BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/BM/GN/2022-23/20651-20652]

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

In respect of:

Noticee No.	Noticee Name	PAN
1	Tejas Harshadbhai Patel	BCRPP0368N
2	Nandita Tejaskumar Patel	ELZPP6419L

In the matter of
A.M. Febcon Limited

BACKGROUND

1. SEBI conducted an Investigation in the matter of A M Febcon Ltd (hereinafter referred to as **Company**) to ascertain if there was any violation of the provisions of SEBI (Prohibition of Insider Trading) Act, 2015 (hereinafter referred to as **SEBI (PIT) Regulations**) in connection with trading in the scrip of "A M Febcon Ltd" during August 23, 2019 to November 19, 2019 (hereinafter referred as '**Investigation Period'** or **'IP'**).

APPOINTMENT OF ADJUDICATING OFFICER

2. Vide order dated August 17, 2022, SEBI appointed the undersigned as the Adjudicating Officer under Section 19 of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **SEBI Act**) read with Sub-section (1) of Section 15I of the SEBI Act and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as **'SEBI Rules'**) to inquire into and adjudge under the provisions of Section 15G, 15HB and 15A(b) of SEBI Act, for the alleged violations of Section 12A(d) & (e) of SEBI Act, 1992 read with Regulation 4(1) of SEBI (PIT) Regulations, 2015, Provision of Clause 4 of Scheduled B, read with Regulation 9(1) of SEBI (PIT) regulations 2015 and Regulation 7(2)(a) of SEBI (PIT) Regulations 2015 respectively by Tejas Harshadbhai

Patel (hereinafter referred to as **Noticee 1**) and Nandita Tejaskumar Patel (hereinafter referred to as **Noticee 2**) (hereinafter collectively referred to as **Noticees**).

SHOW CAUSE NOTICE, REPLY AND HEARING

3. Show Cause Notice (hereinafter referred to as **"SCN"**) dated August 24, 2022 was issued to Noticee No. 1 and Noticee No. 2 under rule 4(1) of SEBI Rules to show cause as to why an inquiry should not be held against them in terms of Rule 4 of Adjudication Rules read with Section 15-I (1) & (2) of SEBI Act, and penalty, if any, be not imposed on them under Section 15G, 15HB and 15A(b) of SEBI Act, 1992 for the alleged violations of Section 12A(d) & (e) of SEBI Act, 1992 read with Regulation 4(1) of SEBI (PIT) Regulations, 2015, Provision of Clause 4 of Scheduled B, read with Regulation 9(1) of SEBI (PIT) regulations 2015 and Regulation 7(2)(a) of SEBI (PIT) Regulations 2015.

4. The allegations levelled against the Noticee1 and Noticee 2 are summarized below:

i. Company, A M Febcon Ltd made corporate announcement to BSE vide letter dated 14/11/2019 regarding financial results for the half year ended September 30, 2019.

Identification of Price Sensitive Information (PSI)

ii. The definition of 'unpublished price sensitive information' as prescribed under Regulation 2(1) (n) of SEBI (PIT) Regulations, 2015 is as follows:

"unpublished price sensitive information" means any information relating to 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 securities of company 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, and
vi. Material events in accordance with the listing agreement.

iii. As mentioned above, Regulation 2(1)(n)(i) of SEBI (PIT) Regulations, 2015 defines UPSI which, inter alia, includes information relating to "financial results". The financial results published by the company for the half year ended, September 2019 is considered to be an UPSI in the instant matter. There was a substantial increase in the net profit in comparison to half year ended March 2019 from 0.1 Crore to 0.76 crore.

iv. The event (financial results) is therefore considered as material event and unpublished price sensitive information (UPSI) in terms of SEBI (PIT) Regulations, 2015.

Period of UPSI

v. The company made announcement regarding trading window closure period to BSE as per SEBI (PIT) regulations, 2015 vide letter dated 28/09/2019 from 1st October, 2019 until 48 hours from the date of announcement of financial results for the half year ended September 30, 2019. In this regard, the financial results for the half year ended September 30, 2019 were announced at 18:37:45 on November 14, 2019. Thus, the end date of the UPSI is November 16, 2019. Hence, the period starting from October 1, 2019 to November 16, 2019 is considered the period of UPSI in the instant matter.

Insiders

vi. In terms of Regulation 2(1)(g) of SEBI (PIT) Regulations, 2015, "insider" means any person who:

   i. is a connected person; or
   ii. in possession of or having access to unpublished price sensitive information

vii. From the Annual Report 2019-2020, the corporate information regarding the board of Directors were ascertained and is tabled below:

Table-1

S.No.	DIN/PAN	Director Name	Designation
1	6800497	Renukaben Ramesh bhai Shah	Director
2	6833976	Abhishek Lodha	Additional Director
3	7740874	Varun Jignesh kumar Shah	Managing Director
4	7766925	Amitbhai Pravinbhai Kadiya	Director
5	8218720	Tejas Harshadbhai Patel	CFO (KMP)/ Director
6	8395704	Rupal Vijay Thakkar	Additional Director
7	08559002	Avani Koshti	Additional Director

viii. In light of the above, it is alleged that Noticee 1 being the Chief Financial Officer (KMP) / Director of the company and Noticee 2 being the wife of Noticee 1 are the insiders of the company in so far as the announcement of financial results are concerned. Further, Noticee 1 and his wife Noticee 2 were observed to have traded in the scrip of A M Febcon Ltd during the UPSI period.

Trading Plan:

ix. Section 5 (1) of SEBI (PIT) Regulations, 2015 provides that an insider shall be entitled to formulate a trading plan and present it to the compliance officer for approval and public disclosure pursuant to which trades may be carried out on his behalf in accordance with such plan.

x. Clarification was sought from the company about the trading plans, if any, submitted by its Directors for the trading undertaken during the IP. In response to that, the company vide email dated 31/12/2019 has made the following submissions:

a) The Noticee 1 (CFO-cum-Director of A M Febcon Ltd) and Noticee 2 have formulated a trading plan for trading proposed to be carried out during the period starting from 15/07/2019 to 14/06/2020 and presented it to the compliance officer on 12/01/2019 for approval and for public disclosure in terms of Company's Code of Internal Procedures and Conduct for Regulating Monitoring and Reporting of Trading by Insiders adopted by the company as per SEBI(PIT) regulations, 2015.

b) Trading plan submitted by Noticee 1 on January 12, 2019 in respect of self and Noticee 2 is tabulated as below:

Table-2

Name of the Entity	**Proposed Period of Trading**	**Date of Submission of Trading plan**	**Date on which trading plan was approved**	**Proposed Traded Qnty**	
				Buy	**Sell**
Noticee 1	15/07/2019 to 14/06/2020	12/01/2019	12/01/2019	10,00,000	3,50,000
Noticee 2	15/07/2019 to 14/06/2020	12/01/2019	12/01/2019	5,00,000	1,50,000

xi. As per company letter dated 31/12/2019, the aforesaid trading plan was approved by the compliance officer, Hiral Dipsinh Kashela on 12/01/2019 and it was not disclosed by the

Company to the exchange (BSE). BSE also replied to SEBI that no trading plan was submitted by Noticees to the BSE.

xii. Investigation observed that-

a. Noticee 1 and Noticee 2 have allegedly traded during the trading window closure period i.e. from October, 01, 2019 to November 16, 2019.
b. Trading plan which the company claims to have received from the, Noticee 1, was allegedly not filed with the exchange in terms of Regulation 5 (5) of SEBI (PIT) Regulations, 2015.
c. Noticee 1 and Noticee 2 have allegedly made an incorrect statement to the exchange that they are not associated with the company or its promoters in any manner whatsoever.

Role of Compliance Officer with respect to trading plan:

xiii. From the annual Report 2018-19 filed by the company to the exchange it was observed that, Hiral Dipsinh Kashela was the compliance officer of the company during the period starting from 05/11/2018 to 27/05/2019. The same was also clarified by the exchange.

xiv. In this regard, vide email dated 25/02/2022, the comments of the compliance officer, Hiral Dipsinh Kashela were sought regarding why the trading plan was not transmitted to the exchange. The compliance officer has given the following response:

a) She acted as a company secretary and compliance officer of company from 5/11/2018 to 27/05/2019.
b) During her tenure as Company Secretary, none of the directors of company has submitted any trading plan to her for approval under SEBI (PIT) Regulations, 2015.
c) She did not sign in the trading plan submitted by the company under SEBI (PIT), Regulations, 2015 and she also claimed that her signature was forged in the said document.

xv. Noticee 1, vide e-mail dated 02/03/2022, inter-alia, replied as under:

a) The first two pages of trading plan document was signed by him and handed over to Mr. Purvesh Parikh (husband of Mrs. Zalak Parikh who is the promoter of the company) at registered office of company and the said document has not been delivered/handed over to Ms. Hiral Kashela, the compliance officer.

b) Mr. Purvesh Parikh was handling work related to signing of documents of/from directors, connecting/representing before different departments on behalf of directors. Mrs. Zalak Parikh along with her husband, Mr. Purvesh Parikh has been absconding since July, 2021. The said document is signed by Notice 1 in the year 2020, when Ms. Hiral Kashela already resigned from the post of Company Secretary and Compliance officer.

xvi. In view of the submissions made by the then compliance officer, Hiral Kashela and Noticee 1, it is alleged that the said trading plan document was not submitted to the then compliance officer, Hiral Kashela as observed from the submissions of both Hiral Kashela and Noticee 1. Further, Noticee 1 submitted that the said trading plan was signed by him in the year 2020 which is after the Investigation Period. Thus, Noticee 1 and Noticee 2 are alleged to have traded without submitting any trading plan to the company during the IP, which is allegedly in violation of Regulation 4(1) of SEBI (PIT) Regulations, 2015.

Analysis of Trading Pattern of the noticees:

Trading details of Noticee 1

xvii. As per the information provided by the exchanges, the trades in the scrip of A M Febcon Ltd corresponding to Noticee 1 on BSE during the UPSI Period and pre and post UPSI Period are as follows:

Table-3

Date	PAN	Buy Vol	Sell Vol	Buy Value	Sell Value
Pre-UPSI period (August 23, 2019 to September 30, 2019)					
06/09/2019	BCRPP0368N	1,28,000	0	11,59,600	0
09/09/2019	BCRPP0368N	16,000	24,000	1,47,680	2,09,200
11/09/2019	BCRPP0368N	16,000	0	1,47,600	0
16/09/2019	BCRPP0368N	32,000	16,000	3,27,040	1,48,240
17/09/2019	BCRPP0368N	0	8,000		84,000
18/09/2019	BCRPP0368N	56,000	88,000	5,75,680	9,46,160
20/09/2019	BCRPP0368N	0	11,200		92,960
23/09/2019	BCRPP0368N	0	11,200		1,00,128
24/09/2019	BCRPP0368N	0	56,000		5,02,208
25/09/2019	BCRPP0368N	22,400	0	2,17,168	0
26/09/2019	BCRPP0368N	11,200	11,200	1,06,288	1,14,016
	Total	**2,81,600**	**225600**	**26,81,056**	**21,96,912**
During UPSI period (October 1, 2015 to November 16, 2019)					
04/10/2019	BCRPP0368N	11,200	11,200	1,32,160	1,32,160

07/10/2019	BCRPP0368N	0	11,200		1,37,760
17/10/2019	BCRPP0368N	33,600	0	4,64,352	
18/10/2019	BCRPP0368N	22,400	0	3,13,600	
23/10/2019	BCRPP0368N	78,400	0	11,28,176	
05/11/2019	BCRPP0368N	44800	0	7,59,360	
08/11/2019	BCRPP0368N	11200	0	1,99,920	
	Total	**2,01,600**	**22,400**	**29,97,568**	**2,69,920**
Post UPSI period (November 16, 2019 to November 19, 2019)					
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	Grand Total	**4,83,200**	**2,48,000**	**56,78,624**	**24,66,832**

Trading details of Noticee 2

xviii. As per the information provided by the exchanges, the trades in the scrip of A M Febcon Ltd. of Noticee 2 on BSE during the UPSI Period and pre and post UPSI Period are as follows:

Table-4

Date	**PAN**	**Buy Vol**	**Sell Vol**	**Buy Value**	**Sell Value**
Pre-UPSI period (August 23, 2019 to September 30, 2019)					
23/09/2019	ELZPP6419L	22,400	0	2,00,592	0
24/09/2019	ELZPP6419L	22,400	11,200	2,02,720	1,03,712
25/09/2019	ELZPP6419L	22,400	22,400	2,17,280	2,01,600
26/09/2019	ELZPP6419L	22,400	33,600	2,14,928	3,10,128
27/09/2019	ELZPP6419L	0	11,200	0	1,18,720
	Total	89,600	78,400	8,35,520	7,34,160
During UPSI period (October 1, 2015 to November 16, 2019)					
04/10/2019	ELZPP6419L	0	11,200	0	1,32,160
11/10/2019	ELZPP6419L	33,600	22,400	4,49,680	2,99,600
14/10/2019	ELZPP6419L	56,000	0	7,50,736	0
15/10/2019	ELZPP6419L	22,400	0	3,04,528	0
16/10/2019	ELZPP6419L	11,200	22,400	1,64,528	2,89,856
17/10/2019	ELZPP6419L	0	33,600	0	4,60,320
18/10/2019	ELZPP6419L	0	11,200	0	1,57,360
24/10/2019	ELZPP6419L	11,200	0	1,64,528	0
06/11/2019	ELZPP6419L	56,000	0	9,64,320	0

Date	PAN	Buy Vol	Sell Vol	Buy Value	Sell Value
	Total	1,90,400	1,00,800	27,98,320	13,39,296
Post UPSI period (November 16, 2019 to November 19, 2019)					
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	Grand Total	**2,80,000**	**1,79,200**	**36,33,840**	**20,73,456**

xx. In light of the above, it is alleged that Noticee 1 and Noticee 2 traded for 18 days & 14 days respectively, during the IP. Further, Noticee 1 and Noticee 2 traded for 7 and 9 days respectively without submitting any trading plan, while in possession of UPSI pertaining to the financial results for the company for the half year ended September 2019.

xxi. Therefore, it is alleged that the Noticee 1 and Noticee 2 have violated section 12A (d) & (e) of SEBI Act, 1992 read with Regulation 4 (1) of SEBI (PIT) Regulations, 2015.

Trading during trading window Closure period:

xxii. The Financial results for the half year period ending on September 30, 2019 were declared by the Company on 14th November 2019. In this regard vide letter 28/09/2019, the company notified to BSE, its trading window closure for the period starting from 1st October, 2019 till 16th November, 2019 i.e. 48 hours after the declaration of financial results.

xxiii. However, it is observed that the Noticee 1 and Noticee 2 have traded during the trading window closure period. The summarized details of trading undertaken by the entities during the trading window closure period is tabulated as below:

Table-5

Duration of Trading by the Entities	Name of the entity	No. of Trades	Buy Quantity	Sold Quantity	Trading window closure period
04/10/2019 to 08/11/2019	Tejas Harshadbhai Patel & his wife Nandita Tejaskumar Patel	42	3,92,000	1,23,200	01/10/2019 to 16/11/2019

xxiv. Noticee 1 and Noticee 2 have undertaken 20 trades and 23 trades respectively during the stated trading window closure period. Vide e-mail dated 28-02-2022 BSE forwarded copy of company’s undated letter (received by exchanges on 28-09-2019) intimation of Trading

Window Closure in connection with declaration of financial Results for the half year ended September 30, 2019

xxv. In light of the above, it is alleged that Noticee 1 and Noticee 2 have traded during the trading window closure period starting from October 01, 2019 till November 16, 2019 & have thus violated the provision of Clause 4 of Schedule B, read with Regulation 9(1) of SEBI (PIT) Regulations 2015.

Disclosure under PIT Regulation by Noticee 1 and Noticee 2:

xxvi. Regulations 7(2)(a) of SEBI (PIT) Regulations, 2015 provides that every promoter, member of the promoter group, designated person and director of every company shall disclose to the company the number of such securities acquired or disposed of within two trading days of such transaction if the value of the securities traded, whether in one transaction or a series of transactions over any calendar quarter, aggregates to a traded value in excess of ten lakh rupees.

xxvii. It is alleged that the Noticee 1 has crossed the transaction limit of Rs.10 Lakhs as per regulation 7(2) (a) of SEBI (PIT) regulation in 6 instances falling on dates 06/09/2019, 17/09/2019, 18/09/2019, 26/09/2019, 18/09/2019 and 23/09/2019. Similarly, it is observed that the Noticee 2 has also crossed the transaction limit of Rs.10 Lakhs as per regulation 7(2) (a) of SEBI (PIT) regulation in 4 instances falling on dates 26/09/2019, 14/10/2019, 17/10/2019 and 06/11/2019. However, the disclosure for the same was filed with the company on 02/01/2020.

xxviii. BSE in their email dated 01/11/2021 and 23/02/2022 have clarified that Noticees have made the disclosure to the company only on 02/01/2020 under reg 7(2)(a) of SEBI (PIT) regulations, 2015 and the same has been disclosed by the company to the exchange under reg 7(2)(b) of SEBI(PIT) Regulation 2015 on 03/01/2020.

xxix. In light of the above, it is alleged that the Noticee1 and Noticee 2 have violated the provision of 7(2) (a) SEBI (PIT) Regulations, 2015 by delaying in submitting disclosure ranging from 68 days to 40 days (by Noticee 1) in 6 instances falling on dates 06/09/2019, 17/09/2019, 18/09/2019, 26/09/2019, 18/09/2019 and 23/09/2019 and from 82 days to 49 days (by Noticee 2) in 4 instances falling on dates 26/09/2019, 14/10/2019, 17/10/2019 and 06/11/2019.

5. The SCNs were issued at the last known addresses of Noticee 1 and Noticee 2 through Speed Post Acknowledgment Due (SPAD) which was delivered. SCNs were also sent through Digitally Signed E-mail dated August 25, 2022 which was delivered and the delivery of the notices are on record. Vide email dated September 26, 2022 reminder was sent to the Noticees to file the reply till October 03, 2022. However, Noticee 1 and Noticee 2 did not file any reply to the SCNs. Hearing opportunities were also given to the Noticees. Vide hearing Notice dated September 28, 2022 Noticee 1 & Noticee 2 were advised to appear for hearing on October 06, 2022. Hearing Notice was sent via SPAD which was delivered, and the notices were also delivered via digitally signed email dated 02/10/2022, the delivery of which is on record. Second opportunity of hearing was given to Noticee 1 & 2 on 14/10/2022 vide email dated 06/10/2022 which was also delivered. However Noticee 1&2 did not avail of the second hearing opportunities also. I note that sufficient opportunities have been given to Noticees 1 and Noticee 2 to represent their case and the principles of natural justice have been complied with. It is observed that, despite service of the SCN and hearing notices through SPAD and Digitally Signed E-mail, Noticee 1 and Noticee 2 did not respond and avail the opportunity of personal appearance. The Hon'ble Securities Appellate Tribunal (SAT) in the matter of Sanjay Kumar Tayal & Ors. v. SEBI(in appeal No. 68/2013) decided on February 11, 2014, held that "...*appellants have neither filed reply to show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceeding and, therefore, appellants are presumed to have admitted charges levelled against them in the show cause notices*". Since no replies to the SCN was filed by Noticee 1 and Noticee 2, it can be reasonably presumed that the allegations have been admitted to by Noticee 1 and Noticee 2 in this case.

6. In view of the above, I am compelled to proceed ex-parte in the matter against Noticee 1 and Noticee 2. I am of the view that Noticee 1 and Noticee 2 has nothing to submit and in terms of Rule 4(7) of SEBI Adjudication Rules, the matter is proceeded ex-parte on the basis of material available on record.

<u>ISSUES FOR CONSIDERATION, EVIDENCE AND FINDINGS</u>

7. I have taken into consideration the facts and circumstances of the case and the material available on record. The issues that arise for consideration in the present case are:

ISSUE I: Whether:- a) Noticee 1 and Noticee 2 traded while in possession of UPSI, without submitting the trading plan and thereby violated Section 12A(d) & (e) of SEBI Act, 1992 read with Regulation 4(1) of SEBI (PIT) Regulations, 2015,

b) Noticee 1 and Noticee 2 traded during the trading window closure period and thereby violated Provision of Clause 4 of Scheduled B, read with Regulation 9(1) of SEBI (PIT) regulations 2015, and

c) Noticee 1 and Noticee 2 made a delayed disclosures and thereby violated Regulation 7(2)(a) of SEBI (PIT) Regulations 2015.

ISSUE II: Does the violation, if any, on part of the Noticee 1 and Noticee 2 attract penalty under Section for 15G, 15HB and 15A(b) of SEBI Act, 1992.

ISSUE III: If so, how much penalty should be imposed on the Noticees taking into consideration the factors mentioned in Section 15J of the SEBI Act?

8. Before proceeding further, it will be appropriate to refer the provisions of Section 12A(d) & (e) of SEBI Act, 1992 read with Regulation 4(1) of SEBI (PIT) Regulations, 2015, Provision of Clause 4 of Scheduled B, read with Regulation 9(1) of SEBI (PIT) regulations 2015 and Regulation 7(2)(a) of SEBI (PIT) Regulations 2015. The texts of the alleged provisions are as under-

Regulation 12A of the SEBI Act, 1992- Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.

No person shall directly or indirectly—

(d) engage in insider trading;

(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;

Regulation 4 - Trading when in possession of unpublished price sensitive information.

(1) No insider shall trade in securities that are listed or proposed to be listed on a stock exchange when in possession of unpublished price sensitive information:

[Explanation –When a person who has traded in securities has been in possession of unpublished price sensitive information, his trades would be presumed to have been motivated by the knowledge and awareness of such information in his possession.]

Provided that the insider may prove his innocence by demonstrating the circumstances including the following: –

(i) the transaction is an off-market inter-setransfer between 18[insiders]who were in possession of the same unpublished price sensitive information without being in breach of regulation 3 and both parties had made a conscious and informed trade decision.

[Provided that such unpublished price sensitive information was not obtained under sub-regulation (3) of regulation 3 of these regulations.

Provided further that such off-market trades shall be reported by the insiders to the company within two working days. Every company shall notify the particulars of such trades to the stock exchange on which the securities are listed within two trading days from receipt of the disclosure or from becoming aware of such information.];

[(ii) the transaction was carried out through the block deal window mechanism between persons who were in possession of the unpublished price sensitive information without being in breach of regulation 3 and both parties had made a conscious and informed trade decision;

Provided that such unpublished price sensitive information was not obtained by either person under sub-regulation (3) of regulation 3 of these regulations.

(iii) the transaction in question was carried out pursuant to a statutory or regulatory obligation to carryout a bona fide transaction.

(iv) the transaction in question was undertaken pursuant to the exercise of stock options in respect of which the exercise price was pre-determined in compliance with applicable regulations.]

(v)in the case of non-individual insiders: –

(a) the individuals who were in possession of such unpublished price sensitive information were different from the individuals taking trading decisions and such decision-making individuals were not in possession of such unpublished price sensitive information when they took the decision to trade; and

(b) appropriate and adequate arrangements were in place to ensure that these regulations are not violated and no unpublished price sensitive information was communicated by the individuals possessing the information to the individuals taking trading decisions and there is no evidence of such arrangements having been breached;

(vi) the trades were pursuant to a trading plan set up in accordance with regulation 5.

Regulation 7- Disclosures by certain persons-

(2) Continual Disclosures.

(a).Every promoter [, member of the promoter group], [designated person] and director of every company shall disclose to the company the number of such securities acquired or disposed of within two trading days of such transaction if the value of the securities traded, whether in one transaction or a series of transactions over any calendar quarter, aggregates to a traded value in excess of ten lakh rupees or such other value as may be specified

Regulation 9- Code of Conduct- (1)The board of directors of every listed company and [the board of directors or head(s) of the organisation of every intermediary shall ensure that the chief executive officer or managing director] shall formulate a code of conduct [with their approval] to regulate, monitor and report trading by its [designated persons and immediate relatives of designated persons] towards achieving compliance with these regulations, adopting the minimum standards set out in Schedule B [(in case of a listed company) and Schedule C (in case of an intermediary)] to these regulations, without diluting the provisions of these regulations in any manner.

[Explanation –For the avoidance of doubt it is clarified that intermediaries, which are listed, would be required to formulate a code of conduct to regulate, monitor and report trading by their designated persons, by adopting the minimum standards set out in Schedule B with respect to trading in their own securities and in Schedule C with respect to trading in other securities.

(2) [The board of directors or head(s) of the organisation, of every other person who is required to handle unpublished price sensitive information in the course of business operations shall formulate a code of conduct to regulate, monitor and report trading by their designated persons and immediate relative of designated persons towards achieving compliance with these regulations, adopting the minimum standards set out in Schedule C to these regulations, without diluting the provisions of these regulations in any manner.

Clause 4 Schedule B of SEBI (PIT) Regulations, 2015 - (1) Designated persons may execute trades subject to compliance with these regulations. Towards this end, a notional trading window shall be used as an instrument of monitoring trading by the designated persons. The trading window shall be closed when the compliance officer determines that a designated person or class of designated persons can reasonably be expected to have possession of unpublished price sensitive information. Such closure shall be imposed in relation to such securities to which such unpublished price sensitive information relates. Designated persons and their immediate relatives shall not trade in securities when the trading window is closed.

(2) [Trading restriction period [shall] be made applicable from the end of every quarter till 48 hours after the declaration of financial results. The gap between clearance of accounts by audit committee and board meeting should be as narrow as possible and preferably on the same day to avoid leakage of material information.]

[(3) The trading window restrictions mentioned in sub-clause(1) shall not apply in respect of –

(a)transactions specified in clauses(i) to (iv) and (vi) of the proviso to sub-regulation (1) of regulation 4 and in respect of a pledge of shares for a bonafide purpose such as raising of funds, subject to pre-clearance by the compliance officer and compliance with the respective regulations made by the Board;

(b) transactions which are undertaken in accordance with respective regulations made by the Board such as acquisition by conversion of warrants or debentures, subscribing to rights issue, further public issue, preferential allotment or tendering of shares in a buy-back offer, open offer, delisting offer] [or transactions which are undertaken through such other mechanism as may be specified by the Board from time to time].

FINDINGS

9. On perusal of the material available on record and giving regard to the facts and circumstances of the case I record my findings hereunder:

ISSUE I: Whether:- (a) Noticee 1 and Noticee 2 traded while in possession of UPSI, without submitting the trading plan and thereby violated Section 12A(d) & (e) of SEBI Act, 1992 read with Regulation 4(1) of SEBI (PIT) Regulations, 2015,

b) Noticee 1 and Noticee 2 traded during the trading window closure period and thereby violated Provision of Clause 4 of Scheduled B, read with Regulation 9(1) of SEBI (PIT) regulations 2015, and

c) Noticee 1 and Noticee 2 made a delayed disclosures and thereby violated Regulation 7(2)(a) of SEBI (PIT) Regulations 2015.

(a) Whether Noticee 1 and Noticee 2 traded while in possession of UPSI?

10. A & M Febcon Limited is engaged in the services of engineering and it is listed on BSE SME Platform.

Board of Directors of A M Febcon Ltd.

11. The management of the Company and their details during the investigation period are as under:

Table-6

DIN/PAN	Director Name	Designation	Appointment Date	Cessation Date
6800497	Renukaben Ramesh bhai Shah	Director	25/01/2014	11/02/2020
6833976	Abhishek Lodha	Additional Director	23/03/2019	27/01/2020
7740874	Varun Jignesh kumar Shah	Managing Director	22/03/2017	-----
7766925	Amitbhai Pravinbhai Kadiya	Director	22/03/2017	-----
8218720	Tejas bhai Harshad bhai Patel	CFO (KMP) / Director	10/09/2018	-----
8395704	Rupal Vijay Thakkar	Additional Director	20/03/2019	19/03/2020

08559002	Avani Koshti	Additional Director	10/09/2019	------

12. I note from the above table that Noticee 1 is the CFO (KMP) / director of the company.

Financial Results

13. The financials of the company for the year ended March 2018 and March 2019 and for the half year ended September 2018, March 2019 and September 2019 are tabulated as below:

Table-7
(Rs. In Crs.)

Particulars	Half Year ended Sept 2019	Half Year ended March 2019	Half Year ended Sept 2018	Year ended March 2019	Year ended March 2018
Net Sales / Operational Income	10.29	0.06	0.28	0.33	3.51
Other Income	0.05	-	-	-	-
Total Income	10.34	0.06	0.28	0.33	3.52
Net Profit	0.76	0.01	0.01	0.01	0.01

14. I note from the above table that the company registered net profit of 0.01 Crores, 0.01 Crores and 0.76 crores for the half year ended Sept 2018, March 2019 and Sept 2019 respectively.

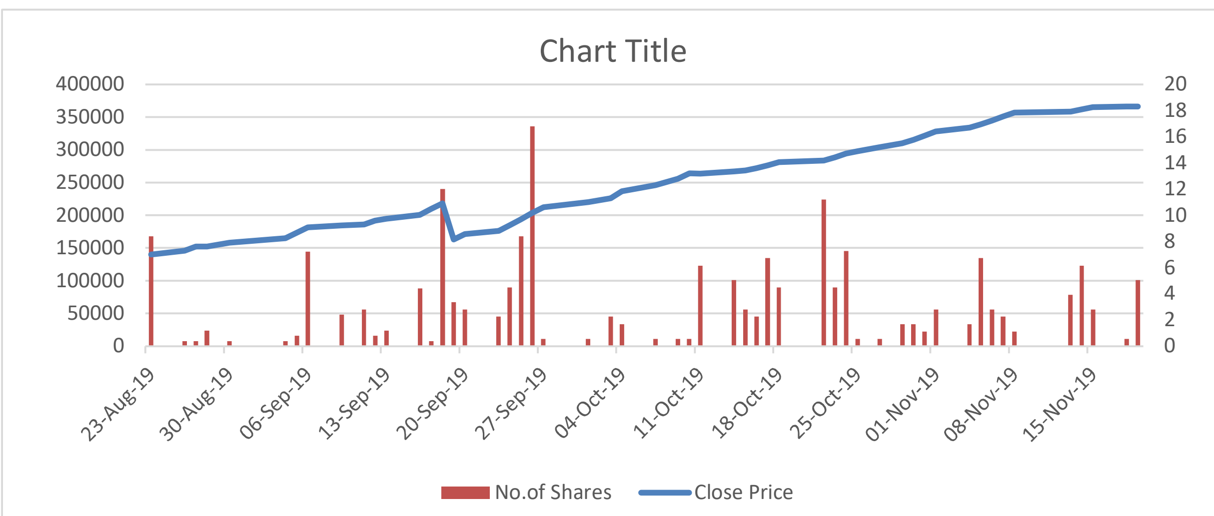
Price volume Analysis:

15. During the IP, 3596800 shares of A M Febcon Ltd were traded through 293 trades at BSE during the 53 trading days starting from 23/08/2019 to 19/11/2019. The price/volume during the price rise observed during the Pre-IP, IP & Post IP at BSE including the opening, closing, low and high price of the scrip along with average number of shares traded prior, during and after the investigation period are given below:

Table- 8

Period	Dates		Opening Price (volume) on first day of the period (Rs)	Closing price (volume) on last day of the period (Rs.)	Low price (volume) during the period (Rs.)	High Price (volume) during the period (Rs.)	Avg. no. of shares traded daily during the period
Pre-Investigation Period	**(01/06/2019-22/08/2019)**	Price	4.30	7.35	3.75 (02/07/2019)	10.18 (02/08/2019)	50880
		Vol.	8000	16,000	32,000	32,000	
Investigation Period	**(23/08/2019-19/11/2019)**	Price	6.99	18.30	6.99 (23/08/2019)	18.40 (19/11/2019)	67,864.15
		Vol.	1,68,000	1,00,800	1,68,000	1,00,800	
Post-investigation period	**(20/11/2019-20/02/2020)**	Price	18.30	20.50	17.15 (16/12/2019)	21.90 (18/02/2020)	85,575.30
		Vol.	67,200	840	123200	128383	

<u>Price-volume movement in the scrip of A M Febcon Ltd Investigation Period – BSE</u>



16. During the IP, price of the scrip at BSE moved from Rs.6.99 on 23/08/2019 to Rs.18.40 on 19/11/2019.

17. I find that there are four important things needs to be established for attracting the provisions of Section 12A (d) & (e) of SEBI Act, 1992 read with Regulation 4(1) of SEBI (PIT) Regulations, 2015 which are as follows:-

a) There was Unpublished Price Sensitive Information (UPSI) during the IP,

b) Noticees were an insider of the company during the IP,

c) Noticees had received or has had access to relevant UPSI, and

d) Noticees traded while in possession of UPSI during the UPSI period.

a. There was Unpublished Price Sensitive Information (UPSI) during the IP

17. The definition of 'unpublished price sensitive information' as prescribed under Regulation 2(1) (n) of SEBI (PIT) Regulations, 2015 is as follows:

"unpublished price sensitive information" means any information relating to 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 securities of company 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, and
vi. Material events in accordance with the listing agreement.

18. As mentioned above, Regulation 2(1)(n)(i) of SEBI (PIT) Regulations, 2015 defines UPSI which, inter alia, includes information relating to "financial results". Company A.M. Febcon made corporate announcement of financial result for the half year ended September 2019. I note that there was a substantial increase in the net profit in comparison to half year ended March 2019 from 0.1 Crore to 0.76 crore. Therefore, I observe that the financial results published by the company for the half year ended, September 2019 affected the

price of the securities and is an UPSI in the instant matter. Thus it is concluded that there was UPSI during the IP.

Period of UPSI

19. As there was UPSI in the company, it is to be determined what the UPSI period was. During investigation, to establish the date of existence of UPSI, chronology of events leading to preparation and dissemination of financial results for the half year ended September 2019 were sought from the company. However no reply was received from the company. Further vide email dated 02/03/2022, Noticee 1 was also inquired about the date from which he was involved in the preparation and dissemination of the said financial results. In this regard, no reply was received from Noticee 1.

20. I note from the material available before me that the company made announcement regarding trading window closure period to the BSE as per SEBI (PIT) regulations, 2015 vide letter dated 28/09/2019 from 1st October, 2019 until 48 hours from the date of announcement of financial results for the half year ended September 30, 2019. In this regard, the financial results for the half year ended September 30, 2019 were announced at 18:37:45 on November 14, 2019. So, the end date of the UPSI is November 16, 2019. Thus, I find that the period starting from October 1, 2019 to November 16, 2019 is considered as the period of UPSI in the instant matter.

b. <u>Noticees were an insider of the company:-</u>

21. In terms of Regulation 2(1)(g) of SEBI (PIT) Regulations, 2015, “insider” means any person who:
    i. is a connected person; or
    ii. in possession of or having access to unpublished price sensitive information

22. I note from the material available on record that SEBI vide email dated 15/03/2022 and 25/02/2022, advised the company to provide list of all persons/employees of its organization who were associated with any event related to Corporate Announcement (Preparation and Dissemination of financial results for the half year ended September 30,

2019) along with all the documentary evidences. However, the company failed to respond to any of SEBI's queries.

23. I observe that, the company was advised vide email dated February 22, 2022 to provide copy of the code of conduct framed by it as per the SEBI (PIT) Regulations, 2015. However, the company did not submit any reply. From the Annual Report 2019-2020, the corporate information regarding the board of Directors were ascertained and is tabled below:

Table-9

S.No.	DIN/PAN	Director Name	Designation
1	6800497	Renukaben Ramesh bhai Shah	Director
2	6833976	Abhishek Lodha	Additional Director
3	7740874	Varun Jignesh kumar Shah	Managing Director
4	7766925	Amitbhai Pravinbhai Kadiya	Director
5	8218720	Tejas Harshadbhai Patel	CFO (KMP)/ Director
6	8395704	Rupal Vijay Thakkar	Additional Director
7	08559002	Avani Koshti	Additional Director

24. From the above table it is observed that Noticee 1 was the Chief Financial Officer (CFO) (KMP)/ Director of the company. I note that Chief Financial Officer is responsible for managing the finance and accounting divisions of the company and for ensuring that the company's financial reports are accurate and completed in a timely manner. Therefore, I observe that Noticee 1 is an insider of the company.

25. I note from the KYC documents of the Noticee 2 available with Central KYC Registry, that Noticee 1 is the husband of Noticee 2. Further, I note that as per Regulation 2(1)(d)(ii)(a) of the SEBI (PIT) regulations, 2015, connected person includes an immediate relative of the director or officer or an employee of the company. Hence, Noticee 2 being an immediate relative (wife) of Noticee 1 is the connected person as provided under regulation 2(1)(g) of SEBI (PIT) Regulations, 2015, and hence, Noticee 2 is an insider of the company.

26. In addition to the above, I further note from material available on record, that company vide letter dated December 31, 2019, submitted clarification on the trading window closure period to BSE, wherein company admitted that they did not transmit the trading plan to stock exchanges and further in the aforesaid letter, company attached the trading plan as

submitted by Noticee 1 to the company and approved by the company. In the attached trading plan, Noticee 1 submitted that he is the insider and Executive Director of the company and Noticee 2 is the wife (immediate relative) of the Noticee 1, and therefore Noticee 1 prepared the trading plan for himself and Noticee 2. In view of the same, I reiterate that Noticee 1 and Noticee 2 are the insiders of the company.

c. <u>Noticees had received or has had access to relevant UPSI:-</u>

27. I note from the records available before me that in order to ascertain whether Noticee 1 and Noticee 2 are involved with events in connection with/in relation to preparation & dissemination of Company's half yearly financial results for the period ended September 30, 2019, their comments were sought vide email dated 02/03/2022, regarding their involvement in the process of preparation and dissemination of the aforesaid event. In this regard, no reply was received.

28. Further, vide e-mail dated 25/02/2021, the company was advised to provide details regarding the starting date in respect of chronology of events leading to preparation and dissemination of financial results for half year ended September 2019 & the date since when the Noticee 1 was involved in the process of preparing the aforesaid events. Further, the company was also asked to provide the details of pre-clearance accorded, if any, to Noticee 1 and Noticee 2 for trading during IP. However, no reply has been submitted by the company.

29. From the material available on record, I note that Noticee 1 is the Chief Financial Officer of the company. As stated before, Chief Financial Officer is responsible for managing the finance and accounting divisions of the company and for ensuring that the company's financial reports are accurate and completed in a timely manner. Thus, Noticee 1 being a Chief Financial officer (CFO)-cum-Director of the company, the likelihood of his involvement/awareness of the Company's half yearly financial results for the period ended September 30, 2019 along with his wife Noticee cannot be ruled out.

30. Therefore, from the foregoing, I observe that Noticee 1 was in possession of UPSI and Noticee 2 being insider had access in so far as the announcement of financial results of the company are concerned and were in receipt of the UPSI.

d. <u>Noticees traded while in possession of UPSI during the UPSI period:</u>

31. It is pertinent to highlight here that as per explanation to regulation 4(1) of the PIT Regulations when a person who is in possession of UPSI trades, his trades would be presumed to be motivated by knowledge of such information in his possession. Thus, once it is established that a person is an insider and he had traded in possession of UPSI, the onus shifts to the insider to prove that he/she traded on some other basis. In this regard, Hon'ble SAT in the matter of *Mrs. Chandrakala vs. SEBI, Appeal No. 209 of 2011*, dated January 31, 2012while deciding an appeal for violation of regulation 3(i) of the erstwhile insider trading regulations which is pari materia with regulation 4(1) of the PIT Regulations held as follows:

"The prohibition contained in regulation 3 of the regulations apply only when an insider trades or deals in securities on the basis of any unpublished price sensitive information and not otherwise. It means that the trades executed should be motivated by the information in the possession of the insider. If an insider trades or deals in securities of a listed company, it may be presumed that he / she traded on the basis of unpublished price sensitive information in his / her possession unless contrary to the same is established. The burden of proving a situation contrary to the presumption mentioned above lies on the insider. If an insider shows that he / she did not trade on the basis of unpublished price sensitive information and that he / she traded on some other basis, he / she cannot be said to have violated the provisions of regulation 3 of the regulations."

32. However, I note that the Noticees has not made any submissions to show that they have not traded while in possession of UPSI. However, it is essential to examine the trades of the Noticee during the UPSI Period which are as follows:-

Trading details of Noticee 1

33. The trades in the scrip of A M Febcon Ltd corresponding to Noticee 1 on BSE during the UPSI Period and pre and post UPSI Period are as follows:

Table-10

Date	PAN	Buy Vol	Sell Vol	Buy Value	Sell Value

Pre-UPSI period (August 23, 2019 to September 30, 2019)					
06/09/2019	BCRPP0368N	1,28,000	0	11,59,600	0
09/09/2019	BCRPP0368N	16,000	24,000	1,47,680	2,09,200
11/09/2019	BCRPP0368N	16,000	0	1,47,600	0
16/09/2019	BCRPP0368N	32,000	16,000	3,27,040	1,48,240
17/09/2019	BCRPP0368N	0	8,000		84,000
18/09/2019	BCRPP0368N	56,000	88,000	5,75,680	9,46,160
20/09/2019	BCRPP0368N	0	11,200		92,960
23/09/2019	BCRPP0368N	0	11,200		1,00,128
24/09/2019	BCRPP0368N	0	56,000		5,02,208
25/09/2019	BCRPP0368N	22,400	0	2,17,168	0
26/09/2019	BCRPP0368N	11,200	11,200	1,06,288	1,14,016
	Total	**2,81,600**	**225600**	**26,81,056**	**21,96,912**
During UPSI period (October 1, 2015 to November 16, 2019)					
04/10/2019	BCRPP0368N	11,200	11,200	1,32,160	1,32,160
07/10/2019	BCRPP0368N	0	11,200		1,37,760
17/10/2019	BCRPP0368N	33,600	0	4,64,352	
18/10/2019	BCRPP0368N	22,400	0	3,13,600	
23/10/2019	BCRPP0368N	78,400	0	11,28,176	
05/11/2019	BCRPP0368N	44800	0	7,59,360	
08/11/2019	BCRPP0368N	11200	0	1,99,920	
	Total	**2,01,600**	**22,400**	**29,97,568**	**2,69,920**
Post UPSI period (November 16, 2019 to November 19, 2019)					
--	--	--	--	--	--
	Grand Total	**4,83,200**	**2,48,000**	**56,78,624**	**24,66,832**

34. Thus it is observed from the above that Noticee 1 traded during the pre UPSI period and UPSI period.

Trading details of Noticee 2

35. The trades in the scrip of A M Febcon Ltd. of Noticee 2 on BSE during the UPSI Period and pre and post UPSI Period are as follows:

Table-11

Date	**PAN**	**Buy Vol**	**Sell Vol**	**Buy Value**	**Sell Value**
Pre-UPSI period (August 23, 2019 to September 30, 2019)					
23/09/2019	ELZPP6419L	22,400	0	2,00,592	0
24/09/2019	ELZPP6419L	22,400	11,200	2,02,720	1,03,712

Date	PAN	Buy Vol	Sell Vol	Buy Value	Sell Value
25/09/2019	ELZPP6419L	22,400	22,400	2,17,280	2,01,600
26/09/2019	ELZPP6419L	22,400	33,600	2,14,928	3,10,128
27/09/2019	ELZPP6419L	0	11,200	0	1,18,720
	Total	89,600	78,400	8,35,520	7,34,160
During UPSI period (October 1, 2019 to November 16, 2019)					
04/10/2019	ELZPP6419L	0	11,200	0	1,32,160
11/10/2019	ELZPP6419L	33,600	22,400	4,49,680	2,99,600
14/10/2019	ELZPP6419L	56,000	0	7,50,736	0
15/10/2019	ELZPP6419L	22,400	0	3,04,528	0
16/10/2019	ELZPP6419L	11,200	22,400	1,64,528	2,89,856
17/10/2019	ELZPP6419L	0	33,600	0	4,60,320
18/10/2019	ELZPP6419L	0	11,200	0	1,57,360
24/10/2019	ELZPP6419L	11,200	0	1,64,528	0
06/11/2019	ELZPP6419L	56,000	0	9,64,320	0
	Total	1,90,400	1,00,800	27,98,320	13,39,296
Post UPSI period (November 16, 2019 to November 19, 2019)					
--	--	--	--	--	--
	Grand Total	**2,80,000**	**1,79,200**	**36,33,840**	**20,73,456**

36. Thus it is observed from the above that Noticee 2 traded during the pre UPSI period and UPSI period.

37. In view of the above table 10 and table 11, I observe that Noticee 1 and Noticee 2 respectively while being an insider and while having possession of the UPSI pertaining to the financial results for the company for the half year ended September 2019 have traded for 7 days & 9 days respectively, during UPSI period which is from October 01, 2019 till November 16, 2019.

38. I note that the section 5 (1) of SEBI (PIT) Regulations, 2015 reads as under:

"5(1) An insider shall be entitled to formulate a trading plan and present it to the compliance officer for approval and public disclosure pursuant to which trades may be carried out on his behalf in accordance with such plan."

39. I note that the clarification was sought from the company about the trading plans, if any, submitted by its Directors for the trading undertaken during the IP. In response to that, the company vide email dated 31/12/2019 has made the following submissions:

i. Noticee 1 (CFO-cum-Director of A M Febcon Ltd) and Noticee 2 formulated a trading plan for trading proposed to be carried out during the period starting from 15/07/2019 to 14/06/2020 and presented it to the compliance officer on 12/01/2019 for approval and for public disclosure in terms of Company's Code of Internal Procedures and Conduct for Regulating Monitoring and Reporting of Trading by Insiders adopted by the company as per SEBI (PIT) regulations, 2015.

ii. Trading plan submitted by Noticee 1 on January 12, 2019 to the company in respect of self and Noticee 2 is tabulated as below:

Table-12

Name of the Entity	Proposed Period of Trading	Date of Submission of Trading plan	Date on which trading plan was approved	Proposed Traded Qnty	
				Buy	Sell
Noticee 1	15/07/2019 to 14/06/2020	12/01/2019	12/01/2019	10,00,000	3,50,000
Noticee 2	15/07/2019 to 14/06/2020	12/01/2019	12/01/2019	5,00,000	1,50,000

40. As per company letter dated 31/12/2019, the aforesaid trading plan was approved by the compliance officer, Hiral Dipsinh Kashela on 12/01/2019. As per the company letter dated 31/12/2019, it has been inadvertently not disclosed by the Company to the exchanges (BSE). BSE, in response to the queries raised by SEBI, vide email dated 01/11/2021, 23/02/2022 has also confirmed that no trading plans were submitted by the noticees for the trades undertaken during IP.

41. Subsequently, in order to ascertain the details of compliance officer, the company was inquired to provide the details of the compliance officer who was responsible for notifying the Trading Plan to the exchange as per SEBI (PIT) Regulations, 2015. In this regard, no reply was received from the company. Hence, annual Report 2018-19 filed by the company to the exchange was perused and it was observed that, Hiral Dipsinh Kashela was the compliance officer of A M Febcon Ltd during the period starting from 05/11/2018 to 27/05/2019. The same was also clarified by the exchange vide their email dated 23/02/2022.

42. In this regard, vide email dated 25/02/2022, the comments of the compliance officer, Hiral Dipsinh Kashela were sought regarding why the trading plan was not transmitted to the exchange. The compliance officer has given the following response:

a) She acted as a company secretary and compliance officer of A M Febcon Ltd from 5/11/2018 to 27/05/2019.
b) During her tenure as Company Secretary, none of the directors of A M Febcon Ltd has submitted any trading plan to her for approval under SEBI (PIT) Regulations, 2015.

c) She did not sign in the trading plan submitted by the company under SEBI (PIT), Regulations, 2015 and she also claimed that her signature is forged in the said document.

43. The details of trading plan submitted by, Noticee 1 and Noticee 2 were sought from the company vide email dated 28/10/2021, 17/12/2021 and 22/02/2022. However, the company did not respond to any of SEBI's queries.

44. I further note that vide e-mail dated 21/02/2022, the entities, Noticee 1 and Noticee 2 were inquired whether the trades carried out by them during the IP is as per the trading Plan submitted by them to the Company and details of pre-clearance sought, if any, for the said trades. However, no reply was received in this regard.

45. Subsequently, Noticee 1, vide e-mail dated 02/03/2022, inter-alia, replied as under:

a) The first two pages of trading plan document was signed by Noticee 1 and handed over to Mr. Purvesh Parikh (husband of Mrs. Zalak Parikh who is the promoter of the company) at registered office of company and the said document has not been delivered/handed over to Ms. Hiral Kashela, the compliance officer.

b) Mr. Purvesh Parikh was handling work related to signing of documents of/from directors, connecting/representing before different departments on behalf of directors. Mrs. Zalak Parikh along with her husband, Mr. Purvesh Parikh has been absconding since July, 2021. The said document is signed by him in the year 2020, when Ms. Hiral Kashela has already resigned from the post of Company Secretary and Compliance officer.

46. In view of the submissions made by the then compliance officer, Hiral Kashela and Noticee 1, I observe that the said trading plan document was not submitted to the then compliance officer Hiral Kashela neither it was approved / signed by the compliance officer.

47. Moreover, Noticee 1 and the then compliance officer, Hiral Kashela have submitted that the said trading plan was not submitted on January 12, 2019 and was not approved/signed by the compliance officer, as opposed to the clarification issued by the company to BSE that Noticee 1 submitted trading plan to the company on January 12, 2019 and it was approved by the company on the same day. Further, vide email dated 02/03/2022, Noticee 1 submitted that the said trading plan was signed by him in the year 2020 which is after the

Investigation Period. Thus, I observe that Noticee 1 and Noticee 2 have traded without submitting any trading plan to the company during the IP.

48. In view of the same, I observe that Noticee 1 and Noticee 2 traded while in possession of UPSI, during UPSI period and without submitting the trading plan to the exchanges. Therefore, I conclude that Noticee 1 and Noticee 2 have violated section 12A (d) & (e) of SEBI Act, 1992 read with Regulation 4 (1) of SEBI (PIT) Regulations, 2015.

b) Whether Noticee 1 and Noticee 2 traded during the trading window closure period?

49. I note that Clause 4 of Scheduled B of SEBI (PIT) regulations 2015, provides that designated persons and their immediate relatives shall not trade in securities when the trading window is closed. I further note from the material available on record that financial results for the half year period ending on September 30, 2019 were declared by the Company on 14th November 2019. In this regard vide letter 28/09/2019, the company notified to BSE, its trading window closure for the period starting from 1st October, 2019 till 16th November, 2019 i.e. 48 hours after the declaration of financial results. Therefore, I observe that the trading window closure period was from 1st October, 2019 to till 16th November, 2019.

50. As established above, the Noticee 1 and Noticee 2 traded in the scrip of the company while in possession of the UPSI. I note from the details of the trading that Noticee 1 executed trades from October 04, 2019 to November 08, 2019 and Noticee 2 executed trades from October 04, 2019 to November 06, 2019. The date of the closure of window was from October 1, 2019 to November 16, 2019. Thus, Noticees traded during window closure period. The details of trading undertaken by the entities during the trading window closure period is tabulated as below:

Table-13

Trade date	Client Name	Counter Party Client name	Trade Value	Buy Quantity	Sell Quantity
04/10/2019	TEJAS HARSHADBHAI PATEL	NANDITA TEJASKUMAR PATEL	132160	11200	
04/10/2019	SUSHILABEN KISHORBHAI RAJPUROHIT	TEJAS HARSHADBHAI PATEL	132160		11200
04/10/2019	TEJAS HARSHADBHAI PATEL	NANDITA TEJASKUMAR PATEL	132160		11200
07/10/2019	VIVID MERCANTILE LIMITED	TEJAS HARSHADBHAI PATEL	137760		11200

11/10/2019	NANDITA TEJASKUMAR PATEL	PAYAL DAMANI	148960	11200	
11/10/2019	NANDITA TEJASKUMAR PATEL	RAJESHWARI STOCK BROCKING PVT LTD	150640	11200	
11/10/2019	NANDITA TEJASKUMAR PATEL	SHRENI SHARES PRIVATE LIMITED	150080	11200	
11/10/2019	SATISHKUMAR GYANCHAND BHANUSHALI	NANDITA TEJASKUMAR PATEL	150640		11200
11/10/2019	RAKESH KISHOR SHARMA	NANDITA TEJASKUMAR PATEL	148960		11200
14/10/2019	NANDITA TEJASKUMAR PATEL	KANTA RANI	149968	11200	
14/10/2019	NANDITA TEJASKUMAR PATEL	JIGAR PRAMODBHAI SHAH	300160	22400	
14/10/2019	NANDITA TEJASKUMAR PATEL	MEGNABEN SANJAYKUMAR GANDHI	150304	11200	
14/10/2019	NANDITA TEJASKUMAR PATEL	NISHA JIGARBHAI SHAH	150304	11200	
15/10/2019	NANDITA TEJASKUMAR PATEL	KANTA RANI	152208	11200	
15/10/2019	NANDITA TEJASKUMAR PATEL	RAJESHWARI STOCK BROCKING PVT LTD	152320	11200	
16/10/2019	NANDITA TEJASKUMAR PATEL	JIGAR PRAMODBHAI SHAH	152208	11200	
16/10/2019	SHAH RAHUL BABULAL	NANDITA TEJASKUMAR PATEL	150080		11200
16/10/2019	YASH NILESH PANDYA	NANDITA TEJASKUMAR PATEL	152096		11200
17/10/2019	TEJAS HARSHADBHAI PATEL	KANSARA ZANKHANA AMITKUMAR	154224	11200	
17/10/2019	TEJAS HARSHADBHAI PATEL	SHAH RAHUL BABULAL	155120	11200	
17/10/2019	TEJAS HARSHADBHAI PATEL	DHAIRYA RAHULKUMAR SHAH	155120	11200	
17/10/2019	SHAH CHIRAG A	NANDITA TEJASKUMAR PATEL	153440		11200
17/10/2019	YASH NILESH PANDYA	NANDITA TEJASKUMAR PATEL	153440		11200
17/10/2019	MAVAJEBHAI ABHUBHAI CHAUDHARI	NANDITA TEJASKUMAR PATEL	153440		11200
18/10/2019	TEJAS HARSHADBHAI PATEL	SHRENI SHARES PRIVATE LIMITED	156800	11200	
18/10/2019	TEJAS HARSHADBHAI PATEL	SATISHKUMAR GYANCHAND BHANUSHALI	156800	11200	
18/10/2019	ATUL SEVANTILAL SHAH	NANDITA TEJASKUMAR PATEL	157360		11200

23/10/2019	TEJAS HARSHADBHAI PATEL	SHRENI SHARES PRIVATE LIMITED	159488	11200	
23/10/2019	TEJAS HARSHADBHAI PATEL	RIDDHESHKUMAR GIRISHBHAI BHANDARI	161056	11200	
23/10/2019	TEJAS HARSHADBHAI PATEL	KANTA RANI	160608	11200	
23/10/2019	TEJAS HARSHADBHAI PATEL	RIDDHESHKUMAR GIRISHBHAI BHANDARI	161840	11200	
23/10/2019	TEJAS HARSHADBHAI PATEL	RIDDHESHKUMAR GIRISHBHAI BHANDARI	161840	11200	
23/10/2019	TEJAS HARSHADBHAI PATEL	RIDDHESHKUMAR GIRISHBHAI BHANDARI	161840	11200	
23/10/2019	TEJAS HARSHADBHAI PATEL	MEGNABEN SANJAYKUMAR GANDHI	161728	11200	
24/10/2019	NANDITA TEJASKUMAR PATEL	KANTA RANI	164528	11200	
05/11/2019	TEJAS HARSHADBHAI PATEL	NAVEEN GUPTA	189840	11200	
05/11/2019	TEJAS HARSHADBHAI PATEL	HARESHBHAI CHIMANBHAI CHAUHAN	379680	22400	
05/11/2019	TEJAS HARSHADBHAI PATEL	SHRENI SHARES PRIVATE LIMITED	189840	11200	
06/11/2019	NANDITA TEJASKUMAR PATEL	SHRENI SHARES PRIVATE LIMITED	191520	11200	
06/11/2019	NANDITA TEJASKUMAR PATEL	RAJESHWARI STOCK BROCKING PVT LTD	193200	11200	
06/11/2019	NANDITA TEJASKUMAR PATEL	NIRAV J SHAH HUF	579600	33600	
08/11/2019	TEJAS HARSHADBHAI PATEL	HARESHBHAI CHIMANBHAI CHAUHAN	199920	11200	

51. From the above table, I observe that Noticee 1 and Noticee 2 have executed 42 trades during the window closure period from October 04, 2019 to November 08, 2019 and have bought a total quantity of 3,92,000 and sold a total quantity of 1,23,200.Noticee 1 and Noticee 2 have not submitted any reason for trading during trading window closure period either during investigation or during present proceedings.

52. In view of the above and from material available on record, I observe that Noticee 1 and Noticee 2 traded during the trading window closure period starting from October 01, 2019 till November 16, 2019 & have thus violated the provision of Para 4 of Schedule B, read with Regulation 9(1) of SEBI (PIT) Regulations 2015.

c) Whether Noticee 1 and Noticee 2 made a delayed disclosure under SEBI (PIT) Regulations 2015?

53. It has been alleged that Noticee 1 and Noticee 2 have violated Regulation 7(2)(a) of SEBI (PIT) Regulations, 2015. I note that Regulations 7(2)(a) of SEBI (PIT) Regulations, 2015 provides that:

"*7 (2) (a) Every promoter, member of the promoter group, designated person and director of every company shall disclose to the company the number of such securities acquired or disposed of within two trading days of such transaction if the value of the securities traded, whether in one transaction or a series of transactions over any calendar quarter, aggregates to a traded value in excess of ten lakh rupees or such other value as may be specified.*

54. From the material available on record, I note that Noticee 1 and Noticee 2 have undertaken transactions during the IP. The following table provides for the transactions undertaken by the Noticee 1 and Noticee 2 alongwith the threshold value and time limit as prescribed under regulation 7(2)(a) of SEBI (PIT) Regulations, 2015.

Trades undertaken by Noticee 1

Table-14

Date	**Qnty Bought**	**Buy rate**	**Qnty Sold**	**Sell rate**	**Total Value Transacted**	**Due date of Disclosure required under reg 7(2)(a) of SEBI(PIT) Regulation 2015**	**Date of Disclosures by the Entity to the Company under reg 7(2)(a) of SEBI(PIT) Regulation 2015**	**Date of Disclosures by the Company to the Exchange under reg 7(2)(b) of SEBI(PIT) Regulation 2015**	**Duration of Delay under reg 7(2)(a) of SEBI(PIT) Regulation 2015**
06/09/2019	1,28,000	9.06	0	0.00	11,59,680	on or before 10/09/2019	02/01/2020	03/01/2020	82 days
09/09/2019	16,000	9.23	24,000	8.72	3,56,960	NA			
11/09/2019	16,000	9.23	0	0.00	1,47,680	NA			
16/09/2019	32,000	10.22	16,000	9.27	4,75,360	NA			
17/09/2019	0	0.00	8,000	10.50	84,000	on or before 19/09/2019			75 days

18/09/2019	56,000	10.28	88,000	10.75	15,21,680	on or before 20/09/2019			74 days
20/09/2019	0	0.00	11,200	8.30	92,960	NA			
23/09/2019	0	0.00	11,200	8.94	1,00,128	NA			
24/09/2019	0	0.00	56,000	8.97	5,02,320	NA			
25/09/2019	22,400	9.70	0	0.00	2,17,280	NA			
26/09/2019	11,200	9.49	11,200	10.18	2,20,304	on or before 30/09/2019			68 days
04/10/2019	11,200	11.80	11,200	11.80	2,64,320				
07/10/2019	0	0.00	11,200	12.30	1,37,760	NA			
17/10/2019	33,600	13.82	0	0.00	4,64,352	NA			
18/10/2019	22,400	14.00	0	0.00	3,13,600	on or before 22/10/2019			52 days
23/10/2019	78,400	14.39	0	0.00	11,28,176	on or before 25/10/2019			49 days
05/11/2019	44800	16.95	0	0.00	7,59,360	NA			
08/11/2019	11200	17.85	0	0.00	1,99,920	NA			

Trades undertaken by Noticee 2

Table-15

Date	Qnty Bought	Buy rate	Qnty Sold	Sell rate	Total Value Transacted	Due date of Disclosure required under reg 7(2)(a) of SEBI(PIT) Regulation 2015	Date of Disclosures by the Entity to the Company under reg 7(2)(a) of SEBI(PIT) Regulation 2015	Date of Disclosures by the Company to the Exchange under reg 7(2)(b) of SEBI(PIT) Regulation 2015	Duration of Delay under reg 7(2)(a) of SEBI(PIT) Regulation 2015
23/09/2019	22,400	8.95	0	0.00	2,00,592	NA	02/01/2020	03/01/2020	
24/09/2019	22,400	9.05	11,200	9.26	2,02,720	NA			
25/09/2019	22,400	9.70	22,400	9.00	4,18,880	NA			
26/09/2019	22,400	9.59	33,600	9.23	5,25,056	On or before 30/09/2019			68 days
27/09/2019	0	0.00	11,200	10.6	1,18,720	NA			
04/10/2019	0	0.00	11,200	11.8	1,32,160	NA			
11/10/2019	33,600	13.38	22,400	13.37	7,49,280	NA			
14/10/2019	56,000	13.40	0	0.00	7,50,736	On or before 16/10/2019			56 days

15/10/2019	22,400	13.59	0	0.00	3,04,528	NA			
16/10/2019	11,200	13.59	22,400	13.49	4,54,384	NA			
17/10/2019	0	0.00	33,600	13.7	4,60,320	On or before 21/10/2019			53 days
18/10/2019	0	0.00	11,200	14.05	1,57,360	NA			
24/10/2019	11,200	14.69	0	0.00	1,64,528	NA			
06/11/2019	56,000	17.20	0	0.00	9,64,320	On or before 08/11/2019			40 days

55. From Table-14 above, I observe that the Noticee 1 has crossed the transaction limit of Rs.10 Lakhs as per regulation 7(2) (a) of SEBI (PIT) Regulation in 6 instances falling on dates 06/09/2019, 17/09/2019, 18/09/2019, 26/09/2019, 18/09/2019 and 23/09/2019. Similarly, on the perusal of Table-15, I observe that the Noticee 2 has also crossed the transaction limit of Rs.10 Lakhs as per regulation 7(2) (a) of SEBI (PIT) regulation in 4 instances falling on dates 26/09/2019, 14/10/2019, 17/10/2019 and 06/11/2019. However, the disclosure for the same was filed with the company by Noticee 1 and Noticee 2 on 02/01/2020 i.e. with a delay ranging from 82 days to 40 days.

56. I note that vide email dated 17/12/2021 and 28/10/2021, information was sought from the company regarding the disclosures received from Noticee 1 and Noticee 2 under section 7(2)(a) and disclosures made by the company with BSE under 7(2)(b) of SEBI (PIT) regulations, 2015. However, no reply was received from the company.

57. Further, I note that the comments were also sought from Noticee 1 and Noticee 2 vide email dated 21/02/2021, regarding the reasons for delay in disclosure with respect to reg 7 (2) (a) of SEBI (PIT) regulations, 2015. However, no reply was received from the Noticee 1 and Noticee 2.

58. I note that the BSE vide email dated 01/11/2021 and 23/02/2022 to SEBI have clarified that Noticee 1 and Noticee 2 have made the disclosure to the company only on 02/01/2020 under regulation 7(2)(a) of SEBI (PIT) regulations, 2015 and the same has been disclosed by the company to the exchange under regulation 7(2)(b) of SEBI(PIT) Regulation, 2015 on 03/01/2020.

59. In light of the above and from the material available on record, I observe that the Noticee1 and Noticee 2 have violated the provision of 7(2) (a) SEBI (PIT) Regulations, 2015 by delaying in submitting disclosure ranging from 68 days to 40 days (by Noticee 1) in 6 instances falling on dates 06/09/2019, 17/09/2019, 18/09/2019, 26/09/2019, 18/09/2019

and 23/09/2019 and from 82 days to 49 days (by Noticee 2) in 4 instances falling on dates 26/09/2019, 14/10/2019, 17/10/2019 and 06/11/2019.

60. From the foregoing, I observe that Noticee 1 and Noticee 2 have violated the following provision :-

a) Noticee 1 and Noticee 2 have traded for 18 days & 14 days respectively, during the IP without submitting any trading plan, while in possession of UPSI pertaining to the financial results for the company for the half year ended September 2019 and thereby violated Section 12A(d) & (e) of SEBI Act, 1992 read with Regulation 4(1) of SEBI (PIT) Regulations, 2015.

b) Noticee 1 and Noticee 2 have undertaken trade in 20 instances and 23 instances respectively, during the Trading window closure period starting from 1st October, 2019 till 16th November, 2019 thereby, violated the provision of Clause 4 of Schedule B, read with Regulation 9(1) of SEBI (PIT) Regulations 2015.

c) Noticee 1 has crossed the transaction limit of Rs.10 Lakhs as per regulation 7(2) (a) of SEBI (PIT) regulation, 2015 in 6 instances falling on 06/09/2019, 17/09/2019, 18/09/2019, 26/09/2019, 18/09/2019 and 23/09/2019. However, it is observed that the Noticee 1 has made the disclosure under SEBI (PIT) regulations, 2015 for the stated transactions on 02/01/2020 only, which amounts to delay in disclosure (ranging from 40 days to 68 days) and thus Noticee 1 violated the provision of regulation 7(2)(a) SEBI of (PIT) Regulations, 2015.

d) Noticee 2 had crossed the transaction limit of Rs.10 Lakhs as per regulation 7(2) (a) of SEBI (PIT) regulation in 4 instances falling on dates 26/09/2019, 14/10/2019, 17/10/2019 and 06/11/2019. However, it is observed that the Noticee 2 has made the disclosure under SEBI (PIT) regulations, 2015 for the stated transactions on 02/01/2020 only, which amounts to delay in disclosure (ranging from 49 days to 82 days) and thus violated the provision of regulation 7(2)(a) of SEBI (PIT) Regulations, 2015.

ISSUE II: Does the violation, if any, on part of the Noticee 1 and Noticee 2 attract penalty under Section for 15G, 15HB and 15A(b) of SEBI Act, 1992?

61. As has been established in foregoing paragraphs that Noticee 1 and Noticee 2 have violated the Section 12A(d) & (e) of SEBI Act, 1992 read with Regulation 4(1) of SEBI (PIT) Regulations, 2015, Provision of Clause 4 of Scheduled B, read with Regulation 9(1) of SEBI (PIT) regulations 2015 and Regulation 7(2)(a) of SEBI (PIT) Regulations 2015.

62. The Hon'ble Supreme Court of India in the matter of SEBI vs. Shri Ram Mutual Fund interalia held that*" once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties committing such violation becomes totally irrelevant. Once the contravention is established then the penalty is to follow."*

63. Therefore, I am convinced that it is a fit case for imposition of penalty under the provisions of Section 15G , 15HB and 15A(b) of the SEBI Act, which reads as given below:

15G- Penalty for insider trading- 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 [which shall not be less than ten lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher].

15HB- Penalty for contravention where no separate penalty has been provided- Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be [liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.]

Penalty for failure to furnish information, return, etc.

Section 15A. If any person, who is required under this Act or any rules or regulations made thereunder,—

(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations [or who furnishes or files false, incorrect or incomplete information, return, report, books or other documents], he shall be liable to [a penalty [which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees]];

ISSUE III: If so, how much penalty should be imposed on the Noticees taking into consideration the factors mentioned in Section 15J of the SEBI Act?

64. While determining the quantum of penalty under sections 15G , 15HB and 15A(b) of the SEBI Act, it is important to consider the factors stipulated in section 15J of the SEBI Act, which reads as under:-

15J - 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."

65. From the material available on record, I note that Noticee 1 bought 2,01,600 shares and sold 22,400 shares and Noticee 2 bought 1,90,400 shares and sold 1,00,800 shares during the UPSI period while in possession of price sensitive information. It is observed that no shares have been sold immediately after UPSI period. In this regard, I note that Hon'ble Supreme Court in the matter of *Securities and Exchange Board of India vs Abhijeet Rajan (civil appeal no. 563 of 2020)* said that "*This is a case where a man of ordinary prudence would have expected the price of the shares to go up, after the information became public, due to the impact that the information was likely to have on the turnover/net worth of the company."* In view of the above, I observe that the declaration of financial results had a positive impact on the share price of the company and the Noticees would have made profit by selling the shares after the UPSI period. The buying and selling by the Noticees during UPSI period and not selling anything immediately after USPI period defies any logic of the

trading while in possession of UPSI. However, fact remain that the Noticees traded when in possession of the confidential and material non-public information about the company. Taking advantage of the privileged access is breach of individual fiduciary duty.

66. I am of the view that the disclosures requirements under the respective regulations serve very important purposes. The stock exchange is informed via disclosures so that the investing public will come to know of the position enabling them to stick on with or exit from the company. Further, timely disclosures of the details of the shareholding of the persons acquiring substantial stake is of significant importance as such disclosures also enable the regulators to monitor such acquisitions. Further, Hon'ble Securities Appellate Tribunal (‘SAT’) in the matter of Coimbatore Flavors & Fragrances Ltd. vs SEBI(Appeal No. 209 of 2014 order dated August 11, 2014), has also held that “*Undoubtedly, the purpose of these disclosures is to bring about more transparency in the affairs of the companies. True and timely disclosures by a company or its promoters are very essential from two angles. Firstly; investors can take a more informed decision to invest or not to invest in a particular scrip secondly; the Regulator can properly monitor the transactions in the capital market to effectively regulate the same*."

67. Further, Hon’ble SAT in its judgement dated October 14, 2014 in the matter of Virendrakumar Jayantilal Patel vs. SEBI(Appeal No. 299 of 2014), has held that *“.......... obligation to make disclosures within the stipulated time is a mandatory obligation and penalty is imposed for not complying with the mandatory obligation.”*

ORDER

68. Having considered the facts and circumstances of the case, the material available on record, the factors mentioned in Section 15J of the SEBI Act, the purpose of SEBI (PIT) Regulations 2015, taking note of Section 15G, 15HB and 15A(b) of the SEBI Act, and also taking into account judgment of the Hon’ble Supreme Court in *SEBI vs. Bhavesh Pabari (2019) 5 SCC 90* and in exercise of power conferred upon me under section 15-I of the SEBI Act, 1992 read with rule 5 of the Adjudication Rules, 1995, I hereby impose following penalty under section 15G, 15HB and 15A(b) of the SEBI Act, 1992 on the Noticees:

Name of entity	Provisions violated	Penalty (Rs.)
Tejas Harshadbhai Patel	1. Section 15G of SEBI Act, 1992	20,00,000/- (Rs. Twenty Lakhs only)
Nandita Tejaskumar Patel	2. Section 15HB of SEBI Act, 1992	10,00,000/- (Rs Ten Lakhs Only)
	3. Section 15A(b) of SEBI Act, 1992	5,00,000/- (Rs Five Lakhs Only)
Total		35,00,000/- (Rs. Thirty Five Lakhs Only) (To be paid Jointly and Severally)

69. I am of the view that the said penalty is commensurate with the lapse/omission on the part of the Noticee.

70. The Noticee 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 online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT → Orders → Orders of AO → PAY NOW. In case of any difficulties in payment of penalties, Noticee may contact the support at portalhelp@sebi.gov.in.

71. The aforesaid Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to "The Division Chief (Enforcement Department 1 DRA-2), Securities and Exchange Board of India, SEBI Bhavan, Plot No. C/7, "G" Block BKC, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051." The Noticee shall also provide the following details while forwarding DD / payment information:

1. Case Name:	
2. Name of payee:	
3. Date of payment:	
4. Amount paid:	
5. Transaction no.:	
6. Bank details in which payment is made:	

7. Payment is made for: (like penalties/ disgorgement/ recovery/ settlement amount and legal charges along with order details)	

72. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

73. In terms of the provisions of rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticee 1and Noticee 2 and also to the Securities and Exchange Board of India.

Place: Mumbai **BARNALI MUKHERJEE**

Date: October 21, 2022 **ADJUDICATING OFFICER**