Hospital Business of JFTHL is given below–

Event	**Date**
MOU signed between Jubilant First Trust Healthcare and Narayana Health	24th Dec 2013
Business Transfer Agreement Signed	3rd March 2014
Share Purchase Agreement Signed	3rd March 2014
Receipt of Money	3rd March 2014
Intimation to Stock exchanges	3rd March 2014

79. I have noted from Board meeting of Noticee No. 1 held on February 06, 2014 (copy of which was taken by the Noticee(s) during the course of inspection of documents under instant proceedings) that the sale of Hospital Business of JFTHL was discussed in said Board meeting for which agenda was already circulated to Directors on January 31, 2014. Further, it is noted from said minutes of the Board Meeting that the Noticee No. 3 (Chairman & MD) and Noticee No. 4 (Co-Chairman & MD) had attended the said meeting and therefore they were aware about talks / decision regarding sale of JFTHL to Narayana Health.

80. In my opinion, JFTHL was a subsidiary of Noticee No.1 and its entire business was decided to be sold and therefore, such decision is a material information / PSI. It is not the case that only some division or some portion of JFTHL was decided to be sold, but, it is the case that entire business of a subsidiary has been decided to be sold. Since, the Noticee No.1 and JFTHL involved in the same kind of business (i.e. manufacturing of pharmaceuticals / hospital), therefore, any material bearing or change in the subsidiary, certainly, would have an impact upon its holding company.

81. It is also noted that this information / development was in fact disclosed by the Noticee No.1 to the Stock Exchange as submitted by Noticee No. 2 to 4. Needless to say that after examining the bearing / impact of such development and taking into account the same as a PSI, the disclosure was made to the Stock Exchange by Noticee No.1 which itself suggests that same was a PSI. Had it not been a material information, then, same would have not been so disclosed to the Stock Exchange by the Noticee No.1.

82. It is noted from the records that MOU for sale of business was signed between JFTHL and Narayana Health on December 24, 2013 and business transfer agreement was signed between them on March 03, 2014 and on the same day the disclosure was made to the Stock Exchange regarding such sale / transfer. From the series of these events it is noted that when the MOU was signed by JFTHL and Narayana Health regarding entire sale business of JFTHL, at that point of time this became a PSI. As per records, at the time of signing of MOU and the Board Meeting of Noticee No.1 on February 06, 2014 discussing the said sale of business, the Noticee No. 3 & 4 were the Chairman / Managing Director of Noticee No.1.

83. In view of the aforesaid, the Noticee No. 2 to 4 came to know about the PSI on February 06, 2014 (when the Noticee No.3 & 4 were present during the Board Meeting of Noticee No.1 discussing the aforesaid sale of business) and such PSI remained unpublished till March 03, 2014 (when the disclosure was made

to Stock Exchange). From the aforesaid, it is apparent that Noticee No. 2 to 4 were aware / in possession of said PSI and being in possession of such PSI, the trades has been executed by them on February 28, 2014 (i.e. within UPSI period).

84. In respect to the allegation, the Noticee No. 2 to 4 had contended that actual transfer of business came into effect only on sale agreement on March 03, 2014 and before that it was a mere understanding / agreement / only indicative intent to purchase / yet to receive the consideration amount and therefore, the same is not PSI before March 03, 2014. I do not accept the said contention of the Noticee No. 2 to 4 as the decision to sell the entire hospital business of JFTHL was taken on December 24, 2013 which resulted into MOU between JFTHL and Narayana Health and as observed above, the same was also discussed in the Board Meeting of Noticee No.1. Therefore, the moment when such decision took place, the PSI *ipso facto* comes into picture and only the final part i.e. formal sale agreement was to result in due course.

85. As regards to the plea of clause 49 of the listing agreement, the Noticee No. 2-4 merely referred said clause, but did not explained / detailed as to how the same is relied upon for their defence. I have perused the clause 49 of the Listing Agreement and the relevant portion related to the issue involved, is produced below;

Clause 49

III. Subsidiary Companies

i. At least one independent director on the Board of Directors of the holding company shall be a director on the Board of Directors of a material non listed Indian subsidiary company.

ii. The Audit Committee of the listed holding company shall also review the financial statements, in particular, the investments made by the unlisted subsidiary company.

iii. The minutes of the Board meetings of the unlisted subsidiary company shall be placed at the Board meeting of the listed holding company. The management should periodically bring to the attention of the Board of Directors of the listed holding company, a statement of all significant transactions and arrangements entered into by the unlisted subsidiary company.

Explanation 1: The term "material non-listed Indian subsidiary" shall mean an unlisted subsidiary, incorporated in India, whose turnover or net worth (i.e. paid up capital and free reserves) exceeds 20% of the consolidated turnover or net worth respectively, of the listed holding company and its subsidiaries in the immediately preceding accounting year.

Explanation 2: The term "significant transaction or arrangement" shall mean any individual transaction or arrangement that exceeds or is likely to exceed 10% of the total revenues or total expenses or total assets or total liabilities, as the case may be, of the material unlisted subsidiary for the immediately preceding accounting year.

Explanation 3: Where a listed holding company has a listed subsidiary which is itself a holding company, the above provisions shall apply to the listed subsidiary insofar as its subsidiaries are concerned.

86. Explanation 1 of clause 49 refers to "material non-listed Indian subsidiary" wherein it is shown that if the total turnover or net worth (i.e. paid up capital and free reserves) of the subsidiary exceeds 20% of the consolidated turnover or net worth of the listed holding company, then, the same would be termed as material subsidiary. In my opinion, classification of 'material non listed subsidiary' under said Explanation has been referred for the limited purpose of appointment of Independent Director into such non-listed Indian subsidiary. No such definition of "material non-listed Indian subsidiary" has been referred in any other part of Listing Agreement or Clause 36 of the Listing Agreement.

87. In fact, the requirement of making disclosure of PSI / material information having impact upon the operation / profitability on the company under clause 36 of the Listing Agreement (which has been analyzed in detail at pre paras of this order), is an independent requirement and cannot be abrogated by virtue of any other limited referred provision (clause 49) in the Listing Agreement. Such requirement has been inducted into Listing Agreement as a part of the good governance so that and informed decision at the end of investors can be taken for fair and smooth functioning in the company.

88. The contention that the Noticee No.1 was holding these hospitals as one of its subsidiary was already in public domain and the sale of this entity (JFTHL) for a consideration of ₹ 44 crores does not constitute a PSI, is not acceptable as the sale decision of JFTHL was not within the public domain untill it was so announced to the Stock Exchange on March 03, 2014.

89. The Noticee No. 2-4 also made following submissions;

a. that JFTHL is one of the 48 subsidiaries of Noticee No. 1 and constitutes only about 0.37% of the consolidated fixed assets of the Noticee No. 1 and disposal of one or two assets does not amount to PSI unless the same constitutes "disposal of whole or substantially the whole of the undertaking".

b. That the decision of business sale of JFTHL is not a PSI as JFTHL's total revenue contributed very miniscule part of the Noticee No.1 (i.e. 0.33%) and therefore, the same is not PSI in terms of clause 49 of the Listing Agreement as well as same cannot have any impact on the operation / profitability of the Noticee No. 1.

90. The aforesaid contentions of Noticee No. 2-4 cannot be accepted in view of discussion made at pre paras.

91. The Noticee No. 2 to 4 have also contended that the sale decision was not a material decision in the context of Noticee No.1 and it was mere a general business release and being an information of general nature, the Chairman of Noticee No.1 did not make any statement regarding business sale. The aforesaid contention doesn't sound any merit as non-making of statement / press release by the Chairman or by the Noticee No. 3 & 4, cannot mitigate the existence of PSI which already came into existence in the company.

92. Since, it is established that the decision of sale of hospital business of JFTHL to Narayana Health was a PSI, therefore, execution of trades by the Noticee No. 2-4 during the UPSI is being examined as under.

93. It is noted from the undisputed fact that the Noticee No. 2 being the promoter / subsidiary of Noticee No.1 had purchased 1,25,000 shares on February 28, 2014 and the Noticee Nos. 3 to 4 (being the Director of Noticee No. 2 and being the Chairman / Managing Director of Noticee No.1) were the authorized signatories on behalf of Noticee No. 2 for purchase of said shares through stock broker namely- Emkay Global Financial Services Ltd.

94. As it has been observed above that the Noticee No. 2 to 4 came to know about such PSI on February 06, 2014 (when the Noticee No. 3 & 4 were present during the Board Meeting of Noticee No.1 discussing the aforesaid sale of hospital business) and such PSI remained unpublished till March 03, 2014 (when the disclosure was made to Stock Exchange), therefore, being aware / in possession of said UPSI, they had traded in the shares of Noticee No. 1 on February 28, 2014. Accordingly, the trading by the Noticee No. 2-4 is against regulation 3 and 3A of the PIT Regulations.

In respect of Noticee No. 5

95. The trades executed by the Noticee No. 5 (i.e. sale of 830 shares on February 25, 2013 and purchase of 450 shares on February 26, 2014) is not in dispute.

It has already been established that the Noticee No.5 was an 'insider'. It is established that the first warning letter dated February 20, 2013 against JHS issued by FDA which was PSI in the nature and the said letter/ information was communicated to JHS on February 22, 2013 which was passed on to Marcelo Morales on February 23, 2013. Marcelo Morales intimated the said PSI vide e-mail dated February 24, 2013 to the Noticee No.1 as well as to the Noticee No.5 and ultimately such PSI was announced/disclosed to the Stock Exchange only on February 27, 2013.

96. Since the said information / warning letter was a PSI and such PSI remained unpublished till February 27, 2013 and therefore, it became UPSI from 22nd – 27th February 2013. However, the Noticee No. 5 came to know about such UPSI on February 24, 2013 (upon receipt of an e-mail from Marcelo Morales) and being in possession of such UPSI, he had traded / sold shares on very next day (i.e. February 25, 2013) in the scrip of Noticee No.1. From the above, it is clear that the trading done by Noticee No.5 was during the UPSI period only. Needless to say that being an insider of Noticee No.1 and in possession of UPSI, he was not supposed to trade in the scrip during such UPSI, however, he had sold 830 shares on February 25, 2013 (within UPSI period).

97. I also cannot ignore that there was a price fluctuation in the scrip upon announcement of aforesaid warning letter/PSI to the Stock Exchange. The fluctuation in the price are shown in the table below:

Date	Open Price	High Price	Low Price	Close Price	close to close % change	Total Traded Quantity	Turnover (in Lakhs)	Deliverable quantity
18-Feb-13	205.05	206.6	202	202.65	-0.81%	16,992	34.63	11,982
19-Feb-13	202.9	208	202.9	204.85	1.09%	24,762	50.82	13,496
20-Feb-13	205.05	207.85	202.65	203	-0.90%	16,178	33.04	10,809
21-Feb-13	202	203.9	198.2	199.2	-1.87%	31,880	63.9	21,631
22-Feb-13	201.7	206	196.25	203.55	2.18%	24,382	49.36	13,750
25-Feb-13	183.7	204	183.7	199.75	-1.87%	17,770	35.62	12,764
26-Feb-13	199.5	199.5	183.1	185.9	-6.93%	2,34,674	438.08	1,35,035
27-Feb-13	189.1	190	170.8	175.95	-5.35%	4,62,065	822.87	2,21,344
28-Feb-13	178.5	183	167.1	169.25	-3.81%	96,943	170.06	57,360
01-Mar-13	169.95	173.1	166.2	172.05	1.65%	26,340	45.07	15,400

04-Mar-13	173.05	174.45	170.4	173	0.55%	14,900	25.7	10,896
05-Mar-13	175.3	180.2	171.65	179.45	3.73%	47,380	84.34	28,116
06-Mar-13	183.05	183.05	179	180	0.31%	55,799	100.5	46,954
07-Mar-13	181.3	182.4	179.95	180.25	0.14%	30,694	55.38	24,010

98. The intent of Noticee No. 5 to avoid the possible loss in the shares upon such adverse finding by FDA, can be seen by virtue of trading done by him while in possession of UPSI.

99. Further, it is noted from the records that FDA vide report dated February 21, 2014 classified the pharmaceutical manufacturing facility (JHS) at Montreal, Canada as “acceptable” and the same was communicated on February 25, 2014 to Marcelo Morales which in turn was communicated to the Noticee No.1 and Noticee No. 5 on the same day and same was announced to Stock Exchange on 28th February 2014 (before market hours) or made public on February 27, 2014.

100. Therefore, UPSI period was 25th – 27th February 2014 and the Noticee No.5 also came to know about such PSI/UPSI on February 25, 2014. It is noted that being in possession of such UPSI, the Noticee No. 5 had traded on very next day (i.e. February 26, 2014) in the scrip of Noticee No.1. Accordingly, being an insider / in possession of UPSI, the Noticee No. 5 was not supposed to trade in the scrip during such UPSI, however, he had bought 450 shares during UPSI.

101. Here I cannot ignore that there was a price fluctuation in the scrip upon announcement of aforesaid acceptable report of FDA / PSI to the Stock Exchange. The fluctuation in the price are shown in the table below:

Date	Open Price	High Price	Low Price	Close Price	close to close % change	Total Traded Quantity	Turnover (in Lakhs)
20-Feb-14	112.5	113.5	111.5	111.75	-1.02%	2,02,607	227.51
21-Feb-14	112.05	116	111.75	113.2	1.30%		338.87

						2,98,588	
24-Feb-14	113.9	118	112.5	115.85	2.34%	2,92,867	340.09
24-Feb-14	113.9	118	112.5	115.85	-3.46%	2,92,867	340.09
25-Feb-14	115.05	118.55	115.05	116.85	0.86%	1,37,352	161.02
26-Feb-14	116	118.2	115.65	116.1	-0.64%	94,955	110.87
28-Feb-14	122.1	126	121.2	124.05	6.85%	8,77,705	1088.73
03-Mar-14	125.15	136.45	124.7	136.45	10.00%	7,20,261	957.8
04-Mar-14	144.5	147.5	138.1	141.05	3.37%	11,52,518	1632.13
05-Mar-14	142.4	143.4	134.05	135.95	-3.62%	4,12,888	566.15
06-Mar-14	136.15	144.7	135	141.55	4.12%	7,93,557	1122.92
07-Mar-14	141.9	142.45	138	140	-1.10%	2,45,728	344.39

102. It is seen from the above table that upon disclosure of such PSI to public, the price in the scrip went up from February 27, 2014 onwards. Here, I cannot refrain from pointing out that the Noticee No.5 being in possession of UPSI, had bought the shares with obvious intent / knowledge that the price in the scrip are likely to inflate upon disclosure of such information / PSI.

103. From the above, it is clear that the Noticee No. 5 while in possession of UPSI had traded in the scrip at two occasions against the provision of regulation 3 of PIT Regulations which debars an insider to trade in the scrip when in possession of UPSI.

104. It would be pertinent to mention that legislative intention has been made clear to define the “insider” and if it is established that a person is “insider’ and had dealt in the scrip “when in possession” of UPSI, then, such trading done by him would be against the regulatory framework / in violation of regulation 3 (i), 3 (ii) and 3A of the PIT Regulations.

105. The case laws / judgments relied upon by the Noticee No. 2-5 viz. *Mrs. Chandrakala vs. SEBI (*decided on 31/01/2012), *Manoj Gour vs. SEBI* (decided on

03/10/2012) would not help them in light of subsequent judgments of the Hon'ble Securities Appellate Tribunal (**SAT)** in case of *Mrs. Chandra Mukherji vs. SEBI (decided on November 30, 2016), SRSR Holdings Private Limited & Ors. vs. SEBI* (decided on August 11, 2017) which are being discussed as under.

106. While holding the insider trading case, the Hon'ble SAT in case of *SRSR Holdings (supra) at para 23 (c) held that –*

> *"Impugned order passed by the WTM of SEBI on 10.09.2015 against all the appellants herein (except in case of B. Jhansi Rani, Appellant in Appeal No. 462 of 2015) is upheld to the extent that the appellants were insiders under the PIT Regulations and that the appellants had pledged/sold the shares of Satyam when in possession of UPSI and thus, they have violated the SEBI Act and the PIT Regulations……."*.

107. I have also noted that regulation 3(i) and 3A of the PIT Regulations, 1992 originally stated as follows:

> *"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 <u>on the basis of</u> any unpublished price sensitive information; or"*

108. The regulation 3 (i) and 3A was amended by the SEBI (Insider Trading) (Amendment) Regulations, 2002 which came into effect from February 20, 2002 and after this amendment, the phrase "on the basis of" was substituted by "when in possession". After the amendment, regulation 3 (i) reads as follows:

> *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 <u>when in possession</u> of any unpublished price sensitive information; or*

109. In the light of 2002 Amendment, the prohibition under regulation 3(i) and 3A of the PIT Regulations would be attracted if – the person was an 'insider' and such insider had dealt in securities 'when in possession" of UPSI. Further, the legislative intent while amending and incorporating the words "when in possession' in place of word "on the basis" had amply made clear that if the person is found to be "insider' within the definition of regulation 2(e) of the PIT Regulations, and being so if he trades during UPSI, then, the bar under regulation 3 (i), 3 (ii) and 3 A of PIT Regulations would be attracted or in other words he is liable for violation of insider trading. Also, I cannot loose sight that the requirement of "when in possession' of UPSI is already covered under regulation 2 (e) (i) i.e. "reasonably expected to have access to UPSI" to consider him as 'insider'. Therefore, once, it is established a person is "insider" in terms of regulation 2 (e) (i) taking into account the requirement of "reasonably expected to have access to UPSI", then, it is deemed that he was in 'possession" of UPSI and such trading during UPSI is in contravention of regulation 3(i), 3 (ii) and 3A of the PIT Regulations. Moreover, in light of aforesaid observations, the Noticee No. 2-5 have been apparently shown in possession of UPSI.

110. In respect to the allegation, the Noticee No. 5 submitted that during the month of June 2012, he moved into a new house and needed some funds for its renovation over the period of next one year and therefore, he sold 830 shares on February 25, 2013. However, the Noticee No. 5 could not produce any evidence in support of the said submissions. Moreover, it creates suspicion as to what compelled him to sell these shares on the very next day when he came to know about first warning letter. The pattern adopted by the Noticee No. 5 itself suggests that the moment he came to know about such negative news which was in the nature of having impact upon the price of the scrip (and in fact price fluctuation took place as shown above), he immediately during UPSI sold the shares to avoid loss.

111. In respect of purchase of shares, Noticee No. 5 stated that he purchased 450 shares in the scrip of Noticee No. 1 on February 26, 2014 as he had some spare funds to invest. He also submitted that he had purchased shares in several other blue-chip companies including Reliance Industries, Tata Teleservices, Indian Hotels, TCS, Coal India, HCL Infosystems and Power Grid etc. However, no proof has been provided by the Noticee No. 5 showing his investment in said blue chip companies. In my opinion, it again raises doubts as to why such immediate decision of purchasing shares of only Noticee No. 1 (without investing in so called blue chip companies) took by him just very next day when he came to know about "acceptable letter/ Report from FDA before such UPSI could be disclosed to stock exchange on 27th February 2014. Certainly, this pattern itself suggests that the moment the Noticee No. 5 came to know about such positive news which was in the nature of having impact upon the price of the scrip (and in fact price rise took place as shown above), he immediately purchased shares of the Noticee No. 1 to take advantage of such UPSI.

112. The plea taken by the Noticee No. 5 that no benefit was derived by him through selling of these shares (purchased shares) and he sold the same after several weeks when the information was made public / disclosed to the stock exchanges. The said plea would not help the Noticee No. 5 as he already took advantageous position in respect of price of the scrip (as after the disclosure the price in the scrip went up considerably) and he had also failed to demonstrate / provide any evidence as to on what price these shares were sold lateron after the information became public. Such submissions made by the Noticee does not reveal the true picture of his case as to whether he sold these shares subsequently at the same price or at low price or at high price as compared to price when he purchased on February 26, 2016. Moreover, as observed above, trading by any insider during UPSI period, is itself against the legislative / regulatory framework and therefore aforesaid submissions of the Noticee No. 5 is not acceptable.

113. Other pleas as taken by the Noticee No. 1 which has been relied upon by the Noticee No. 5, has been examined in above part of this order. As the established violation are serious in nature having possible impact towards the investors / securities market, therefore, plea of the Noticee No. 5 that the same is technical / procedural/venial breach, cannot be accepted.

114. Since the violation of insider trading by the Noticee No. 2-5 are established against them, therefore, their plea of clause 3.2-1 and 2.2-3 of the Model code of Conduct for prevention of Insider Trading, are not acceptable. I am of the opinion that the requirement of closure of 'trading window' (whereby employees/directors shall not trade during such period) is an independent requirement on happening of certain event specified in aforesaid clause 3.2-3 itself, whereas the prohibition from dealing by an 'insider' in the scrip of company during UPSI period, is totally different regulatory requirement. The question raised by the Noticee No. 2-5 as to what is the PSI / UPSI period, has already been discussed at pre para and therefore, same is not repeated for sake of brevity.

115. The submissions made by the Noticee No. 2-5 that they did not sell shares after purchasing the same to make any profit, cannot be accepted in view of prohibitory norms under PIT Regulations. Interestingly, I cannot ignore to mention certain observations made by the Hon'ble SAT in case of Mrs. *Chandra Mukherji (*which infact is relied upon by the Noticee No. 2-5 in their favour) as under -

"36. …….. ***In any case being an insider no trades could be executed during the existence of the UPSI*** *from 19th June, 2009. Admittedly, trades were executed by the appellant on 3rd July, 2009 i.e. during the subsistence of UPSI.* ***The argument made by the Counsel for the appellant that she did not sell the shares bought on 3rd July, 2009 and as such did not benefit from the UPSI even assuming that if she was privy to the UPSI is also without any merit. Under the relevant regulations trading in the shares of the company (whether buy or sell) by an insider is prohibited".***

116. Here, it is not out of place to mention that once the person is found to be "insider" within the meaning of PIT Regulations, then, the onus to disprove that he is not an "insider' and not in 'possession' of UPSI, lies on the said person only. In the instant case, the Noticee No. 2-5 had failed to disprove the same.

117. I am of the opinion that basic premise that underlines the integrity of securities market is that persons connected with such market conform to the standards of transparency, good governance and ethical behaviour prescribed in securities laws. The Insider Trading Regulations have put in place a framework for prohibition of insider trading in securities and the prohibitions provided in the PIT Regulations ensure a level-playing field in the securities market and safeguard the interest of investors and integrity of securities market. I am of the view that the object and spirit of the Insider Trading Regulations would get defeated if the violators of the said Regulations are not dealt as per the spirit of PIT Regulations.

118. In light of detailed observations, it is concluded that the Noticee No. 2 (through its director viz. Noticee No. 3 and 4) and the Noticee No. 5 being the senior vice president FP&A of the Noticee No. 1 (being 'insiders') had traded in the scrip "when in possession" of aforesaid UPSI and thereby Noticee No. 2 had violated regulation 3A of the PIT Regulations and the Noticee No. 3-5 had violated regulation 3 (i) of the PIT Regulations.

ISSUE NO. 7

If yes, then, whether the Noticee No. 2 – 5 are liable for monetary penalty under section 15 G of the SEBI Act?

119. Since, the violation of regulation 3 (i) of the PIT Regulations against the Noticee No. 3 to 5 and violation of regulation 3A of the PIT Regulations against the Noticee No. 2 have been established and keeping in mind the seriousness of violations against the stipulated regulatory framework, I am therefore of the

view that penalty needs to be imposed upon the Noticee No. 2 - 5 under section 15 G of the SEBI Act. Section 15 G of the SEBI Act reads as under;

Penalty for insider trading.

15G. If any insider who,—

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

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

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

shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher.

120. Though, no plea is taken by the Noticee No. 2-5, but, it would also be relevant to mention that section 15G (Chapter VIA of SEBI Act) was incorporated vide SEBI Amendment Act in the year of 1995 and remained as it is except change in quantum of penalty in said section / Chapter in subsequent Amendments. As observed in pre paras of this order that the intention to amend the PIT regulation in 2002 was to bring the concept of trading done 'while in possession' of UPSI and not 'on the basis' of UPSI. Also, the same was held by Hon'ble SAT in case of *SRSR Holding case (supra)*. Moreover, the legislative intent of keeping the phrase "while in possession" can be clearly seen in the New PIT Regulation 2015. Further, I cannot ignore to mention that section 12 A under chapter VA of the SEBI Act was inserted by virtue of SEBI (Amendment) Act, 2002 w.e.f. October 29, 2002 and after that amendment itself, the legislative intent to bring the concept of trading done 'while in possession' of UPSI was brought into legislation under clause 12 A (e) of SEBI Act. It is not the position that the word "on the basis of" in section 15 G was incorporated subsequent to 2002 PIT Regulations Amendment / SEBI Act Amendment in 2002. It would be appropriate to mention that since the violation of insider trading is established, then, such section (viz. 15 G of the SEBI Act)

which is only remedial in nature, would be attracted for the commission of insider trading violation.

ISSUE NO. 8

What would be the monetary penalty that can be imposed upon the Noticee No. 1 under section 23 A (a) of the SCRA and upon Noticee No. 2-5 under section 15 G of the SEBI Act, taking into consideration the factors stipulated in section 15J of the SEBI Act and section 23 J of the SCRA read with rule 5 (2) of the Adjudication Rules?

121. The Noticee(s) had relied various case laws as shown in above part of this order in respect of imposition of penalties. I have gone through the said case laws which are mainly relating to the subjective satisfaction / judicial discretion of the Adjudicating Officer for imposition of penalty taking into account various factors.

122. However, I cannot loose sight from the following well-known judgment(s) of Hon'ble Supreme Court of India in case of ***The Chairman, SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC)*** wherein it was held-

> *"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 and hence the intention of the parties committing such violation becomes wholly irrelevant".*

123. The said case of *Shri Ram Mutual Fund* (*supra*) was maintained by the three judge bench of the Hon'ble Supreme Court of India in the case of ***Union of India vs. Dharmendra Textile Processor 2008 (13) SCC 369 decided on September 29, 2008*** on the issue related to income tax act. It was held by the Hon'ble Supreme Court that penalty under the provision is for breach of civil obligation and is mandatory and the *mens- rea* is not an essential element for imposing the penalty. The adjudicatory authority has no discretion to levy duty less than what is legally and statutorily leviable. The Hon'ble Supreme Court also

specifically observed that the case of *Shri Ram Mutual Fund* (*supra*) has been analysed in the legal position and in the correct perspectives.

124. In view of the aforesaid, the case laws relied by the Noticee(s) on the issue of imposition of penalties would not support the Noticee(s).

125. While determining the quantum of penalty under section 23A (a) and section 15G of the SEBI Act, it is important to consider the factors stipulated in section 15J of the SEBI Act, section 23J of the SCRA read with rule 5 (2) of the Adjudication Rules, which reads as under:-

> ***Factors to be taken into account by the adjudicating officer***
> *While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-*
> *(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
> *(b) the amount of loss caused to an investor or group of investors as a result of the default;*
> *(c) the repetitive nature of the default."*

126. Available records neither reveals specify disproportionate gains or unfair advantage made by the Noticee(s) nor the loss caused to the investors due to aforesaid belated disclosures / insider trading. Also, no past actions / repetitive nature of default has been shown in the investigation report. Also, I have noted that disclosures were ultimately made by the Noticee No. 1 though belatedly (in one instance a delay was of around 2 months and for others only for 1-2 days delay). Also the total number of shares sold / bought by the Noticee No. 5 was not voluminous and the Noticee No. 2-5 had indulged into one day transaction only. However, I cannot ignore the gravity of violations committed by the Noticee(s) which are in the nature of causing detriment to the investors and bears adverse impact in disturbing the equilibrium of the fair market. Considering the facts and circumstance of the case, I am of the view that a justifiable penalty needs to be imposed upon the Noticees to meet the ends of justice.

ORDER

127. After taking into consideration all the aforesaid facts / circumstances of the case and the aforesaid mitigating factors, therefore, in exercise of the powers conferred upon me under section 23 I (2) of the SCRA and section 15 I (2) of the SEBI Act read with rule 5 of the Adjudication Rules, I hereby impose penalty upon the Noticees as shown in table below;

Name of the Noticee	**Amount of Penalty**	**Penalty Provisions and Violations**
Jubilant Life Sciences Limited (**Noticee No. 1)**	₹ 10,00,000/- (Rupees Ten Lakh only)	Under section 23 A (a) of the SCRA for violation of clause 36 of Listing Agreement read with Section 21 of the SCRA.
Jubilant Stock Holding Private Limited (**Noticee No. 2)**	₹ 10,00,000/- (Rupees Ten Lakh only)	Under section 15 G of the SEBI Act for violation of regulation 3 A of the PIT Regulations.
Mr. Shyam Sunder Bhartia **Noticee No. 3)**	₹ 10,00,000/- (Rupees Ten Lakh only)	Under section 15 G of the SEBI Act for violation of regulation 3 (i) of the PIT Regulations.
Mr. Hari Shankar Bhartia, (**Noticee No. 4**)	₹ 10,00,000/- (Rupees Ten Lakh only)	Under section 15 G of the SEBI Act for violation of regulation 3 (i) of the PIT Regulations.
Mr. Amit Arora (**Noticee No. 5**)	₹ 10,00,000/- (Rupees Ten Lakh only)	Under section 15 G of the SEBI Act for violation of regulation 3 (i) of the PIT Regulations.

128. I am of the view that the aforesaid penalty would commensurate with the violations committed by the Noticees.

129. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through e-payment facility into Bank Account the details of which are given below;

Account No. for remittance of penalties levied by Adjudication Officer	
Bank Name	State Bank of India
Branch	Bandra-Kurla Complex
RTGS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No.	31465271959

130. The Noticees shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Enforcement Department – Division of Regulatory Action – I of SEBI. The Format for forwarding details / confirmations of e-payments shall be made in the following tabulated form as provided in SEBI Circular No. SEBI/HO/GSD/T&A/CIR/P/2017/42 dated May 16, 2017 and details of such payment shall be intimated at e-mail ID- tad@sebi.gov.in

Date	Department of SEBI	Name of Intermediary/ Other Entities	Type of Intermediary	SEBI Registration Number (if any	PAN	Amount (in ₹)	Purpose of Payment (including the period for which payment was made e.g. quarterly, annually	Bank name and Account number from which payment is remitted	UTR No

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

Date: January 31, 2018 **(RACHNA ANAND)**

Place: Mumbai **GENERAL MANAGER &**

ADJUDICATING OFFICER