BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER No. Order/VV/AK/2022-23/19841

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

In respect of:

Shailendra Mehta
(PAN: ALGPM2002F)

In the matter of circulation of unpublished price sensitive information (UPSI) through WhatsApp messages with respect to Mindtree Limited

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A. BACKGROUND

1. During November 2017, there were certain articles published in newspapers/print media referring to the circulation of Unpublished Price Sensitive Information (hereinafter referred to as "**UPSI**") in various private WhatsApp groups about certain companies ahead of their official announcements to the respective Stock Exchanges. Against this backdrop, Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") initiated a preliminary examination in the matter of circulation of UPSI through WhatsApp groups during which search and seizure operation for 26 entities of Market Chatter WhatsApp Group were conducted and approximately 190 devices, records etc., were seized. The WhatsApp chats extracted from the seized devices were examined further and while examining the chats, it was found that in respect of around 12 companies whose earnings data and other financial information had allegedly got leaked in WhatsApp. SEBI, while examining the chats from the seized device has identified other 11 scrips regarding which the UPSI was in circulation on one to one basis.

2. Mindtree Ltd. (hereinafter referred to as "**Mindtree/Company**") was one of the Companies among 11 scrips about which the chat "*Mindtree revenue 1295cr Pat 103 Pbit 128*" dated January 17, 2017 was found in the WhatsApp Chat of Ms. Shruti Vora (hereinafter referred to as "**Shruti/SV**"), a member of Market Chatter group whose device - (Apple iPhone 6s, IMEI: 355767073570777) was seized along with others. It was observed from the WhatsApp chats retrieved from the SV's device that the aforesaid message "Mindtree revenue 1295cr Pat 103 Pbit 128" was received by SV from Shailendra Mehta (hereinafter referred to as "**Noticee/SM**") on January 17, 2017 at 11:50:00. It is found the aforesaid information has been forwarded by the Shailendra Mehta. The said WhatsApp message "*Mindtree revenue 1295cr Pat 103 Pbit 128*" was then communicated by SV on January 17, 2017 during the time period 11:55:41 till 11:58:54 to several entities viz; Govind Agarwal, Omkar Hadkar, Divesh Kumar, Rajatdeep Singh Anand, Sunil Kumar and Jay Shah on one-one-one chats. The details of communication of WhatsApp message related to Mindtree Ltd. as observed from WhatsApp chats retrieved from SV's device were tabulated as below:

Entity from whom SV received the WhatsApp message		Date and Time of receipt of message by SV (After adding 5.30 hours)		Entities to whom SV communicated the message		Date and Time of communicating of message by SV	
Name	**Tel. Number**	**Date**	**Time**	**Name**	**Tel. Number**	**Date**	**Time**
Shailendra Mehta	*9820393691*	17/01/2017	11:50:00	Govind Agarwal	9819018325	17/01/2017	11:55:41
				Omkar Hadkar	9930930334	17/01/2017	11:55:47
				Divesh Kumar	9833532366	17/01/2017	11:55:58
				Rajatdeep Singh Anand	8527233880	17/01/2017	11:58:54
				Sunil Kumar	9820808438	17/01/2017	11:56:22
				Jay Shah	9619400247	17/01/2017	11:58:35

3. It was also observed from the WhatsApp chats retrieved from the SV's device that Noticee had communicated the referred message on WhatsApp group (in which SV was also a member).

4. It was noticed that Mindtree Limited made announcement on BSE and NSE on January 19, 2017 (BSE and NSE website) at 16:07 with respect to its quarterly results for the quarter ended December 2016 as under:

<table>
<tr><th>Announcement</th><th>Price Impact/Shares Traded (BSE)</th><th>Price Impact/Shares Traded (NSE)</th></tr>
<tr>
<td rowspan="2">Announces Q3 results (Standalone & Consolidated), Auditors' Report (Standalone & Consolidated), Results Press Release & Earnings release for the Quarter ended December 31, 2016: MindTree Ltd. has announced the following results for the quarter ended December 31, 2016:

The Audited Standalone results for the Quarter ended December 31, 2016

The Company has posted a net profit of Rs. 1184 million for the quarter ended December 31, 2016 as compared to Rs. 1404 million for the quarter ended December 31, 2015. Total Income has increased from Rs. 11237 million for the quarter ended December 31, 2015 to Rs. 11871 million for the quarter ended December 31, 2016.

The Consolidated Results are as follows:
The Audited Consolidated results for the Quarter ended December 31, 2016, The Group has posted a net profit of Rs. 1031 million for the quarter ended December 31, 2016 as compared to Rs. 1407 million for the quarter ended December 31, 2015. Total Income has increased from Rs. 12174 million for the quarter ended December 31, 2015 to Rs. 13065 million for the quarter ended December 31, 2016.</td>
<td>19/01/2017 (BSE)<table><tr><th>O</th><th>H</th><th>L</th><th>C</th></tr><tr><td>500</td><td>500</td><td>482</td><td>484.85</td></tr></table>No. of shares traded: 51288

20/01/2017 (BSE)<table><tr><th>O</th><th>H</th><th>L</th><th>C</th></tr><tr><td>483</td><td>483</td><td>471.45</td><td>474.85</td></tr></table>No. of shares traded: 96621</td>
<td>19/01/2017 (NSE)<table><tr><th>O</th><th>H</th><th>L</th><th>C</th></tr><tr><td>498.55</td><td>500</td><td>483</td><td>485.10</td></tr></table>No. of shares traded: 508958

20/01/2017 (NSE)<table><tr><th>O</th><th>H</th><th>L</th><th>C</th></tr><tr><td>481</td><td>483</td><td>470.50</td><td>475.25</td></tr></table>No. of shares traded: 960247</td>
</tr>
<tr>
<td colspan="2">Remarks:
The scrip closed on 20/01/2017 at 2.06% below its previous day closing price on BSE and 2.03% below its previous day closing price on NSE.
The trading volume on 20/01/2017 increased by 88.39% as compared to previous day trading at BSE and increased by 88.67% as compared to previous day trading at NSE.</td>
</tr>
</table>

5. As mentioned at para above, on January 19, 2017 (at 16:07), Mindtree announced results (Standalone & Consolidated) for the quarter ended December 31, 2016 on BSE and NSE, after the meeting of Board of Directors

of the Company held on January 19, 2017. Therefore, January 19, 2017 had been taken as the date, when the Company had made the aforesaid price sensitive information public.

6. It was observed that vide SEBI letter dated August 14, 2018, Mindtree was, *inter-alia*, asked about the detailed chronology of events w.r.t announcement of quarterly results on January 19, 2017 for QE December 2016, the details of persons involved in preparation of financial results / having access to financial information at various stages / persons who attended the corresponding Board Meeting, details of trading window closure period etc.

7. The Company vide letter dated August 23, 2018 and email dated May 17, 2019 provided the requisite details and inter-alia submitted the following information:

Date	***Particulars of Events***
Dec 14, 2016	*Intimation of trading window closure to stock exchanges by the Company Secretary Team (CS Team):* *For Designated employees, trading window was closed from December 16, 2016 till two days after the declaration of financial results (i.e. January 21, 2017) (both the days inclusive)* *For other employees, trading window was closed from January 01, 2017 till two days after the declaration of financial results (i.e. January 21, 2017) (both the days inclusive)*
Jan 3, 2017	*Intimation of Board meeting to consider Financial Results to stock exchanges under Regulation 29 of LODR by the CS team.*
Jan 4, 2017	*Soft book closure by all the teams – accounts payable, fixed assets, accounts receivable, treasury and payroll (Accounting Team). Activities include each of the teams reviewing and ensuring all required accounting entities including payments and accruals are put through in SAP and verifies before book closure for the quarter.*
Jan 4, 2017 – Jan 9, 2017	*Preparation of financial results by the management reporting team, review and discussion of financial results by the Investor relations/management reporting team/Executive Board members.*
Jan 10, 2017 – Jan 14, 2017	*Submission of full-fledged financial statements by the reporting team to the auditors and audit of financial results.*
Jan 11, 2017	*Circulation of Agenda of Board and Audit committee meeting to the Board and Audit members*
Jan 15, 2017	*Finalization of results by the reporting team post review by auditors.*
Jan 16, 2017	*Circulation of results to the board and audit committee members by CFO and CS team.*
Jan 16, 2017	*Sharing of financial results with the marketing team for designing the artwork for newspaper publication*
Jan 18, 2017	*Review of financial results in the audit committee meeting.*
Jan 19, 2017	*Meeting of Board of Directors of the Company inter alia to review and approve quarterly financial results of the Company*
Jan 19, 2017	*Announcement of financial results to the stock exchange by the CS team, uploading of financial results on Mindtree's website and subsequent media briefing and analyst calls by Investor relations team.*
Jan 19, 2017	*As part of our regular internal communication to Mindtree Minds (employees),every quarter post announcement of financial results to the stock exchanges, an extract of the results is circulated to the all employees in Mindtree*

8. As per the following table, financial figures communicated on WhatsApp pertaining to Mindtree were compared with actual figures for QE December 2016 disclosed subsequently on exchange to gauge the deviation between two sets of figures:

Date and time of WhatsApp message	Figures in WhatsApp message	Date and time of disclosure on Exchange	Actual figures disclosed on Exchange	F1W*	F1A**	F2 W	F2A	F3 W	F3A	%ge Deviations observed in Figures		
										F1Dev	F2Dev	F3Dev
17/01/2017 11:50:00	Revenue 1295 cr Pbit 128 Pat 103	19/01/2017 16:07:35	Income 1295.3 PBIT 128.1 PAT 103.1	1295	1295.3	128	128.1	103	103.1	0.02	0.08	0.10

** Figure1 in WhatsApp (F1W)*

*** Figure1 in Actual (F1A)*

**** Figure1 Deviation (F1Dev)*

9. It was observed from the above table, in respect of Mindtree:-
   i. The financial figures of Mindtree Ltd. were communicated through WhatsApp prior to their announcement on stock exchanges.

   ii. The financial figures of Mindtree (*viz* Revenue, PAT and PBIT) communicated through WhatsApp closely matched with those disclosed subsequently by Mindtree on exchanges. The deviation in financial figures was miniscule *i.e*. within a range of 0.02% to 0.10%.

10. Vide email and letter dated May 30, 2019 Shailendra Mehta, *inter-alia*, replied the following:

"It is a common practice to exchange publicly available information (events, estimates, views and news) among individuals and WhatsApp groups. Since the matter is quite old, it is difficult for me either to recall on my own or to trace each message received by me on WhatsApp or other media. At this point of time I am unable to recollect or trace the chat group in which I received the chat message.

I believe Shruti Vora working with Antique Ltd. during that time, as a technical analyst. I know her as she was active member in a Reuters community. I may have seeker her view on stocks based on her technical views. I remember knowing her for few years in professional capacity.

…I may have forwarded the chat message received by me from another WhatsApp chat group to the wahtspp group termed as "Only Trades No Bakwsas." However, since the matter is quite old it is difficult for me to either recall on my own or to trace each message received by me on

WhatsApp or other media. At this point, I am unable to recollect or trace the chat group in which I received the chat message.

Purpose: It was a regular practice to exchange publicly available information, inferences, and/or expectations/estimates between members of various groups. This informal sharing of information was between traders/analysts and such other persons and can at best be called peer to peer sharing of information related to market purely for academic purpose and not to be acted upon till released by the verified agencies.

No trades were carried out by me in cash or derivative segment in Mindtree during the said period."

11. Vide an email dated June 07, 2019, name and address of Shruti Vora and Shailendra Mehta (persons communicating the referred WhatsApp message) were shared with the Company and the details of relationship/association/connection of persons involved in preparation of financial results / having access to financial information at various stages / persons who attended the corresponding Board Meeting/ promoters / directors, if any, with Shruti Vora and Shailendra Mehta were sought.

12. In this regard, the Company vide an email dated June 11, 2019 replied the following:

"Pursuant to receipt of your email, we did an internal examination regarding association of the two persons mentioned in your email, with our company, or our promoters/directors, etc. Following are our findings in this regard:

1. The Company's list of employees during the period between December 01, 2016 and January 31, 2017 (being the relevant period under investigation) does not reflect the name of these two individuals.

2. All the persons mentioned in our reply to SEBI letter dated August 14, 2018 (not including the persons who have left our organization as on date), have given an undertaking that they do not know / knew, are/were ever associated, related, or connected, etc., in any capacity whatsoever, directly and/or indirectly, with the two individuals."

13. In light of the above, it is observed that from the WhatsApp chats retrieved from the device of Shruti Vora that the financial figures of Mindtree (*viz*; Revenue, PAT and PBIT) for QE December 2016 communicated by Shailendra Mehta and Shruti Vora through WhatsApp messages closely matched with those

disclosed subsequently by Mindtree on exchanges. Therefore, the aforesaid message related to Mindtree would fall under unpublished price sensitive information and such circulation of financial figures through WhatsApp has been considered as communication of UPSI. Considering the above, it was alleged that Mr. Shailendra Mehta was in possession of the UPSI and therefore, Mr. Shailendra Mehta, the Noticee was allegedly and "*insider*" as per Regulation 2(1)(g) of SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as "**PIT Regulation, 2015**").

14. It was observed *inter alia* that Noticee being an insider had communicated the UPSI related to Mindtree Ltd. *viz* Revenue, PAT and PBIT of Mindtree Ltd for QE December 2016 to other person(s) through WhatsApp messages. In the message communicated by Noticee, no mention of the brokerage firm or institution who estimated/ forecasted such financial figures of Mindtree Ltd was present. It was also observed that, as Noticee communicated the said messages to SV, the same was not the outcome of internal research of organisation where he worked, and that the UPSI was communicated to a WhatsApp group by the Noticee.

B. APPOINTMENT OF ADJUDICATING OFFICER

15. Shri B J Dilip was appointed as the Adjudicating Officer (hereinafter referred as "**erstwhile AO**") by communiqué dated November 07, 2019 under section 19 read with section 15I(1) of the SEBI Act, 1992 (hereinafter referred to as "**SEBI Act**") and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as "**Adjudication Rules**") to conduct adjudication proceedings in the manner specified under Rule 4 of Adjudication Rules read with section 15I(1) and (2) of SEBI Act, and if satisfied that the Noticee is liable, impose such penalty deemed fit in terms of Rule 5 of Adjudication Rules read with Section 15G of SEBI Act. Pursuant to the transfer of erstwhile AO, vide communiqué dated December 31, 2020 the case has been transferred to undersigned. It has been advised that except for the change of the Adjudicating Officer the other terms and conditions of the

original orders '*shall remain unchanged and shall be in full force and effect*' and that the "*Adjudicating Officer shall proceed in accordance with the terms of reference made in the original orders*."

C. SHOW CAUSE NOTICE, REPLY AND HEARING

16. The Show Cause Notice (hereinafter referred as "**SCN**") bearing no. EAD-7/BD/BM/30793/1/2019 dated November 20, 2019 was served upon the Noticee under rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be held and penalty not be imposed against it under section 15G of the SEBI Act for the alleged violation of 12A(d) and 12A(e) of SEBI Act read with Regulation 3(1) of PIT Regulations, 2015. SCN issued through SPAD and duly delivered to the Noticee in terms of Rule 7 of the Adjudication rules. Subsequently, Noticee filed his reply through letter dated February 27, 2021 and email dated July 18, 2022. The aforementioned email contain the letter dated February 27, 2021, Hon'ble Securities Appellate Tribunal ("**SAT**") order dated March 22, 2021 and Hon'ble Supreme Court judgment in the matter of *Balram Garg vs SEBI* (order dated April 19, 2022). Noticee in its reply stated that – "*impugned information of the Company was merely a news/ estimates and generally available information. He was never associated/connected in any matter whatsoever whether directly or indirectly with the Company or its promoter/director of the company. He just forwarded the WhatsApp message with no specific intention*".

17. After giving several opportunities, the hearing was conducted on July 20, 2022 *via* video conferencing on WebEx platform. On the scheduled date of hearing, the authorized representative of the Noticee appeared before me and reiterated the submissions made vide his letter dated February 27, 2021 and placed reliance on Hon'ble Supreme Court order in the matter of *Balram garg (Supra)* and Hon'ble SAT order dated March 22, 2021 (Misc. Application No 346-355 of 2020). The process of adjudication proceedings undertaken has been mentioned below:

Noticee	SCN	Inspection	Hearing Concluded
Shailendra Mehta	November 20, 2019	July 11, 2022	July 20, 2022

D. Relevant Provisions

18. ***SEBI Act, 1992***

12A. No person shall directly and indirectly-

…………………………………………………..

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

12A(e) *deal in securities while in possession of material or non-public information or communicate such material or non-public information to any other person, in a manner which is in contravention of the provisions of this Act or the rules or the regulations made thereunder;*

19. ***PIT Regulations, 2015***

2(1)(n) *"unpublished price sensitive information" means any information, relating to a company or its securities, directly or indirectly, that is not generally available which upon becoming generally available, is likely to materially affect the price of the securities and shall, ordinarily including but not restricted to, information relating to the following: –*

(i) financial results;

(ii) dividends;

(iii) change in capital structure;

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

(v) changes in key managerial personnel

Note*: It is intended that information relating to a company or securities, that is not generally available would be unpublished price sensitive information if it is likely to materially affect the price upon coming into the public domain. The types of matters that would ordinarily give rise to unpublished price sensitive information have been listed above to give illustrative guidance of unpublished price sensitive information.*

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

i. a connected person; or

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

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

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

(i) financial results;

(ii)dividends;

(iii)change in capital structure;

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

(v)changes in key managerial personnel.

NOTE: *It is intended that information relating to a company or securities, that is not generally available would be unpublished price sensitive information if it is likely to materially affect the price upon coming into the public domain. The types of matters that would ordinarily give rise to unpublished price sensitive information have been listed above to give illustrative guidance of unpublished price sensitive information.*

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

E. CONSIDERATION

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

"….

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

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

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

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

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

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

By stating above, Hon'ble SAT had held that no violation has been committed under PIT Regulations, 2015 by the respective Noticee(s) in these case(s).

21. Subsequently, an appeal was filed by SEBI with reference to the aforesaid SAT order dated March 22, 2021, before Hon'ble Supreme Court. Thereafter, Hon'ble Supreme Court in the matter of *SEBI vs Shruti Vora & ors.* (Civil Appeal

Nos. 2252-2262/2021 dated September 26, 2022), while declining to interfere with the aforesaid order of the Hon’ble SAT, had *inter alia* held that: -

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

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

22. In view of the aforesaid facts and circumstances and the factum of the aforementioned judgements of Hon’ble Apex court and Hon’ble SAT, I note that facts in the instant case are replica of the case that was decided by Hon’ble SAT *vide* order dated March 22, 2021 & upheld by Hon’ble Supreme Court vide order dated September 26, 2022, with only difference that the circulation of WhatsApp messages pertain to different scrips.

23. Considering the similar nature of facts and circumstances and the aforesaid judgements of higher courts, I do not find any merit in adjudication of similar set of facts. Hence, as such, the SCN alleging the violation of section 12A(d) and (e) of SEBI Act read with Regulation 3(1) of PIT Regulation, 2015, as being disposed of without any consideration.

Order

24. In view of above, I find it appropriate to conclude the instant adjudication proceeding by disposing of the Show Cause Notice bearing no. EAD-7/BD/BM/30793/1/2019 dated November 20, 2019 *qua* Noticee *i.e.* Shailendra Mehta (PAN: ALGPM2002F), without imposition of any monetary penalty.

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

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

Place: Mumbai **Adjudicating Officer**