BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER: Order/NH/VS/2022-23/19864-19866]

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

In respect of –

1. **Gautam Dutta** (PAN: AADPD6689F) having address at K 2035 IInd Floor, Chittaranjan Park, New Delhi – 110019
2. **N C Gupta** (PAN: AAKPG7192B) having address at House No. A 83, Ground Floor, Block A, Palladians Sector 47, Gurgaon – 122001
3. **Pramod Arora** (PAN: AAGPA5278G) having address at Ground Floor, 11-Paschim Marg, DLF Phase – I, Gurgaon – 122001

In the matter of PVR Limited

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") initiated adjudication proceedings against Mr. Gautam Dutta, CEO Operations of PVR Limited ("**Noticee 1"**), Mr. N. C. Gupta, Company Secretary of PVR Limited ("**Noticee 2**"), and Mr. Pramod Arora, Chief Development Officer ("**Noticee 3**") of PVR Limited (hereinafter collectively referred to as "**the Noticees"**), under Sections 15A (b) and 15HB of the Securities and Exchange Board of India Act, 1992 **("SEBI Act")** for alleged violation of the SEBI (Prohibition of Insider Trading) Regulations, 2015 ("**PIT Regulations**") and the SEBI (Prohibition of Insider Trading) Regulations, 1992 ("**PIT Regulations 1992**") while dealing in the

shares of PVR Limited ("**the Company**") between April 1, 2014 and March 31, 2017 ("**investigation period**").

APPOINTMENT OF ADJUDICATING OFFICER

2. Ms. Maninder Cheema was appointed as Adjudicating Officer vide order dated April 7, 2021 to inquire into and adjudge the violations alleged in respect of the Noticees. Subsequently, upon transfer of the matter, the undersigned was appointed as Adjudicating Officer ("**AO**") vide order dated June 16, 2022 to inquire into and adjudge under Section 15-I of the SEBI Act read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter be referred to as the "**Adjudication Rules**") the aforesaid alleged violations by the Noticees. The appointment of the undersigned as AO was communicated vide communique dated June 27, 2022.

SHOW CAUSE NOTICE, REPLY AND HEARING

3. Show Cause Notice ("**SCN"**) No. EAD5/MC/RM/23372/2021 dated September 9, 2021 issued to the Noticees by the previous AO levelled the following allegations against the Noticees:-
   i. *SEBI carried out a detailed investigation into the trading in the shares of PVR Ltd. to examine in the matter of violation of SEBI (Prevention of Insider Trading Regulations) 1992/ SEBI (Prevention of Insider Trading Regulations) 2015.*
   ii. *The Company (CIN: L74899DL1995PLC067827) PVR Limited was incorporated on April 26, 1995 under the Companies Act, 1956 as "Priya Village Roadshow Limited" and obtained a certificate of commencement of business on December 4, 1995. On June 28, 2002 the name of the company was changed from "Priya Village Roadshow Limited" to "PVR Limited". The company got listed on BSE and NSE on 04/01/2006. The registered office of the company is "61, Basant Lok, Vasant Vihar, New Delhi - 110057".*
   iii. *During the investigation, the Company vide email dated March 29, 2019 (Annexure-2 to SCN) provided the list of Designated Persons for the period 2014-15 to 2016-17. Trades executed by the Designated Persons during the*

Investigation period (i.e. April 01, 2014 to March 31, 2017) were examined along with details of trading window closure by the Company.

iv. *Details of the trading window closure during the Investigation period as informed by the company were as follows:*

Date and time of information regarding Trading Window Closure sent to Designated person through email	Date of start of closure of Trading Window	Date of end of closure of Trading Window	Date of Next board Meeting	Reason for such closure
21/05/2014 12:15	22/05/2014	30/05/2014	29/05/2014	Fin Results for Mar 31, 2014
23/07/2014 14:07	24/07/2014	01/08/2014	31/07/2014	Fin Results for June 30, 2014
21/10/2014 11:15	21/10/2014	01/11/2014	03/10/2014	Fin Results for Sep 30, 2014
20/01/2015 10:56	20/01/2015	31/01/2015	30/01/2015	Fin Results for Dec 31, 2014
19/05/2015 14:12	19/05/2015	31/05/2015	29/05/2015	Fin Results for Mar 31, 2015
10/06/2015 17:45	12/06/2015	14/06/2015	12/06/2015	Urgent meeting
08/07/2015 16:21	09/07/2015	23/07/2015	22/07/2015	Fin Results for June 30, 2015
20/10/2015 13:42	20/10/2015	05/11/2015	03/11/2015	Fin Results for Sep 30, 2015
21/01/2016 11:38	21/01/2016	31/01/2016	29/01/2016	Fin Results for Dec 31, 2015
18/05/2016 12:45	19/05/2016	29/05/2016	27/05/2016	Fin Results for Mar 31, 2016
20/07/2016 11:35	21/07/2016	31/07/2016	28/07/2016	Fin Results for June 30, 2016
19/10/2016 12:09	20/10/2016	29/10/2016	27/10/2016	Fin Results for Sep 30, 2016
25/01/2017 11:53	26/01/2017	05/02/2017	03/02/2017	Fin Results for Dec 31, 2016

v. *On examination of trades executed during the Investigation period by a few of the designated employees of PVR Limited i.e. Mr. Gautam Dutta (Noticee-1), CEO Operations, Mr. N C Gupta (Noticee-2), Company Secretary, Mr. Pramod Arora (Noticee-3), Chief Development Officer, and Mr. Kamal Gianchandani (Noticee-4), Chief Business Planning, certain violations were observed. Copy of list of trades executed by Designated Employees were placed at Annexure-3 to the SCN.*

Noticee 1

vi. *62 trades during the investigation period were executed by Noticee-1 in the scrip of PVR Ltd., out of the same, 43 trades (if both the legs of the transactions are treated as separate) were contra trades. List of Trades executed by Noticee-1 during the Investigation Period was attached as Annexure-4 to the SCN. Out of the said contra trades, Noticee-1 allegedly earned profit of Rs. 49,941 (profit calculated on FIFO basis without deducting the loss incurred out of Contra Trades). In this regard, PVR Limited vide letter dated February 10, 2021, inter-alia, stated that since the trades done by Noticee-1 were not reported to them, they did not take any steps during the said period. However, on being made aware of the contra trades during the course of SEBI's investigation, PVR remitted a Demand Draft, (DD no. 022703 for Rs. 49,941) (Annexure–5 to the SCN) in favour of SEBI –Investor Protection and Education Fund in accordance with Clause 10 of Schedule B of SEBI (Prohibition of Insider Trading) Regulations, 2015.*

vii. *Therefore, by entering into Contra trades within the specified time, Noticee-1 was alleged to have violated Clause 10 of Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders prescribed in Schedule B read with Regulation 9 (1) of SEBI (Prohibition of Insider Trading) Regulations, 2015.*

viii. *It was also observed that during the investigation period, four trades in the scrip of PVR Ltd were executed by Noticee-1 during trading window closure which were as follows:*

	Date	Type of transaction	Qty	Value
Mr. Gautam Dutta, CEO - Operations.	29-01-2016	Buy	600	4,42,200
	29-01-2016	Sell	600	4,41,210
	26-05-2016	Sell	98	83,006
	27-05-2016	Buy	98	83,151

ix. *The Company vide email dated Jan 21, 2016 (Annexure-6 to SCN) had informed Designated Persons (including Noticee-1) regarding closure of Trading window from Jan 21, 2016 to Jan 31, 2016, as its Board meeting was scheduled to be held on Jan 29, 2016 for approving financial results for PE*

Dec 31, 2015. Similarly, company vide email dated May 18, 2016 (Annexure-7) informed Designated Persons (including Noticee-1) regarding closure of trading window from May 19, 2016 to May 29, 2016 as Board meeting was scheduled to be held on May 27, 2016 for approving financial results for PE March 31, 2016. However, Noticee-1 executed two trades on 29-01-2016, executed one trade on 26-05-2016 and 27-05-2016 each (as stated in above mentioned table).

x. *Therefore, by entering into trades in shares of the Company during the closure of Trading Window, Noticee-1 was alleged to have violated Clause 4 of Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders specified in Schedule B read with Regulation 9 (1) of SEBI (Prohibition of Insider Trading) Regulations, 2015.*

xi. *Further, it was observed from reply of PVR Ltd. dated February 10, 2021(Annexure-8 to SCN) that during the Investigation period, for none of the 62 trades done by Noticee-1, pre-clearances were obtained from the Board of PVR Ltd. Therefore, by not obtaining pre-clearance from the company for his trades, Noticee-1 was alleged to have violated Clause 6 of Schedule B (Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders) read with Regulation 9 (1) of SEBI (Prohibition of Insider Trading) Regulations, 2015.*

xii. *Further, except for four trades out of 62 trades (two trades executed during calendar quarter Oct-Dec, 2015 and two trades executed during calendar quarter Jan- Mar 2016 were of value less than ten lakh rupees), all other 58 trades were required to be disclosed by Noticee-1 as a designated person to the company under Regulation 7 (2) (a) of SEBI (Prohibition of Insider Trading) Regulations, 2015. However, it was observed from the reply given by the company and Noticee-1 that no such disclosures were made by Noticee-1.*

xiii. *PVR Limited stated in its reply dated February 10, 2021 (Annexure-8 to the SCN**)** that trades carried out by Noticee-1 were not in compliance of the Code. Noticee-1 in his reply to SEBI vide letter dated February 09, 2021 (Annexure-9 to the SCN) stated that he could not get pre-clearances for the trades executed during the Investigation period and all the 43 contra trades were* *inadvertently due to negligence on his part; due to his extremely busy schedule to oversee the operations of the company and a very busy travel schedule, there was mistake on his part to keep track of the intimations /emails for the date of trading window closure. Thus, he could not make compliances required under SEBI (Prohibition of Insider Trading) Regulations, 1992 and SEBI (Prohibition of Insider Trading) Regulations, 2015; that all such trades were executed inadvertently and without malafide intent.*

xiv. *Therefore, by not making disclosures Noticee-1 is alleged to have violated Regulation 7 (2) (a) of SEBI (Prohibition of Insider Trading) Regulations, 2015.*

<u>Noticee 2</u>

xv. *PVR Limited in their letter dated February 10, 2021 (Annexure -8 to the SCN) stated that Noticee-2 was designated as Company Secretary and Compliance Officer, who was responsible to administer the code of conduct and other requirements under SEBI (Prohibition of Insider Trading) Regulations, 1992 and SEBI (Prohibition of Insider Trading) Regulations, 2015 during the Investigation period.*

xvi. *32 trades were done by Noticee-2 during the Investigation period, out of which, eight trades (if both the legs of the transactions are treated as separate) were contra trades. Profit arising out of such contra trades was Rs. 26,537 (profit calculated on FIFO basis without deducting the loss incurred out of contra trades). In this regard, PVR Limited vide letter dated February 10, 2021 (Annexure-8 to the SCN), inter-alia, stated that details of trading done by Noticee-2 was not reported to the company. However, on being made aware of the contra trades during the course of SEBI's investigation, PVR remitted a Demand Draft (DD no. 148090 for Rs. 26,537) disgorging the profit pertaining to contra trades executed by N C Gupta in favour of SEBI –Investor Protection and Education Fund in accordance with Clause 10 of Schedule B of SEBI (Prohibition of Insider Trading) Regulations, 2015.*

xvii. *Noticee-2 in reply dated February 08, 2021 (Annexure 10 to the SCN) stated that the contra trades were conducted for very nominal numbers of shares inadvertently and with no mala-fide intention.*

xviii. *Therefore, by entering into Contra trades within the specified time, Noticee-2 is alleged to have violated Clause 3.3 and 4.2 of Model Code of Conduct for Prevention of Insider Trading for Listed Companies prescribed in Schedule I - Part-A read with Regulation 12 (1) of SEBI (Prohibition of Insider Trading) Regulations, 1992 and Clause 10 of Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders prescribed in Schedule B read with Regulation 9 (1) of SEBI (Prohibition of Insider Trading) Regulations, 2015.*

xix. *Out of the 32 trades done by Noticee-2 during the Investigation period, for 12 trades given below (which includes the contra trades), pre-clearances were not obtained:*

Name of the Designated Employee	Date of Trade	Type	Qty transacted	Value
Mr. N.C. Gupta, Company Secretary and Compliance Officer	08/07/2014	Buy	1,000	6,60,000
	08/07/2014	Sell	1,000	6,70,000
	07/08/2014	Sell	1,000	6,62,292
	18/08/2014	Buy	254	1,58,900
	18/08/2014	Sell	254	1,67,640
	02/12/2015	Buy	404	3,40,572
	02/12/2015	Sell	404	3,43,360
	09/02/2015	Sell	1,000	6,80,998
	13/02/2015	Sell	3,000	21,58,325
	09/03/2015	Sell	1,000	7,10,000
	09/08/2016	Buy	242	2,96,812
	09/08/2016	Sell	242	3,01,821 (proportionately for 242 shares out of 2242 shares sold)

xx. *SEBI has issued Guidance Note on SEBI (Prohibition of Insider Trading) Regulations, 2015 on August 24, 2015, which inter-alia clarifies as follows:*

<u>Query no 8</u>: Who will be approving authority for trades done by the Compliance Officer or his immediate relatives, as Insiders?

<u>Guidance:</u> The board of directors of the company shall be the approving authority in such cases and may stipulate such procedures as are deemed necessary to ensure compliance with these regulations.

xxi. *In respect of the trades where pre-clearances were obtained by Noticee-2 (who was the Company Secretary and Compliance Officer), the pre-clearance orders were obtained from the Sr. VP-Secretarial (Annexure 11 to the SCN) and not from the Board of Directors as required by SEBI (Prohibition of Insider*

Trading) Regulations, 2015. The same was confirmed by the company in its letter dated February 10, 2021 (Annexure 8 to the SCN). Out of the 32 trades done by Noticee-2 during the Investigation period, 16 trades were done subsequent to issuance of above-mentioned Guidance by SEBI.

xxii. *SEBI (Prohibition of Insider Trading) Regulations, 1992 states that the Compliance Officer is a senior level employee who shall report to the Managing Director/Chief Executive Officer and SEBI (Prohibition of Insider Trading) Regulations, 2015 states that the compliance officer shall report to the board of directors and in particular, shall provide reports to the Chairman of the Audit Committee, if any. Hence, Compliance officer should get approval from person who is senior to him in position and not from Sr.VP-Secretarial, who is junior to him. Noticee-2 did not obtain pre-clearances for 12 trades and the remaining 20 trades executed by Noticee-2 during the Investigation period were not authorized by the Board of the company or by a person who was holding position senior to him.*

xxiii. *Noticee-2 in reply dated February 08, 2021 (Annexure 10 to the SCN) stated that the sale of shares of PVR Limited was made by him in respect of shares allotted under PVR ESOP Schemes and due to oversight pre-clearances could not be obtained.*

xxiv. *Therefore, by not obtaining pre-clearance permission for his trades from the Board of PVR Ltd, Noticee-2 was alleged to have violated Clause 3.3 of Model Code of Conduct for Prevention of Insider Trading for Listed Companies prescribed in Schedule I - Part -A read with Regulation 12 (1) of SEBI (Prohibition of Insider Trading) Regulations, 1992 read with Guidance note issued by SEBI on August 24, 2015 and Clause 6 of Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders prescribed in Schedule B read with Regulation 9 (1) of SEBI (Prohibition of Insider Trading) Regulations, 2015.*

xxv. *Further, Noticee-2 did not disclose following 4 trades to the company as required under Regulation 13 (4) of SEBI (Prohibition of Insider Trading) Regulations, 1992:*

Name of the Designated Employee	Date of Trade	Type	Qty transacted	Value	Disclosures required under Regulation 13 (4) of SEBI (PIT) Regulations, 1992
Mr. N.C. Gupta, Company Secretary and Compliance Officer	07/08/2014	Sell	1,000	6,62,292	Not made, Change in shareholding exceeds 5 lakhs in value as per 13 (4) of PIT 1992
	09/02/2015	Sell	1,000	6,80,998	
	13/02/2015	Sell	3,000	21,58,325	
	09/03/2015	Sell	1,000	7,10,000	

xxvi. Therefore, by not making disclosures Noticeee-2 was alleged to have violated Regulation 13 (4) of SEBI (Prohibition of Insider Trading) Regulations, 1992.

Noticee 3

xxvii. *During the Investigation period, Noticee-3 had traded in the scrip of PVR Limited. The Company vide their letter dated February 10, 2021 (Annexure-8 to the SCN) stated that Noticee-3 was on Gardening leave from April 01, 2014 to August 31, 2014. After September 01, 2014, he left the Company. Trades executed by Noticee-3 during the investigation period when he was employee of the company were as follows:*

Date	Type of transaction	Qty	Value	Profit	Traded during trading window closure	Pre-clearances obtained	Disclosed under Reg 13 (4) of PIT 1992
05/06/2014	Sell	196	1,25,832			No	Less than five lakhs
06/06/2014	Buy	196	1,21,520	4312		No	Less than five lakhs
12/06/2014	Sell	880	5,36,495			No	No
13/06/2014	Sell	2,602	15,77,520			No	No
17/06/2014	Sell	1,500	9,13,509			No	No
18/06/2014	Sell	5,800	36,18,740			No	No
19/06/2014	Sell	4,900	32,89,519			No	No
20/06/2014	Sell	500	3,48,546			No	Less than five lakhs
24/07/2014	Buy	2,778	18,28,547		Yes	No	No
24/07/2014	Sell	2,778	18,07,364	(21,182.55)	Yes	No	No
01/09/2014	Sell	2,609	17,63,313			No	No

xxviii. *11 trades were done by Noticee-3 during the Investigation period and out of the same, four trades (if both the legs of the transactions are treated as separate) were contra trades. Profit arising out of such contra trades was Rs.*

4,312 (profit calculated on FIFO basis without deducting the loss incurred out of contra trades).

xxix. *In this regard, PVR Limited vide letter dated February 10, 2021 (Annexure -8 to the SCN), inter-alia, stated that details of these trades done by Noticee-3 were not reported to the company. However, on being made aware of the contra trades during the course of SEBI's investigation, PVR remitted a Demand Draft (DD no. 148091 for Rs. 4,312) (Annexure-5 to the SCN) in the favour of SEBI – Investor Protection and Education Fund in accordance with Clause 10 of Schedule B of SEBI (Prohibition of Insider Trading) Regulations, 2015.*

xxx. *Noticee-3 in reply dated February 8, 2021 (Annexure -12 to the SCN) stated that he was allotted equity shares' under PVR ESOP Scheme and was on Gardening leave from April 01, 2014 to August 31, 2014. He had inadvertently entered into two contra trades during the said period without any malafide intention. During the leave period he was not attending office and was not aware of any Unpublished Price Sensitive Information.*

xxxi. *Though Noticee-3 was on Gardening leave from April 01, 2014 to September 01, 2014, Noticee-3 was still the employee of the company and a designated employee who was supposed to comply with the Code of Conduct framed by the company and code prescribed under SEBI (Prohibition of Insider Trading) Regulations, 1992.*

xxxii. *Therefore, by entering into Contra trades Noticeee 3 was alleged to have violated Clause 4.2 of Model Code of Conduct for Prevention of Insider Trading for Listed Companies prescribed in Schedule I Part -A read with Regulation 12 (1) of SEBI (Prohibition of Insider Trading) Regulations, 1992.*

xxxiii. *Company vide email dated July 23, 2014 (Annexure -13 to the SCN) had informed Designated Persons (including Noticee-3) regarding closure of trading window from July 24, 2014 to August 01, 2014 as Board meeting of PVR Limited was scheduled to be held on July 31, 2014 to approve financial results for period ending June 30, 2014. However, Noticee-3 executed trades on July 24, 2014 i.e. during the closure of the trading window.*

xxxiv. *Therefore, by entering into trades for Company Scrip during the closure of Trading Window Noticee-3 is alleged to have violated Clause 3.2.2 of Model*

Code of Conduct for Prevention of Insider Trading for Listed Companies prescribed in Schedule I Part -A read with Regulation 12 (1) of SEBI (Prohibition of Insider Trading) Regulations, 1992.

xxxv. *From April 01, 2014 to September 01, 2014, Noticee-3 had executed 11 trades, for none of which Noticee-3 got pre-clearances from the company, which was confirmed by the company. Therefore, by not obtaining pre-clearance permission for his trades from the Board of PVR Ltd, Noticee-3 is alleged to have violated Clause 3.3 of Model Code of Conduct for Prevention of Insider Trading for Listed Companies prescribed in Schedule I Part -A read with Regulation 12 (1) of SEBI (Prohibition of Insider Trading) Regulations, 1992.*

xxxvi. *Out of such 11 trades, 8 trades were for value exceeding Rs. 5 lakhs requiring disclosures by the Designated Employee to the company under Regulation 13 (4) of SEBI (Prohibition of Insider Trading) Regulations, 1992. However, PVR Limited has confirmed that no such disclosures were made by Noticee-3 to the company (Annexure -8 to the SCN). Therefore, by not making disclosures Noticee-3 is alleged to have violated Regulation 13 (4) of SEBI (Prohibition of Insider Trading) Regulations, 1992.*

4. The SCN was served upon Noticees 1 and 3 vide e-mail dated September 9, 2021, and on Noticees 2 and 3 by SPAD on September 17, 2021 as per tracking details obtained from the website of India Post. Proof of service of the said e-mails is on record.

5. Vide e-mails and letters dated September 21, 2021 Noticees 1, 2 and 3 submitted copies of vakalatnamas in favour of Shardul Amarchand Mangaldas and Co., authorising them to appear on behalf of the Noticees through Ms. Manjari Tyagi, Ms. Deepika Goyal and Mr. Tanish Prabhakar and/or any of their partners or associates in the above matter. Vide their letters dated September 21, 2021 the Noticees also sought copies of all the documents, information, Reports etc. which had been relied upon by SEBI in the present adjudication proceedings, and an opportunity to inspect originals of the same.

6. In response to the Noticees' request for documents, vide e-mail dated October 6, 2021 the said Noticees were provided relevant extract of the investigation report pertaining to the violations alleged in respect of the Noticees. The Noticees were granted an opportunity of hearing by videoconferencing through WebEx on November 17th and 18th, 2021 before the previous AO. The Noticees were also informed that in case they had any further submissions regarding inspection of documents, they could make them during the hearing.

7. Vide e-mails dated October 20, 2021 the Noticees intimated that on October 14, 2021 they had filed settlement applications with SEBI for settlement of the adjudication proceedings initiated against the Noticees under SCN dated September 9, 2021, in terms of the SEBI (Settlement Proceedings) Regulations, 2018 ("Settlement Regulations"). Further, the Noticees requested extension of time to file replies to the SCN until after the settlement applications were disposed of.

8. Vide e-mail dated May 31, 2022, intimation was received from the Settlement Division of SEBI that with regard to the settlement applications filed by Noticees 1, 2 and 3 in respect of the SCN, Internal Committee meeting was held wherein the Noticees were communicated the Indicative Amount and fifteen working days' time was provided to file Revised Settlement Terms. However, the Noticees did not submit Revised Settlement Terms within the stipulated time frame. Accordingly, the Settlement Applications filed by the Noticees were rejected under Regulation 6 (1) (b) of the Settlement Regulations. E-mail of the Settlement Division regarding the above are on record.

9. Subsequently, upon rejection of their settlement applications, the Noticees were granted opportunities of hearing on July 20, 2022 vide Hearing Notice Nos. SEBI/EAD2/NH/VS/OW/P/2022/28179, 28180 and 28181 dated July 8, 2022.

10. Vide e-mails dated July 17, 2022 the Authorised Representatives of the Noticees acknowledged receipt of the Hearing Notices dated July 8, 2022, and confirmed the presence of Mr. Rohan Rajyadaksha, Counsel, Ms. Manjari Tyagi, Ms.

Deepika Goyal and Mr. Pramod Arora (Noticee 3), at the hearing scheduled on July 20, 2022.

11. Vide e-mails dated July 18, 2022, Noticees 1-3 submitted their replies to the SCN, which are reproduced below for reference:-

Noticee 1

i. *Noticee 1 was designated as the CEO Operations of the Company during the relevant investigation period between April 1, 2014 and March 31, 2017*
ii. *Pursuant to receipt of the Notice, on September 29, 2021, the advocates for the Noticee sent an email to SEBI, requesting SEBI to provide an opportunity to inspect all documents, information, reports, notes, evidence, complaints, statements, etc. that may have been considered by, referred to or relied upon by SEBI while issuing the Notice. On October 6, 2021 SEBI acknowledged the request of the Noticee and provided "relevant extract of the Investigation Report pertaining to violations alleged on the Noticee".*
iii. *On October 13, 2021, the Noticee filed an application for settlement in terms of Regulation 3 of SEBI (Settlement Proceedings) Regulations, 2018 ("Settlement Regulations") to settle the allegations made against the Noticee, under the Notice. Thereafter, the Noticee sent emails to SEBI dated October 20, 2021 and November 10, 2021, requesting SEBI to keep the adjudication proceedings in abeyance until the Noticee's settlement application was disposed of by SEBI. On October 25, 2021, SEBI asked the Noticee to make the required disclosures under Regulation 7(2)(a) of the PIT Regulations within seven days. The Noticee made the relevant disclosures on October 29, 2021, (copy of which is attached as Annexure 2 to the reply). Through an email dated November 16, 2021, SEBI adjourned the personal hearing in the matter until further notice*.
iv. *On December 16, 2021, SEBI sent an email to the Noticee advising it to attend the Internal Committee Meeting ("IC Meeting") on December 22, 2021 through video conference which was subsequently postponed until further notice due to some official exigencies*.

v. *Thereafter, the Noticee was represented by his authorized representatives at three IC Meetings conducted with SEBI on February 24, 2022, March 4, 2022 and April 6, 2022. During these IC Meetings, the authorized representative of the Noticee made detailed submissions before the Internal Committee as to why a lenient view should be taken in the present matter. However, as the indicative settlement amount proposed by SEBI was not considered by the Noticee to be commensurate with the alleged violations, the Noticee decided to not proceed with the settlement of proceedings under the Settlement Regulations.*

vi. *An email was received from SEBI on July 12, 2022, attaching a notice for personal hearing (dated July 8, 2022), whereby SEBI directed the Noticee to submit his response to the Notice by July 18, 2022 and has also given an opportunity for personal hearing on July 20, 2022.*

vii. *The Noticee 1 has not violated the objective and intent of the PIT Regulations.*

viii. *As per the preamble to the PIT Regulations, the objective with which the PIT Regulations have been enacted is "to put in place a framework for prohibition in insider trading in securities and to strengthen the legal framework thereof". The overall scheme of the PIT Regulations is aimed at ensuring that there is no information asymmetry in the market, as that would disrupt the level playing field and enable certain entities to trade in the securities of a listed company on the basis of knowledge of price sensitive information that is otherwise not generally available in the public domain. The Hon' ble Tribunal in the matter of <u>E. Sudhir Reddy v. SEBI</u> (Appeal No. 138 of 2011, decided on December 16, 2011 by SAT) has discussed the purpose behind enactment of laws prohibiting insider trading. The relevant portion of the order is quoted below:*

"A shareholder becomes an owner of the company to the extent of the value of shares held by him. He is therefore, entitled to his share in the profits earned by the company. Therefore, performance of a company is of primary importance to the investors as well as to the general public who might be interested in investing in the company. <u>The shareholders and general public get information about the company either through the annual</u>

report or during the annual general meeting. However, persons in the company or otherwise concerned with the affairs of the company are in possession of such information before it is actually made public. The directors of the company or for that matter even professionals like Chartered accountants and Advocates advising the company on its business related activities are privy to the performance of the company and come in possession of information which is not in public domain. Knowledge of such unpublished price sensitive information in the hands of persons connected to the Company puts them in an advantageous position over the ordinary shareholders and the general public. Such information can be used to make gains by buying shares anticipating rise in the price of the scrip or it can also be used to protect themselves against losses by selling the shares before the price falls. Such trading by the insider is not based on level playing field and is detrimental to the interest of the ordinary shareholders the company and general public. It is with a view to curb such practices that section 12A of the SEBI Act makes provisions for prohibiting insider trading and the Board also framed the Insider Trading Regulations to curb such practice."

ix. *Further, the Whole Time Member of SEBI, in a recent order in the matter of insider trading in the shares of Infosys Limited (SEBI WTM Order No. /MPB/ISD/192/2021 decided on May 31, 2021) has highlighted the intent behind formulating the PIT Regulations. The relevant paragraph is quoted below:-*

   "As the regulator of the capital markets, SEBI has the duty to safeguard the interests of investors and protect the integrity of the securities market. PIT Regulations have been formulated with the main objective of prevention of insider trading activity and to prohibit the communication of UPSI, procurement of UPSI and trading by insiders who can derive undue benefit out of their possession of UPSI compared with the rest of the market, owing to asymmetrical access to such information. Such trading affects the integrity of the market and also affects investors who not have access to such UPSI".

x. *In the instant matter, as already stated by the Noticee in his reply to SEBI (attached as Annexure 9 to the Notice), the errors had occurred inadvertently due to negligence on the part of the Noticee, as he had an extremely busy schedule while he was engaged with the Company during the Investigation Period. Due to this reason, he was unable to keep track of the intimations and emails regarding the Company's insider trading policies and was ignorant about the legal requirements under the PIT Regulations.*

xi. *The alleged violation of the PIT Regulations has occurred inadvertently due to negligence on the part of the Noticee and there no intention on part of the Noticee to circumvent any requirements of the PIT Regulations. The Noticee did not intend to make any undue gains, which is evident from the fact that from the 62 trades under consideration, an aggregate sum of merely INR 49,941/- was accounted by SEBI as the notional profit (without accounting for the losses incurred on such trades). It must also be noted that the Noticee has corrected his inadvertent non-disclosures under Regulation 7(2)(a) of the PIT Regulations by making appropriate (belated) disclosures on October 29, 2022, a copy of which was enclosed as Annexure 2 for SEBI's reference.*

xii. *Noticee did not undertake any of the trades mentioned in the Notice while in possession of, or on the basis of, any unpublished price sensitive information ("UPSI"). It is also evident from the Notice that SEBI did not find any such misconduct on part of the Noticee during its investigation. Furthermore, there was no impact of the alleged trades on the market or trading in the Company's scrip, and no such allegation has been made under the Notice.*

xiii. *By undertaking the trades in the manner alleged, the Noticee has not derived any unfair advantage over any other market participants or undermined the integrity of the market. The inadvertent errors made by the Noticee as alleged in the Notice were, at the most, technical and procedural lapses, which did not contravene the fundamental objectives of the PIT Regulations and the key mischiefs it seeks to prohibit.*

xiv. *Alleged violations were technical, venial and unintentional in nature.*

xv. *The actions/omissions of the Noticee did not have any market-wide impact, nor did thev affect the interest of the investors in the securities market. Further the Noticee has not made any unlawful gains, nor has he avoided any losses because of these.*

xvi. *Noticee has a spotless track record and has never been subjected to any other proceedings by SEBI on allegations of violation of SEBI regulations. The Noticee has also assisted and cooperated with SEBI during the investigation process, by providing timely replies and information/documents as sought by SEBI. Further, immediately after the Noticee came to know of the alleged violations pursuant to his communications with SEBI, the Noticee had duly remitted the notional profit of INR 49,941 (as computed by SEBI) through a demand draft dated February I l , 2021 in favour of SEBI IPEF, for disgorgement of amounts involved under the contra trades. Therefore, the unintentional and inadvertent lapses in compliance with procedural requirements of the PIT Regulations made by the Noticee were, at the most, technical and inconsequential in nature.*

xvii. *In an order passed by the Hon'ble Tribunal in State Bank of India & Ors v. SEBI (Appeal No. 304 of 2020 decided on January 7, 2021) it was observed that technical violations need not always result in a monetary penalty. "Therefore, though admittedly there is a violation but in the face of excruciating factors in delaying full compliance and therefore leading to a technical violation need not always result in a penalty. The judgment of the Hon'ble Supreme Court in the matter of Bhavesh Pabari (supra) is quite relevant that factors under 15J of the SEBI Act is not exhaustive and the adjudicating authorities can look beyond, wherever genuine reasons/factors exist."*

xviii. *It is further submitted that it is a well-established legal position that merely because a statute provides provision of penalty, it does not imply that the adjudicating body is bound to levy some penalty on the defaulter. The Hon'ble Supreme Court's decision in the matter of Hindustan Steel v. State of Orissa (AIR 1970 SC 253) where it was held – "An order imposing penalty for failure to carry out a statutory obligation is the result of a quasi-*

criminal proceeding and penalty will not he ordinarily imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest or acted in conscious disregard of its obligation. Penalty will not also he imposed merely because it is to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authoritv to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will he justified in refusing to impose penalty when there is a technical or venial breach of the provisions of the Act or where the breach flows from a bonafide belief that the offender is not liable to act in the manner prescribed by the statute..".

xix. *After the Noticee became aware of the alleged violations, there have been no instances of similar lapses on his part since 2017. The Noticee also undertakes that the Noticee will be more careful in his future trades in the securities market.*

xx. *At the time of issuance of SCN, disclosure requirement under Regulation 7 (2) (a) of the PIT Regulations had been done away with by SEBI. One of the allegations under the Notice against the Noticee is that he failed to make requisite disclosures for certain trades undertaken by him during the Investigation Period, as required to be made by each designated person under Regulation 7(2)(a) of the PIT Regulations.*

xxi. *On December 1, 2015 SEBI had issued a circular no. CIR/CFD/DCR/17/2015 by way of which SEBI had sought to automate the disclosure obligations provided under various securities laws and regulations, including Regulation 7(2)(a) of the PIT Regulations with a view to bring in transparency and promote orderly conduct in the market". Thereafter, on August 13, 2021 (i.e., before the issuance of the Notice), SEBI issued a circular no. SEBI/HO/ISD/CIR/P/2021/617 directing that the system driven disclosures were live and the requirement of making manual disclosures under certain SEBI regulations, including Regulation 7(2)(a) of the PIT Regulations, had been done away with. Nonetheless, upon receipt* *of the Notice, the Noticee had filed belated disclosures on October 29, 2021.*

xxii. *As per paragraphs 45 and 46 of the Notice, penalty under Section 15 HB of the SEBI Act, is sought to be levied on the Noticee for the violation of Code of Conduct on account of certain contra trades, allegedÌv undertaken by the Noticee.*

xxiii. *Very recently, while discussing the application of Section 15HB of the SEBI Act, the Hon'ble Tribunal in* Bhargav R. Panchal v. SEBI *(SAT Appeal No. 471 of 2020 decided on July 5, 2022) has stated – "'Section 15HB is a residuary clause meaning thereby that where specific penalties have not been provided elsewhere under Chapter-VI, then a penalty could be awarded under Section 15HB for failure to comply with any provisions of the Act, Rules, Regulations or directions issued by the Board.„"*

xxiv. *The alleged violation of the Code of Conduct on account of contra trades does not warrant any penalty under the SEBI Act on account of two reasons: (a) the Noticee in the present matter incurred a mere profit of INR 49,941/- on account of the said contra trades and hence, there was no intention to make undue profits; and (b) it is an established principle that Section 15HB of the SEBI Act is only applicable for violations for which no separate penalty has been provided. However, Clause 10 of the Code of Conduct clearly provides for the penalty for undertaking contra trades, i.e., disgorgement of the amount of profits derived from the contra trades. Therefore, once the profits earned from contra trades have been disgorged, no additional penalty should be levied for such contra trade violations.*

xxv. *This has been upheld by SAT in* Snehlata Tiwari v. SEBI *(Appeal no. 175 of 2020 decided on April 28, 2021 wherein it was observed – "In our opinion, the imposition of penalty of Rs. 1 lakh is wholly erroneous and cannot be sustained…Clause 10 of the Code of Conduct is thus clear, namely, if a contra trade is executed inadvertently or otherwise the profits earned from such trades shall be liable to be disgorged. The provisions of Section 15 HB of the SEBI Act in the instant case is thus not applicable in as much as the said provision only applies when no separate penalty is provided…In the instant case, Clause 10 provides a mechanism for disgorgement of the* *profit earned. In the case, only the profit earned could have been disgorged and no separate penalty could have been imposed under Section 15 HB".*

xxvi. *Hence, given that the profits earned by the Noticee due to the alleged contra trades (as calculated by SEBI) have already been disgorged, no penalty can be levied on the Noticee under Section 15HB of the SEBI Act. Notwithstanding the foregoing, in any event, no additional penalty is warranted as the Noticee evidently made negligible profits even as per SEBI's calculations, which have factored in profits only and entirely disregarded the losses made on these contra trades.*

xxvii. *While imposing penalty under the SEBI Act, the Adjudicating officer is bound to take into account the mitigating factors mentioned under Section 15J of the SEBI Act.*

xxviii. *With regard to Clause (i) of Section 15J: It is submitted that the Noticee has not made any disproportionate gains or has derived any unfair advantage out of the alleged trades, during the Investigation Period. As stated previously, the Noticee had duly remitted the notional profit of INR 49,941/- through a demand draft dated February 11, 2021, in favor of SEBI IPEF, for disgorgement of amounts involved under the contra trades (as computed by SEBI).*

xxix. *With regard to Clause (ii) of Section 15J it is submitted that there are no investor complaints filed against the Noticee with regards to the allegations levied under the Notice, nor has such an allegation been made under the Notice against the Noticee. As stated in paragraph B of this reply, the inadvertent errors made by the Noticee were, at the most, technical and inconsequential in nature, which does not contravene the fundamental objective and spirit of the PIT Regulations. Therefore, it is stated that the alleged violations under the Notice, were not with any intention to violate the principles of the PIT Regulations and thus, the question of deriving any undue advantage over the public investors of the Company does not even arise.*

xxx. *With regard to Clause (iii) of Section 15J: It is submitted that this is the first time that the Noticee has received a show-cause notice for alleged violation of PIT Regulations and Code of Conduct. The Noticee has a spotless track* *record and has never been subjected to any proceedings by SEBI on allegations of violation of any SEBI regulations.*

xxxi. *The mitigating factors provided under the SEBI Act and the Adjudication Rules are squarely applicable in the present matter. It is pertinent to highlight that, in the matter of Siddharth Chaturvedi v. SEBI (2016) 12 SCC 199 decided on March 14, 2016, the Hon'ble Supreme Court has, in the context of Section 15J of the SEBI Act, held that –*

"where there is allegedly only a technical default, and the three parameters of Section 15J would allegedly be satisfied by the Appellants, namely, that no disproportionate or unfair advantage has been made as a result of the default; no loss has been caused to an investor or group of investor as a result of the default; and there is in fact, no repetitive nature of default, no penalty at all ought to be imposed".

xxxii. *Any penalty which is imposed should take into account the gravity of the violation that may have been committed, otherwise it will run foul of the Wednesbury principle of unreasonableness and the rule of proportionality.*

xxxiii. *SEBI has continuously upheld the above principle of proportionality in its orders. In the matter of Puvanesh Pandi in the matter of Mindtree Ltd. in order dated February 8, 2022, SEBI imposed a penalty of only Rs. 1,00,000/- despite the Noticee violating Regulation 7 (2) (a) of the PIT Regulations on several occasions. It is thus clear that in matters of mere disclosure violations which are inconsequential in nature, SEBI has been taking a lenient view by imposing the minimum applicable penalty only. It would not be reasonable for SEBI to take any other approach while levying penalty on the Noticee.*

xxxiv. *SEBI in a recent order dated January 31, 2022 in the matter of J.B. Goel and Nakul Goel imposed penalty of Rs. 2,00,000 on the Noticee for executing trades without taking pre-clearance. In respect of Narendra Chirmule and Biocon Ltd. in the matter of Biocon Ltd., SEBI vide order dated May 19, 2021 imposed a penalty of only Rs. 5,00,000/- for trading during trading window closure. Further, in matters where the Noticee has multiple violations under the PIT Regulations such as (i) non-disclosure of trades; (ii) execution of contra trades and (iii) execution of trades without* *obtaining pre-clearance, SEBI only imposed a penalty of Rs. 1,00,000 for non-disclosure of trades and Rs. 2,00,000 for executing contra trades and trades without obtaining pre-clearance. Eg – in SEBI Orders for Shreejesh Harindranath and Sandeep AC in the matter of Spicejet Limited dated May 29, 2020.*

xxxv. *The Honble Tribunal in <u>Vitro Commodities Private Limited v. SEBI</u> (Appeal No. 118 of 2013 decided on September 4, 2013) while reducing the penalty levied by SEBI, from INR 10,00,000 to INR 1,00,000 has noted that the non-disclosure was due to the <u>ignorance of the appellant and non-appreciation of requirements of disclosure</u>. The relevant portion of the order in quoted below:*

"15. Similarly, no mention of any loss caused to an investor or group of investors as a result of default exists. Hence no cause for any harm to any investors due to non-disclosure has been made. In absence of such mention, it is seen that no such gain or advantage has occurred to appellants or any loss caused to an investor or a group of investors due to acquisition of 5.36% shares or voting rights by appellant in GEE. <u>This is also to be seen from admission of appellant that acquisition of 5.36% or stake by appellant and its non-disclosure was due to their ignorance or non-appreciation of requirement or disclosure, since same occurred mostly' by not as active action by appellant but as on result of bonus shares, shares allotted due to amalgamation and again by issue of bonus</u> shares. Respondent has also not contested/refuted the above mode of acquisition of shares by appellant or placed any document on record to show any motive behind such acquisition like creeping acquisition to gain control over GEE etc. In view of the above, the appeal is dismissed with reduction of penalty imposed to Rs. 1 lac only for violation of Regulation 7 (1) of the Takeover Regulations, 1997 and violation of Regulation 13 (1) of the PIT Regulations 1992"

xxxvi. *Inordinate delay and laches on part of SEBI has made the present proceedings unsustainable - Notice is unsustainable, as it suffers from inordinate delay and laches. As stated above, the Investigation Period in the present matter was from April 1, 2014 to March 31 2017. With respect* *to the Noticee specifically, the trades which are allegedly in violation of the PIT Regulations and the Code of Conduct were executed between August 2015 and March 2017, as listed under Annexure 4 to the Notice. However, it was only in February 2021, that SEBI reached out to the Noticee for the first time to investigate the potential violations and the Notice was issued in September 2021.*

xxxvii. *The Hon'ble Securities Appellate Tribunal ("Tribunal") has, in a plethora of orders, overruled orders passed by SEBI on the ground of laches where there has been an inordinate delay in initiation of proceedings by SEBI. The Hon'ble Supreme Court of India. in the matter of Adjudicating Officer, SEBI v. Bhavesh Pabari has observed – "35. The appellants have also contended that in the absence of any prescribed limitation period, SEBI should have issued a show-cause notice within a reasonable time and there being a delay of about 8 years in issuance of show cause notice in 2014, the proceedings should have been dropped. There are judgments which hold that when the period of limitation is not prescribed: such power must be exercised within a reasonable time. What would be reasonable time would depend upon the facts and circumstances of the case the nature of the default/ statute prejudice caused, whether the third-party rights had been created etc".*

xxxviii. *In SEBI v. Sunil Krishna Khaitan (Civil Appeal 8249 of 2013) the Hon'ble Supreme Court held – "82. The directions given in the aforesaid quotation should not be understood as empowering the authorities/Board to initiate action at any time. In the absence of any period of time and limitation prescribed by the enactment, every authority is to exercise power within a reasonable period. What would be the reasonable period would depend upon facts of each case, such as whether the violation was hidden and camouflaged and thereby the Board or the authorities did not have any knowledge. Though, no hard and fast rules can be laid down in this regard as determination of the question will depend on the facts of each case, the nature of the statute, the rights and liabilities thereunder and other consequences, including prejudice caused and whether third party rights have been created are relevant factors. Whenever a question with regard to* *inordinate delay in issuance of a show-cause notice is made, it is open to the noticee to contend that the show-cause notice is bad on the ground of delay and it is the of the authority/officer to consider the question objectively, fairly and in a rational manner. There is public interest involved in not taking up and spending time on stale matters and, therefore, exercise of power, even when no time is specified: should be done within reasonable time".*

xxxix. *In Sanjay Jethalal Soni v. SEBI the SAT an appeal was filed before the Hon'ble Tribunal against an order imposing a penalty on the group of appellants therein, for violation of certain provisions of the SEBI Act read with the PFUTP Regulations. In this matter, SEBI issued a second show-cause notice in July 2017, i.e. after seven years of the lapse of investigation period. It was contended by the appellants therein that there was no justification as to why proceedings could not be initiated earlier. It was held – "We find that the respondents were aware of the alleged violation and thus there is no justification for waiting for more than five years to issue the second show-cause notice dated July 20 2017. In our view there is an inordinate delay in initiating the proceedings.*

13. As a result without going into the question of res judicata or estoppel raised by the appellants we are of the opinion that on account of the inordinate delay in initiating the proceedings the impugned penaltv order cannot be sustained.".

xl. *In Ashlesh Guvantbhai v. SEBI, the SAT held – "11. On this aspect we are of the opinion that the issue of delay is a mixed question of fact and law and if it goes to the root of the matter such an issue can be raised even at the appellate stage even though such objection was not raised before the AO In the instant case, we find that some of the appellants had raised a specific issue with regard to the inordinate delay in the issuance of the show cause notice. This aspect should have been considered by the AO which in the instant case has not been done and in fact it has totally ignored such objection. We are further of the opinion that when the matter is being decided against the appellants as group by a common order, an objection raised by one appellants will cover for all the appellants and it will* *not be confined to that appellant alone especially when the objection raised is one of mixed question of law which goes to the root of the matter".*

Noticee 2

xli. *As per the SCN, Noticee 2 was designated as the Company Secretary and Compliance Officer of the Company during the relevant period, i.e. between April 1, 2014 to March 31, 2017.*

xlii. *Inadvertent errors on part of the Noticee occurred due to negligence on part of the Noticee. These errors were entirely inadvertent and there was no intention on the Noticee's part to act in contravention of the PIT Regulations, 1992 or the Code of Conduct. Further, the Noticee did not intend to derive any undue gains out of the trades undertaken by him. This is evident from the fact that an aggregate sum of merely INR 26,537/- was accounted by SEBI as the notional profit (without accounting for the losses incurred). Nevertheless, the Noticee has duly remitted the notional profit of INR 26,537/- through a demand draft dated February 11, 2021, in favor of SEBI IPEF, for disgorgement of amounts involved under the contra trades as computed by SEBI.*

xliii. *The Noticee is a senior citizen of advanced age and has suffered from serious disorder due to which he has now completely lost his vision. He is no longer in service due to his physical infirmity and has no regular source of income. Therefore, it is humbly requested that, on compassionate grounds, SEBI may be pleased to exercise leniency in the present matter.*

xliv. *The other submission made by Noticee 2 were identical to those made by Noticee 1.*

Noticee 3

xlv. *The alleged violations of the PIT Regulations were entirely inadvertent and there was no intention on the Noticee's part to circumvent any requirements of the PIT Regulations, 1992, including with a view to make any undue gains, which is evident from the fact that from the four contra trades under consideration, an aggregate sum of merely INR 4,312/- was computed by*

SEBI as the notional profit (without accounting for the losses incurred on such trades).

xlvi. *The errors mentioned in the SCN occurred inadvertently, as the Noticee had tendered his resignation from the services of the Company on April 1, 2014 and served his last working day on September 1, 2014, when he officially left the Company. During the intervening period from April 1, 2014 to September 1, 2014 ("Intervening Period') the Noticee was not actively engaged in day-to-day activities of the Company and was only in the transition phase. For all purposes, the Intervening Period was equivalent to a gardening leave taken by the Noticee. Therefore, the Noticee was not aware that trading restrictions and the insider trading policies were applicable to him during the Intervening Period.*

xlvii. *The Noticee had received the equity shares of the Company through the Employee Stock Ownership Plan ("ESOP") scheme. By way of the 11 trades mentioned above, the Noticee had only sold the shares so received by him as part of the ESOP scheme, and accordingly, the Noticee was not actively engaged in the purchase and sale of the Company's shares during the Investigation Period. The Noticee was not aware that trading restrictions were applicable to him during the Intervening Period, therefore, the Noticee inadvertently executed two trades during the trading window closure period of the Company.*

xlviii. *The inadvertent errors on part of the Noticee occurred due to negligence on part of the Noticee, as he had already resigned from the Company during the Investigation Period. Due to this reason, he was unable to keep track of the intimations and emails regarding the Company's insider trading policies and was ignorant of the legal requirements under the PIT Regulations. These errors were entirely inadvertent and there was no intention on the Noticee's part to act in contravention of the PIT Regulations.*

xlix. *As per the SCN, the Noticee had undertaken four contra trades during the Investigation Period, pursuant to which allegedly made a profit of INR 4312/- (as computed by SEBI on a FIFO basis, without accounting for the losses incurred on such trades). Emphasis is supplied on the fact that in-*

spite of executing four contra trades, the Noticee only earned a paltry profit of INR 4312/- and that too has been disgorged in favor of the SEBI IPEF.

l. *All other submissions made by Noitcee 3 were identical to the submissions made by Noticees 1 and 2.*

12. During the hearing conducted on July 20, 2022 by videoconferencing through Cisco Webex, the Authorised Representatives of the Noticees 1, 2 and 3 appeared alongwith Noticee 3-in-person and reiterated the submissions contained in the Noticees' replies dated July 18, 2022. Further, as requested by the ARs, time up to July 27, 2022 was granted to the Noticees to make additional submissions including supporting documents, if any.

13. Vide letter dated July 28, 2022 the Noticees submitted, *inter alia*, various medical reports of Noticee 2 in support of submission of Noticee 2 regarding vision loss, and a copy of letter issued by PVR Limited certifying that Noticee 3 had worked with the Company in the capacity of "Group President" from September 2, 2008 till September 1, 2014, and had resigned from the Company on April 1, 2014 and his last working day was September 1, 2014.

14. Accordingly, in the light of the allegations contained in the SCN, the submissions of the Noticees in respect of the allegations made in the SCN and relevant material available on record, I hereby proceed to decide the case on merits.

CONSIDERATION OF ISSUES AND FINDINGS

15. The issues arising for consideration in the instant proceedings are:-

    I. Whether the following provisions of law were violated by the respective Noticees –

       a) Clauses 4, 6 and 10 of Schedule B (Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders) read with Regulation 9 (1) and Regulation 7 (2) (a) of the PIT Regulations by Noticee 1

       b) Clauses 3.3 and 4.2 of the Model Code of Conduct in Schedule I Part A read with Regulation 12 (1) of the PIT

Regulations 1992 read with Regulation 12 of the PIT Regulations; and Clauses 6 and 10 of the Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders in Schedule B read with Regulation 9 (1) of the PIT Regulations; Regulation 12 (1) and 13 (4) of the PIT Regulations 1992 read with Guidance Note issued by SEBI on August 24, 2015 read with Regulation 12 of the PIT Regulations by Noticee 2

c) Clauses 3.2.2, 3.3 and 4.2 of Schedule 1 Part A read with Regulation 12 (1) and 13 (4) of the PIT Regulations 1992 read with Regulation 12 of the PIT Regulations by Noticee 3

II. If yes, whether the Noticees are liable for imposition of monetary penalty under Section 15A (b) and Section 15 HB of the SEBI Act?

III. If yes, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5 (2) of the Adjudication Rules?

I. Whether -

a. Noticee 1 violated Clauses 4, 6 and 10 of Schedule B (Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders) read with Regulation 9 (1) and Regulation 7 (2) (a) of the PIT Regulations?

b. Noticee 2 violated Clauses 3.3 and 4.2 of the Model Code of Conduct in Schedule I Part A read with Regulation 12 (1) of the PIT Regulations 1992 read with Regulation 12 of the PIT Regulations; and Clauses 6 and 10 of the Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders in Schedule B read with Regulation 9 (1) of the PIT Regulations; Regulation 12 (1) and 13 (4) of the PIT Regulations 1992 read with Guidance Note issued by SEBI on August 24, 2015 read with Regulation 12 of the PIT Regulations?

c. **Noticee 3 violated Clauses 3.2.2, 3.3 and 4.2 of Schedule 1 Part A read with Regulation 12 (1) and 13 (4) of the PIT Regulations 1992 read with Regulation 12 of the PIT Regulations?**

16. At the outset, I would like to address the preliminary objection raised by the Noticees in their replies that the SCN is unsustainable because it suffers from delay in initiation of proceedings. The violations alleged pertain to trades in the scrip of PVR Ltd. carried out by the Noticees as employees and designated persons of PVR Ltd. between January 29, 2016 to May 27, 2016 (Noticee 1), between July 8, 2014 and August 9, 2016 (Noticee 2) between June 5, 2014 to September 1, 2014 (Noticee 3).

17. I note that investigation was initiated in the matter on May 16, 2019 on the basis of complaints received regarding, *inter alia,* the impugned trades and was concluded in February 2021. Subsequently adjudication proceedings were approved in the matter on February 22, 2021 and the Adjudicating Officer was appointed on April 6, 2021. The SCN was issued on September 9, 2021. Thereafter, the Noticees filed settlement applications in October 2021 and requested extension of time to file replies to the SCN till the settlement applications were disposed of. However, as communicated by SEBI's Settlement Division vide e-mail dated May 31, 2022, the Noticees did not submit Revised Settlement terms on time, and as such, their settlement applications were rejected in May 2022. Subsequently, the adjudication proceedings were transferred by the Competent Authority to the present Adjudicating Officer, and hearings were conducted on July 20, 2022.

18. I note that there is no material on record before me to indicate that upon becoming aware of the facts surrounding the alleged violations, unreasonable time was taken to initiate proceedings. I further note that extension of time to file reply requested by the Noticees on account of settlement applications also contributed to the time taken during the present proceedings.

19. I also note that no limitation has been prescribed in SEBI Act for initiating proceedings for violation of securities laws, as long as proceedings are initiated within a reasonable period. I note that the requirement of *reasonable period* within which proceedings should be initiated has been dealt with by the Hon'ble Supreme Court in in the matters of *Adjudicating Officer, SEBI vs. Bhavesh Pabari* (2019) SCC Online SC 294, and *SEBI v. Sunil Krishna Khaitan* (Civil Appeal No. 8249 of 2013. As per the abovementioned rulings, relevant factors determining *reasonable period* are "*the facts of each case, the nature of the statute, the rights and liabilities thereunder and other consequences, including prejudice caused and whether third party rights have been created*".

20. The material on record does not bring out that the Noticees have been prejudiced on account of the passage of time, or that any third-party rights have been created due to passage of time. Therefore, in the facts and circumstances of this case, I am satisfied that time taken in initiation of proceedings was reasonable and the contention of the Noticee in this regard is not acceptable.

21. I note that Noticee 1, CEO Operations of PVR Limited at the time of his impugned trades between January 29, 2016 to May 27, 2016, was a "designated person" as per the list provided by the Company and annexed as Annexure 2 to the SCN, which was prepared by PVR Limited in compliance with Regulation 9 (4) of the PIT Regulations. The relevant legal provisions are reproduced below for context:-

SEBI (Prohibition of Insider Trading) Regulations, 2015

Code of Conduct

9. (1) The board of directors of every listed company and market intermediary shall formulate a code of conduct to regulate, monitor and report trading by its employees and other connected persons towards achieving compliance with these regulations, adopting the minimum standards set out in Schedule B to these regulations, without diluting the provisions of these regulations in any manner.

…

(4) For the purpose of sub regulation (1) and (2), the board of directors or such other analogous authority shall in consultation with the compliance officer specify the designated persons to be covered by the code of conduct on the basis of their role and function in the organisation and the access that such role and function would provide to unpublished price sensitive information in addition to seniority and professional designation and shall include:

-

Chief Executive Officer and employees upto two levels below Chief Executive Officer of such listed company, intermediary, fiduciary and its material subsidiaries irrespective of their functional role in the company or ability to have access to unpublished price sensitive information;".

22. Similarly, Noticee 2 was Company Secretary and Compliance Officer of PVR Limited during the relevant period, and also a "designated person" of PVR Limited. Noticee 3 was Chief Development Officer and also classified as "Designated Person" by the Company. Therefore, I find that the Code of Conduct specified in Schedule B to the PIT Regulations was applicable to the Noticees as they were designated persons in terms of regulation 9 (4) of the PIT Regulations at the time of their respective impugned trades.

23. I further note that it is evident from the provisions of Regulation 9 (1) read with 9 (4) of the PIT Regulations that the Code of Conduct in Schedule B lays down certain Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders, and the board of directors of the company in consultation with its Compliance Officer identifies designated persons to who the Code of Conduct will apply. A plain reading of Regulation 9 (4) indicates that such designated persons <u>*shall*</u> necessarily include *the CEO and employees upto two levels below CEO*, "<u>*irrespective of their functional role in the company or ability to have access to unpublished price sensitive information*</u>".[<u>*emphasis supplied*</u>] Thus, as per sub-regulation (4) of regulation 9 the Noticees were mandatorily required to be designated persons to whom the Code of Conduct in Schedule B would apply on account of assumption that they have access to unpublished

price sensitive information (“UPSI”) due to their designation in the Company. It is noteworthy that access to UPSI is not a relevant factor for a person to be a “designated person” to whom the requirements in Schedule B would apply.

24. The Noticees have admitted that as designated persons of PVR Limited they had carried out the following impugned trades –

    i. Noticee 1 - 43 contra trades, 4 trades during trading window closure period, and 62 trades in the shares of PVR Limited for which he did not take pre-clearances from the Board of PVR Limited. Further, for 58 trades, Noticee 1 did not make disclosures in terms of Regulation 7 (2) (a) of the PIT Regulations
    ii. Noticee 2 – 8 contra trades, 12 trades for which no pre-clearance was obtained from the board of directors of PVR Limited, 20 trades for which clearance was incorrectly taken from Sr. VP Secretarial instead of the board of directors as per SEBI’s Guidance Note on SEBI (Prohibition of Insider Trading) Regulations, 2015 dated August 24, 2015, and non-disclosure of 4 trades exceeding Rs. 5 lakhs each in value to PVR Limited in contravention of Regulation 13 (4) of the PIT Regulations
    iii. Noticee 3 - 4 contra-trades, trade on July 24, 2014 during closure of trading window, 11 trades without obtaining pre-clearances from the Company, non-disclosure of 8 trades exceeding Rs. 5 lakhs each in value to PVR Limited in contravention of Regulation 13 (4) of the PIT Regulations

25. In carrying out these impugned trades, Noticee 1 allegedly violated the following provisions –

<u>SEBI (Prohibition of Insider Trading) Regulations, 2015</u>

Code of Conduct

9. (1) The board of directors of every listed company and market intermediary shall formulate a code of conduct to regulate, monitor and report trading by its employees and other connected persons towards achieving compliance with *these regulations, adopting the minimum standards set out in Schedule B to these regulations, without diluting the provisions of these regulations in any manner.*

<u>Schedule B</u>

<u>Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders</u>

4. 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.

…

6. When the trading window is open, trading by designated persons shall be subject to pre-clearance by the compliance officer, if the value of the proposed trades is above such thresholds as the board of directors may stipulate. No designated person shall apply for pre-clearance of any proposed trade if such designated person is in possession of unpublished price sensitive information even if the trading window is not closed.

…

10. The code of conduct shall specify the period, which in any event shall not be less than six months, within which a designated person who is permitted to trade shall not execute a contra trade. The compliance officer may be empowered to grant relaxation from strict application of such restriction for reasons to be recorded in writing provided that such relaxation does not violate these regulations. Should a contra trade be executed, inadvertently or otherwise, in violation of such a restriction, the profits from such trade shall be liable to be *disgorged for remittance to the Board for credit to the Investor Protection and Education Fund administered by the Board under the Act.*

Regulation 7 (2) (a) of the PIT Regulations, which reads as follows:-

> *"Disclosures by certain persons.*
> *7 (2) Continual Disclosures.*
> *(a) Every promoter, employee 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;"*

26. The impugned trades of Noticees 2 and 3 commenced during the period prior to PIT Regulations 2015 coming into effect from January 15, 2015. Therefore, the applicable legal provisions of PIT Regulations 1992 allegedly violated by Noticees 2 and 3 by impugned trades carried out during this prior period were as follows:-

<u>PIT Regulations 1992</u>

SEBI (PROHIBITION OF INSIDER TRADING) REGULATIONS, 1992
SCHEDULE I - PART A
MODEL CODE OF CONDUCT FOR PREVENTION OF INSIDER TRADING FOR LISTED COMPANIES

3.2.2 When the trading window is closed, the employees/directors shall not trade in the company's securities in such period.

3.3 Pre-clearance of trades
3.3.1 All directors/officers/designated employees of the company and their dependents as defined by the company] who intend to deal in the securities of the company (above a minimum threshold limit to be decided by the company)

should pre-clear the transaction as per the pre-dealing procedure as described hereunder.

3.3.2 An application may be made in such form as the company may notify in this regard, to the Compliance Officer indicating the estimated number of securities that the designated employee/officer/director intends to deal in, the details as to the depository with which he has a security account, the details as to the securities in such depository mode and such other details as may be required by any rule made by the company in this behalf.

3.3.3 An undertaking shall be executed in favour of the company by such designated employee/director/officer incorporating, inter alia, the following clauses, as may be applicable:

(a) That the employee/director/officer does not have any access or has not received "Price Sensitive Information" upto the time of signing the undertaking.

(b) That in case the employee/director/officer has access to or receives "Price Sensitive Information" after the signing of the undertaking but before the execution of the transaction he/she shall inform the Compliance Officer of the change in his position and that he/she would completely refrain from dealing in the securities of the company till the time such information becomes public.

(c) That he/she has not contravened the code of conduct for prevention of insider trading as notified by the company from time to time.

(d) That he/she has made a full and true disclosure in the matter

Other restrictions

4.2 All directors/ officers/ designated employees who buy or sell any number of shares of the company shall not enter into an opposite transaction i.e. sell or buy any number of shares during the next six months following the prior transaction. All directors/ officers/ designated employees shall also not take positions in derivative transactions in the shares of the company at any time. In the case of subscription in the primary market (initial public offers), the above mentioned *entities shall hold their investments for a minimum period of 30 days. The holding period would commence when the securities are actually allotted.*

<u>Code of internal procedures and conduct for listed companies and other entities.</u>

12. (1) All listed companies and organisations associated with securities markets including :

(a) *the intermediaries as mentioned in section 12 of the Act, asset management company and trustees of mutual funds ;*

(b) the self-regulatory organisations recognised or authorised by the Board;

(c) the recognised stock exchanges and clearing house or corporations;

(d) the public financial institutions as defined in section 4A of the Companies Act, 1956; and

(e) the professional firms such as auditors, accountancy firms, law firms, analysts, consultants, etc., assisting or advising listed companies,

shall frame a code of internal procedures and conduct as near thereto the Model Code specified in Schedule I of these Regulations without diluting it in any manner and ensure compliance of the same.

<u>Regulation 13 (4) of SEBI (Prohibition of Insider Trading) Regulations, 1992</u>

Continual disclosure

(4) Any person who is a director or officer of a listed company, shall disclose to the company and the stock exchange where the securities are listed in Form D, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings of such person and his dependents (as defined by the company) from the last disclosure made under sub-regulation (2) or under this subregulation, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.

<u>Guidance Note on SEBI (Prohibition of Insider Trading) Regulations, 2015 on August 24, 2015</u>

<u>Query no 8:</u> Who will be approving authority for trades done by the Compliance Officer or his immediate relatives, as Insiders?

<u>Guidance:</u> The board of directors of the company shall be the approving authority in such cases and may stipulate such procedures as are deemed necessary to ensure compliance with these regulations

27. I have noted the details of trades carried out by the Noticees at Annexure 3 to the SCN. The Noticees have not denied having carried out the impugned trades. However, various contentions have been put forward to assert that the trades executed by them were not in violation of the PIT Regulations as alleged. The majority of the submissions of the Noticees constitute various mitigating circumstances put forth for consideration in terms of Section 15J of the SEBI Act for leniency in the quantum of penalty which may be levied, and are addressed subsequently in the part of the order dealing with penalty.

28. The common contentions of the Noticees are that their impugned trades did not violate the object and intent of the PIT Regulations, and were merely technical, procedural and venial in nature. The Noticees have claimed that since they did not trade while in actual possession of any unpublished price-sensitive information, there was no information asymmetry involved, no market impact and no harm done to investors, instead there was mere unintentional contravention due to negligence. To emphasise the purpose behind enactment of the PIT Regulations, the Noticees have cited the SAT judgement in *<u>E. Sudhir Reddy v, SEBI (</u>*decided on December 16, 2011), stating that trading by using unpublished price sensitive information by insiders who are in an advantageous position compared to ordinary shareholders is not based on a level playing field and the SEBI Act and PIT Regulations make provisions to curb such practices. The Noticees have also cited SEBI Orders highlighted the intent of the PIT Regulations i.e. "*preventing insider trading activity.. owing to asymmetrical" access* to UPSI. However, I do not find that these judgements cited by the Noticee take away from the importance of the stipulations in the PIT Regulations regarding disclosure and pre-clearance of trades by insiders, and prohibition of contra trades and trading during trading window closure by insiders, in preventing information asymmetry and maintaining a level playing field in terms of the object of the PIT Regulations.

29. With regard to the Noticees' submission they did not trade while in actual possession of any unpublished price-sensitive information, as discussed earlier in the context of the language of Regulation 9 (4) of the PIT Regulations with respect to "designated persons", I find that trading in possession of UPSI or on the basis of UPSI is not required to be established to prove the allegations that the Noticee violated the rule against contra trades, trading during trading window closure period, failure to obtain pre-clearance for his trades and failure to disclose to the Company trades which aggregated in value to more than ten lakh rupees over a calendar quarter.

30. In respect of the Noticees' submission that they were not aware of the PIT Regulation requirements or Company e-mails, I note that the Company sent specific e-mails especially to intimate board meetings for financial results declaration and trading window closure at various points of time. The said e-mails dated February 3, 2021, May 19, 2015, July 8, 2015, June 10, 2015, May 13, 2016, May 18, 2016, July 20, 2016, October 19, 2016, January 25, 2017 addressed to the Noticees are on record. The Noticees' submissions that they did not see the e-mails and were not aware of the related legal obligations under the PIT Regulations are devoid of credibility and merit, and therefore not acceptable. It is difficult to accept that the Noticees who were holding responsible positions in the Company can claim ignorance of the Code of Conduct which has been put in place by the Company and whose implementation is required to be overseen by the Compliance Officer (Noticee 2) in terms of the PIT Regulations. I further note that in case of Noticee 2 who was Company Secretary and Compliance Officer of the company during the relevant period, he took pre-clearance (although from a person junior to him as opposed to the required in SEBI's Guidance Note on SEBI (Prohibition of Insider Trading) Regulations, 2015 dated August 24, 2015*)* for 20 trades but failed to take any pre-clearance for 12 of his trades as per the Company's code of conduct supposed to be administered by him in terms of the Code of Conduct requirements in Schedule B to the PIT Regulations.

31. In respect of the allegation regarding violation of Regulation 7 (2) (a) of the PIT Regulations by the Noticees 1 and 3, and of corresponding Regulation 13 (4) of the PIT Regulations 1992 by Noticee 2 (2 trades) and Noticee 3 (8 trades), Noticee 1 has submitted that Regulation 7 (2) (a) had been done away with before the SCN was issued to the Noticee, and SEBI Circulars dated December 1, 2015 and August 13, 2021 had automated the disclosure requirements under the PIT Regulations. On perusal of the Circulars cited by the Noticees, I find that SEBI Circular No. CIR/CFD/DCR/17/2015 dated December 1, 2015 was applicable to only to the promoter and promoter group of companies, and even then, clause 3 of the said Circular expressly mentioned that "*initially, this system would run in parallel with the existing system i.e. the promoters/promoter group shall continue to comply with the disclosure obligations as applicable to them."* SEBI Circular No. SEBI/HO/ISD/ISD/CIR/P/2021/617 dated August 13, 2021 drew attention to SEBI/HO/ISD/ISD/CIR/P/2020/168 dated September 09, 2020 which specified that "*the system would continue to run parallel with the existing system i.e. entities shall continue to independently comply with the disclosure obligations under PIT Regulations as applicable to them till March 31, 2021"*. It is therefore clear that the provisions of Regulation 7 (2) (a) of the PIT Regulations were applicable to all impugned trades of the Noticees which took place after January 15, 2015 when the said Regulations came into effect, and which aggregated to a traded value of more than ten lakh rupees. The said Circulars were issued to regulate a gradual migration of the disclosure compliances to an automated platform, but had not done away with or made inapplicable the requirements for disclosure under Regulation 7 (2) of the PIT Regulations, as claimed by the Noticees. Accordingly, the submission of the Noticee regarding non-applicability of Regulation 7 (2) (a) of the PIT Regulations is not acceptable.

32. Noticee 3 has further submitted that he was on "gardening leave", having tendered his resignation to PVR Ltd. on April 1, 2014 and served his last working day on September 1, 2014, and that he was not actively involved in company affairs during this time and hence had no access to UPSI. I note that his impugned trades were carried out between June 2014 and September 2014.

However, insufficient material has been put forward to substantiate any change in his professional obligations and duties as Chief Development Officer between June to September 2014 when he carried out the trades. The letter dated February 10, 2021 of PVR Limited expressly states that Noticee 3 was Chief Development Officer of PVR Limited between April 2014 to March 2017. I further note that vide letter dated July 27, 2022 PVR Limited has certified that Noticee 3 was working with the Company as "Group President" till September 1, 2014. No material has been produced before me to show that he was no longer treated as a "Designated Person", instead he was copied on all e-mails regarding prohibition of trades during trading window closure. Further, actual possession of UPSI is not relevant to determine compliance with the disclosure, pre-clearance, not selling within 6 months of the opposite transaction and prohibition against trading during trading window closure, as elaborated previously.

33. Here we cannot ignore that the Noticees 1, 2 and 3 were respectively - CEO Operations, Company Secretary and Compliance Officer, and Chief Development Officer, and were "designated persons" required to comply with the PIT Regulations during the time of their impugned trades. The Compliance Officer is even required to monitor trades and oversee the implementation of the Codes of Conduct under the PIT Regulations.

34. It is relevant to note that a company operates through its board of directors, and the power to manage it's day-to-day affairs is vested with the management team reporting to the board of directors. Under the Companies Act, 2013, the roles of CEO, Compliance Officer and Chief Development are described by their respective definitions in Section 2. "Chief Executive Officer" is defined in Section 2 (18) as "*an officer of a company, who has been designated as such by it*", and is included as one of the "*key managerial personnel*" of a company under Section 2(51) of the Companies Act. CEOs, manager and company secretaries are required to be appointed in companies as whole-time managerial personnel in terms of Section 203 (1) of the Companies Act. The CEO and the company secretary have a role in signature of financial statements on behalf of the Board upon approval of the board of directors, as per Section 134. A compliance officer

is also defined in Regulation 2 (1) (c) of the PIT Regulations 2015 as "*any senior officer, designated so and reporting to the board of directors or head of the organization in case board is not there, who is financially literate and is capable of appreciating requirements for legal and regulatory compliance under these regulations and who shall be responsible for compliance of policies, procedures, maintenance of records, monitoring adherence to the rules for the preservation of unpublished price sensitive information, monitoring of trades and the implementation of the codes specified in these regulations under the overall supervision of the board of directors of the listed company or the head of an organization, as the case may be*". Further, Regulation 9 (1) requires the board of directors to ensure that a CEO or MD formulates the Code of Conduct to regulate, monitor and report trading by designated persons, and ensures compliance with it. Similarly, Regulation 9 (4) of the PIT Regulations requires the board of directors of a company to "*in consultation with the compliance officer specify the designated persons to be covered by the code of conduct*". Clauses 5 and 6 of Schedule B to the PIT Regulations further mandate that the compliance officer shall determine the timing for re-opening of trading window, and pre-clearance of trades above a certain threshold by designated persons.

35. In the specific context of the PIT Regulations, SEBI's interpretive letter dated February 3, 2017 in respect of *Kirloskar Brothers Ltd.* under the SEBI (Informal Guidance) Scheme, 2013 noted – "*any actions of Compliance Officers, Board of Directors or other entities entrusted with ensuring adherence to these Regulations, should be to ensure compliance in letter and spirit to the PIT Regulations*…". Further, vide order dated December 24 2013 in the matter of *G. Jayaraman v. SEBI*, the Securities Appellate Tribunal upheld penalty imposed on Satyam's Compliance Officer for failing in his duty to prevent insider trading in shares of Satyam, holding that the penalty "*cannot be said to be unreasonable, especially when appellant (Jayaraman) occupying high ranking position such as Vice President - Corporate Affairs/ Global Head - Corporate Governance/ Company Secretary and Compliance Officer of Satyam was duty bound to close*

the trading window when in possession of unpublished price sensitive information".

36. In this statutory and regulatory context, it is difficult to accept the Noticees' submissions regarding lack of knowledge of provisions, failure to see e-mails of the company or omission to comply with the legal requirements whose implementation they themselves are required to oversee under extant law.

37. The Noticees have cited the decision of the Hon'ble SAT in *State Bank of India v. SEBI* (decided on January 7, 2021), SEBI's order in the matter of *Refex Industries Ltd.* (order dated February 2, 2017), judgement of the Hon'ble Supreme Court in the matters of *Hindustan Steel v. State of Orissa* (AIR 1970 SC 253), and orders of the Hon'ble SAT in the matters of *DSE Financial Services Limited v. SEBI* (SCC OnLine SAT 159), *Religare Securities Limited v. SEBI* (2016 SCC OnLine SAT 129) and *Bakul Ramniklal Parekh v. SEBI* (2019 SCC OnLine SAT 382) to contend that a technical violation need not always result in a penalty. I find that the decisions cited by the Noticee in this regard operate within a factual matrix different from the matter before me. For example, in *SBI v. SEBI* the SAT took into account "*excruciating factors in delaying full compliance"* with the applicable law in the case of SBI where the appellants had displayed that they had been serious in their endeavour to comply with the law. In the *Refex* matter before the Whole-time Member SEBI, it was taken into account that the acquirers charged with violation of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations 1997 had acquired a very small number of shares and there was no change in control over the target company. The Supreme Court ruling of *Hindustan Steel* cited by the Noticees concerned, *inter alia,* failure of the company to register as a dealer of building material, in alleged contravention of the provisions of the Orissa Sales Tax Act, 1947. However, the Supreme Court found that there was insufficient evidence to establish that the Noticee was a "dealer" in the first place, in terms of the said Act. In this context, the Court that "*an order imposing penalty for failure to carry out a statutory obligation is the result of quasi-criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged acted deliberately in defiance of law or…in conscious*

disregard of his obligation". In the *Hindustan Steel* case, whether the obligation to register could be fastened on the company was not clear. The observations of the Supreme Court regarding technical and venial breach need to be looked at in this context. In *DSE Financial Servics Ltd*., SAT set aside penalty imposed on the broker for solitary instances of violations in maintenance of records, detected during inspection, which were subsequently corrected. The order of the Tribunal in *Religare Securities Ltd, v. SEBI* is not relevant as it sets aside SEBI Order which imposed penalty on a broker for aiding abetting fraudulent and manipulative trades on the ground that the charge itself was not established. Thus, the precedents cited by the Noticees stand distinguished from the case of the Noticees before me on fact and law, and are therefore, inapplicable.

38. I further note that the Noticees' contention that the violations alleged against them are technical or procedural lapses is not *per se* acceptable, as the disclosure requirements in Regulation 7 (2) (a) of the PIT Regulations as well as the clauses in the Code are part of the regulatory regime which seeks to prevent information asymmetry and insider trading. The legal requirements in Clauses 4, 6 and 10 of the Minimum Standards for Code of Conduct for Listed Companies to Regulate, Monitor and Report Trading by Designated Persons ("Code"), as well as the disclosure requirement prescribed in Regulation 7 (2) (a) of the PIT Regulations are also designed to prevent information asymmetry. Misinterpreting the said legal requirements as merely technical or procedural is to lose sight of the fact that Regulation 9 of the PIT Regulations lays down a definitive mandate for the board of directors of listed companies to ensure that their CEO 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." [*emphasis supplied*] The Note at the end of Regulation 9(1) further clarifies that the intent of the regulation is that "*every company whose securities are listed on stock exchanges and every intermediary registered with SEBI is mandatorily required to formulate a code of conduct governing trading by designated persons and their immediate relatives*." [*emphasis supplied*]. Thus, the provisions of the Code

of Conduct to the PIT Regulations are expected to ensure compliance with the PIT Regulations and cannot be looked at as merely technical. Excusing the non-compliances of the Noticees in respect of pre-clearance, disclosure, contra trades and trading when the trading window was closed as technical, procedural or venial would render the very provisions otiose.

39. I would also like to draw a distinction between the provisions of law which carry words and expressions indicating the relevance of intent or a state of knowledge of wrongdoing, such as Regulation 4 (1) of the PIT Regulations 2015 which prohibits trades in securities by insiders when they possess unpublished price sensitive information by assuming that "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", and those which detail disclosure obligations or duties to maintain information symmetry or to not act on the basis of information asymmetry. In the case of the latter, the state of mind or motive of the Noticee becomes irrelevant for determining whether he failed to disclose information regarding trades or obtain pre-clearance of trades in terms of the express legal requirement.

40. Here I would like to place reliance on the judgement of the Hon'ble Supreme Court in *SEBI v. Shriram Mutual Fund* (Civil Appeal 9523-9524 of 2003 decided on May 23, 2006) where it was held that "*Unless there is something in the language of the statute indicating the need to establish the element of mens rea it is generally sufficient to prove that a default in complying with the statute has occurred*." I am satisfied that the disclosure, pre-clearance, contra-trade and trading window closure requirements in the PIT Regulations do not require establishment of intent of the Noticees. I would like to further rely on the judgement of the Hon'ble Bombay High Court in the matter of *SEBI v. Cabot International Capital* (2005 123 CompCas 841 Bom) where the violation was viewed as completely technical or venial as the *bonafides* of the Noticee were evident and there was no impact of non-compliance on the market or investors. However, the High Court did opine that for breach of "*SEBI Act and Regulations,*

that according to us, which are civil in nature, mens rea is not essential. On particular facts and circumstances of the case, proper exercise or judicial discretion is a must, but not on a foundation that mens rea is an essential to impose penalty in each and every breach of provisions of the SEBI Act." In this ruling, the High Court upheld the SAT Order setting aside penalty imposed on the Noticees therein for violations of disclosure obligations under the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997, stating that "*there was no intention of the respondents to avoid filing of such a Report with the appellants, as the respondents had in fact complied with and notified the relevant details to all other concerned Authorities, like Registrar of Companies, Reserve Bank of India and Stock Exchange in respect of the preferential allotment and the relevant details*". However, in the present case, the Noticees 1 and 3, despite being senior managerial personnel and designated persons, have ignored the provisions of law and have repeatedly ignored even the e-mails from the Company regarding trading window closure. The e-mails should have served as a reminder to the Noticees to comply with the PIT Regulations. Further, Noticee 2 as Compliance Officer and Company Secretary, failed to take pre-clearance for most of his trades and took pre-clearance from his junior in others. On account of their fiduciary relationship with the company and the onerous obligation cast on senior management by the Companies Act as well as the SEBI Act and the PIT Regulations, the Noticees were expected to set examples as followers of law to others in the organisation. Therefore, the plea that the violations committed by the Noticees were *bonafide* or inadvertent mistake in complying with the PIT Regulations as designated persons cannot be accepted.

41. In view of the admissions of fact by the Noticees, and cognizant of the fact that intent to violate the respective provisions of the PIT Regulations is not an issue in the present case, I find that admitted negligence and failure to discharge their specific statutory obligations in the manner that can be reasonably expected of a professional in their position is sufficient to establish the allegations levelled against the respective Noticees. Accordingly, I find that –
    (i) Noticee 1 violated Clauses 4, 6 and 10 of Schedule B (Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading

by Insiders) read with Regulation 9 (1) and Regulation 7 (2) (a) of the PIT Regulations

(ii) Noticee 2 violated Clauses 3.3 and 4.2 of the Model Code of Conduct in Schedule I Part A read with Regulation 12 (1) of the PIT Regulations 1992 read with Regulation 12 of the PIT Regulations; and Clauses 6 and 10 of the Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders in Schedule B read with Regulation 9 (1) of the PIT Regulations; Regulation 12 (1) and 13 (4) of the PIT Regulations 1992 read with Guidance Note issued by SEBI on August 24, 2015 read with Regulation 12 of the PIT Regulations

(iii) Noticee 3 violated Clauses 3.2.2, 3.3 and 4.2 of Schedule 1 Part A read with Regulation 12 (1) and 13 (4) of the PIT Regulations 1992 read with Regulation 12 of the PIT Regulations

42. The remaining submissions made by the Noticees in response to the SCN seek to draw attention to factors which mitigate the admitted violations committed by the Noticees, which are dealt with in the next part of this order.

II. If yes, whether the Noticees are liable for imposition of monetary penalty under Section 15A (b) and 15 HB of the SEBI Act?

III. If yes, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5 (2) of the Adjudication Rules?

43. As it has been established that the Noticees violated the provisions of the PIT Regulations, they are accordingly liable for imposition of penalty in terms of Section 15A (b) for failure to disclose their respective impugned transactions in shares of PVR Ltd. to the Company, and in terms of Section 15 HB for failure to obtain pre-clearance and contra trades, and in the case of Noticees 1 and 3, for trading during trading window closure. The applicable provisions are reproduced below for reference:-

<u>SEBI Act</u>-

Penalty for failure to furnish information, return, etc.

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, 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];*

** Substituted for the words "of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less" by the Securities Laws (Amendment) Act, 2014, w.e.f. 08-09-2014*

Penalty for contravention where no separate penalty has been provided.

15HB. *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]*.*
***** *Substituted for the words "liable to a penalty which may extend to one crore rupees" by the Securities Laws (Amendment) Act, 2014, w.e.f. 08-09-2014*

44. The Noticees have contended in respect of the contra trades carried out by them that the profits have been computed by SEBI on first-in-first-out basis without accounting for losses incurred on such trades, that there was no intent to make undue profits, and that penalty cannot be levied on the Noticees for contra trades under Section 15 HB of the SEBI Act as the said section is a residuary clause under which penalty could be awarded in case specific penalties have not been provided elsewhere under Chapter VI of the SEBI Act. In the present case, all 3 \ Noticees have submitted that they have remitted profits accrued from their contra trades to PVR Limited in terms of Clause 10 of the Code of Conduct in Schedule B to the PIT Regulations. PVR Limited had in turn paid the respective disgorged amounts of profit to the Investor Protection and Education Fund in terms of Clause 10. Noticees have contended that Clause 10 of the Code of Conduct in Schedule B to the PIT Regulations provides for disgorgement by the company of

amount of profits derived from the contra trades, and that additional penalty under Section 15 HB of the SEBI Act should not be levied on them.

45. The Noticees have cited the decision of the Securities Appellate Tribunal in the matter of *Snehlata R. Tiwari v. SEBI* (Appeal No. 175 of 2020 decided on April 28, 2021) in support of this contention. In the decision of the Securities Appellate Tribunal in the case of *Snehlata R. Tiwari v. SEBI* (not interfered with by the Supreme Court in its order dated August 18, 2022) cited by the Noticees, penalty of Rs. 1 lakh imposed on the Accounts Officer where she had made a profit of Rs. 348 through 2 contra trades, and where the amount was disgorged to the company, was quashed by SAT as insignificant, considering that "*the provisions of Section 15HB of the SEBI Act in the instant case is thus not applicable in as much as the said provision only applies when no separate penalty is provided*." and that disgorgement of profits in terms of Clause 10 of the Code of Conduct in Schedule B of the PIT Regulations is a penalty precluding applicability of Section 15HB of the SEBI Act.

46. I note that the decision of the Securities Appellate Tribunal in the case of *Snehlata R. Tiwari* was appealed by SEBI before the Hon'ble Supreme Court, where the Apex Court declined to entertain the Appeal considering the amount involved in the matter. However, the Supreme Court vide order dated August 16, 2021 stated that *the question of law is left open* in the peculiar facts and circumstances of the case, and made clear that "*this order shall not be treated as a precedent*."

47. I note that PVR Ltd. has disgorged profits accrued from contra trades in the case of all the Noticees in the present matter, as evidenced from the copies of Demand Drafts enclosed with its letter dated February 11, 2021 to SEBI. With respect to the aspect of "disgorgement" I note that the Explanation to Section 11B states – "*For the removal of doubts, it is hereby declared that the power to issue directions under this section shall include and always be deemed to have been included the power to direct any person, who made profit or averted loss by indulging in any transaction or activity in contravention of the provisions of this*

Act or regulations made thereunder, to disgorge an amount equivalent to the wrongful gain made or loss averted by such contravention". Black's Law Dictionary (Tenth Edition) defines "disgorgement" as "*the act of giving up something (such as profits illegally obtained) on demand or by legal compulsion.".* On the other hand, the Black's Law Dictionary defines "penalty" as "*punishment imposed on a wrongdoer usually in the form of imprisonment or fine; esp., a sum of money exacted as punishment for either a wrong to the state or a civil wrong (as distinguished from compensation for the injured party's loss)." [emphasis supplied].* In the present case, profits made by the Noticees through contra trades have been disgorged in terms of Clause 10 of the Code of Conduct in Schedule B to the PIT Regulations.

48. In the facts and circumstances of the case and the mitigating factors iterated by the Noticees including the fact that the amount was disgorged by the Company and remitted to the SEBI IPEF in accordance with Clause 10 of the Code of Conduct in Schedule B to the PIT Regulations, and in deference to the decision in *Snehlata Tiwari* by the SAT, I am not imposing penalty under Section 15HB of the SEBI Act for the violation of contra trades carried out by the Noticees.

49. While determining the quantum of penalty under Section 15A (b) and Section 15HB of the SEBI Act, the following factors stipulated in Section 15 of the SEBI Act have to be given due regard:

    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.

50. Various mitigating factors have been mentioned by the Noticees in their submissions. Noticee 2 has contended that he is a 78 year old senior citizen of advanced age, and has completely lost his vision and that in view of his age and debilitating medical condition, leniency may be exercised. Medical documents in support of this contention have been submitted by Noticee 2 vide letter dated July

28, 2022. Further, the Noticees have contended that the lapses in compliance were technical, procedural and venial, did not violate the object and intent of the PIT Regulations, did not lead to the Noticees deriving any unfair advantage over any other market participants or undermine the integrity of the market.

51. In this regard, the Noticees have also cited the judgement of the Supreme Court in *Siddhant Chaturvedi v. SEBI (2016) 12 SCC 119*, as well as the judgement of the SAT in *Vitro Commodities Private Limited v. SEBI* (Appeal No. 118 of 2013, decided on September 4, 2013) and various adjudication orders passed by SEBI, to contend that mitigating factors must be taken into account in the Noticees' case, to impose minimal penalty and take a lenient view of the matter. In Siddhant Chaturvedi, the Court took into account that the insider who failed to disclose change in shareholding under the PIT Regulations 1992 did so on only 3 occasions, and did not repeat the said violations, and that Section 15J of the SEBI Act when read harmoniously with Section 15A, gives scope for the Adjudicating Officer to take these factors into consideration while levying penalty. The number and repetitiveness of violations in the case of the Noticees before me distinguishes their case from the facts in the matter of *Siddhant Chaturvedi*.

52. In the matter of *Vitro Commodities Private Limited v. SEBI* (Appeal No. 118 of 2013, decided on September 4, 2013) the Tribunal reduced the penalty levied on the Noticee therein, and held that "*acquisition of 5.36% of stake by appellant and its non-disclosure was due to the ignorance or non-appreciation of requirement of disclosure, since same occurred mostly by not as active action by appellant as a result of bonus shares, shares allotted due to amalgamation*". However, this SAT decision is inapplicable to the facts of the present case as the Noticees actively bought and sold shares in disregard of the PIT Regulations, neglecting to see specific e-mails sent in this regard to them by the Company.

53. I further take into account the adjudication orders cited by the Noticees wherein minimal penalty was levied for in respect of disclosure lapses under Regulation 7 (2) (a) of the PIT Regulations.

54. I take note of the submission of the Noticees that no unlawful gains or avoidance of losses is alleged to have been made by the Noticees due to failure to disclose, obtain pre-clearance or trade during trading window closure. I also take into account the Noticees' submissions that they have never been subjected to any other proceedings by SEBI and that they have co-operated with SEBI during investigation by making belated disclosures under Regulation 7 (2) (a) of the PIT Regulations and disgorging unlawful profits from contra trades to the IPEF. Noticees 1 and 3 made the said disclosures regarding their impugned trades on October 29, 2021, while Noticee 2 did so on November 3, 2021. I also take into account that the trades pertain to 2014-17, and more than five years have passed since the last of the impugned trades.

55. Having considered the facts and circumstances of this matter as well as the mitigating factors, I am of the view that a penalty of Rs. 2,00,000/- (Two lakhs only) each on Noticee 1, 2 and 3 in terms of Section 15 A (b) and Section 15 HB of the SEBI Act for violation of the respective applicable provisions of the PIT Regulations will be commensurate with the violations committed by the Noticees.

ORDER

56. After taking into consideration all the facts and circumstances of the case, in exercise of powers conferred upon me under Section 15 I of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose a penalty of Rs. 1,00,000/- (Rupees one lakh only) each on Noticee 1, Noticee 2 and Noticee 3 in terms of Section 15A (b) of the SEBI Act for non-disclosure of their impugned trades to PVR Ltd. in terms of Regulation 7(2) (a) of the PIT Regulations 2015 or Regulation 13 (4) of the PIT Regulations 1992 as applicable, and of Rs. 1,00,000/- (Rupees one lakh only) each on Noticees 1, 2 and 3 in terms of Section 15 HB of the SEBI Act for failing to obtain pre-clearance of trades, and in the case of Noticees 1 and 3, for trading during trading window closure period despite receiving information from the Company regarding closure of trading window, in violation of Clause 3.2 and 3.3 of Model Code of Conduct for Prevention of Insider Trading for Listed Companies prescribed in Schedule I -

Part -A read with Regulation 12 (1) of SEBI (Prohibition of Insider Trading) Regulations, 1992 read with Guidance note issued by SEBI on August 24, 2015 and Clauses 4 and 6 of Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders prescribed in Schedule B read with Regulation 9 (1) of SEBI (Prohibition of Insider Trading) Regulations, 2015, as applicable.

57. Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through online payment facility available on the SEBI website www.sebi.gov.in on the following path, by clicking on the payment link –

ENFORCEMENT → Orders → Orders of AO → PAY NOW

58. The Noticees shall forward said Demand Draft or the details / confirmation of penalty so paid to the Enforcement Department – Division of Regulatory Action – 2 of SEBI.

59. The Noticees shall provide the following details while forwarding DD/ payment information:

a) Name and PAN of the entity (Noticee)
b) Name of the case / matter
c) Purpose of Payment – Payment of penalty under AO proceedings
d) Bank Name and Account Number
e) Transaction Number

60. Copies of this Adjudication Order are being sent to the Noticees and also to SEBI in terms of Rule 6 of the Adjudication Rules.

HARIHARAN NEELAKANTA IYER

Digitally signed by HARIHARAN NEELAKANTA IYER
Date: 2022.09.30 22:53:57 +05'30'

DATE: SEPTEMBER 30, 2022
PLACE: MUMBAI

N HARIHARAN
ADJUDICATING OFFICER