BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER No. Order/SM/RG/2022-23/22676-22686

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In the matter of circulation of unpublished price sensitive information through WhatsApp messages with respect to Axis Bank Ltd.

Notice No.	Noticee	PAN
1	Amish Arvind Malbari	AETPM3426M
2	Amrish Suresh Vakil	ADYPV7088C
3	Fanil Motiwalla	AAFPM4391K
4	Kunaal Raman Khanna	ALTPK6827F
5	Gaurav Girish Dedhia	AFMPD5304F
6	Kotak Capital Partners	AAQFK3250J
7	Hinglaj Enterprise	AADFH9254Q
8	Nidhi Mehra	AADFH9254Q
9	BharatKumar V. Bagrecha	AAUPB7542C
10	Mita Mahendra Shah	AHWPS1410K
11	Roshan Vivian Saldanha	AUIPS6308K

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1 FACTS OF THE CASE IN BRIEF

I. On November 17, 2017 the Financial Chronicle published a news article (sourced from Reuter's article by Mr. Rafael Nam) with the title "Out on WhatsApp: Prescient messages about Indian firms" which had reported that unpublished financial results of some of the major companies got posted/circulated in the instant messaging app WhatsApp (and groups created therein) ahead of their official announcements of such financial results on the floor of the BSE India Ltd. (hereinafter referred to as "BSE") and the National Stock Exchange of India

Ltd.(hereinafter referred to as "NSE" and collectively as "Stock Exchanges") for the consumption of public at large.

II. In the aforesaid background, Securities and Exchange Board of India (hereinafter referred to as "SEBI") initiated a preliminary examination in the matter of circulation of Unpublished Price Sensitive Information through WhatsApp groups during which search and seizure operation for 26 entities were conducted and approximately 190 devices, records etc., were seized. The WhatsApp chats as extracted from the said seized devices were further examined and it was noticed that in respect of around 12 companies whose earnings data and other financial information got shared/leaked through such WhatsApp groups. Axis Bank Ltd. was one of the major companies about which the information was leaked on the WhatsApp groups.

III. Subsequently , SEBI carried out an investigation in the matter of circulation of unpublished price sensitive information (hereinafter referred to as "**UPSI**") in the scrip of Axis Bank Ltd. (hereinafter referred to as "**Company/Axis Bank**") to ascertain any possible violation of the provisions of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the "**SEBI Act**") and SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as the "**PIT Regulations**") from June 21, 2017 to July 25, 2017 (hereinafter referred to as "**Investigation Period**").

IV. During investigation, SEBI observed that the Axis Bank's quarterly results for the quarter ended June 30, 2017 were announced by Axis Bank at BSE on 25 July, 2017 at 16:22:56 hours and at NSE on 25 July, 2017 at 16:23 hours, but before the announcement of aforesaid quarterly results on stock exchanges, certain figures relating to their quarterly results were circulated on Whatsapp. The message being circulated in this case was "*Gnpa 5.03 Nnpa 2.30 Nim 3.63 Slippages 8000cr-only 35 percent from wishlist Write off 2300 cr Casa 48.33 This HOS is going around for Axis*".

V. The aforesaid message was treated as UPSI as per Regulation 2(1) (n) of PIT Regulations, and the entities in possession of the aforesaid message are being treated as 'insiders' as per Regulation 2(1)(g) of PIT Regulations.

VI. It was observed that following Noticees: Amish Arvind Malbari (Noticee 1), Amrish Suresh Vakil (Noticee 2), Fanil Motiwalla (Noticee 3), Kunaal Raman Khanna (Noticee 4) and Gaurav Girish Dedhia (Noticee 5) had forwarded the above mentioned message on Whatsapp. Therefore, Noticee Nos. 1 to 5 were alleged to have violated Sections 12A(d) and 12A(e) of SEBI Act and Regulation 3(1) of PIT Regulations. Also, it was observed that Kotak Capital Partners (Noticee 6), Hinglaj Enterprise (Noticee 7), Nidhi Mehra (Noticee 8), BharatKumar V. Bagrecha (Noticee 9), Mita Mahendra Shah (Noticee 10) and Roshan Vivian Saldanha (Noticee 11) had traded in the Scrip of Axis Bank while in the possession of the aforesaid UPSI. Therefore, Noticee Nos. 6 to 11 were alleged to have violated Section 12A(d) & 12A(e) of SEBI Act and Regulation 4(1) of PIT Regulations

APPOINTMENT OF ADJUDICATING OFFICER

2 Ms. Maninder Cheema was appointed as Adjudicating Officer, vide order dated January 22, 2021 under Section 19 read with sub-section (1) of Section 15-I of the SEBI Act and Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as "Rules") to inquire into and adjudge the alleged violation of the provisions of Sections 12A (d) and (e) of SEBI Act and Regulation 3(1) and 4(1) of PIT Regulations committed by the Noticees under Section 15G of the SEBI Act. Pursuant to transfer of Ms. Maninder Cheema, Ms. Anitha Anoop was appointed as the Adjudicating Officer vide order dated June 07, 2022. Subsequently, Ms. Asha Shetty was appointed as the Adjudicating Officer vide order dated September 23, 2022. Subsequently, the undersigned has been appointed as the Adjudicating Officer vide order dated October 06, 2022.

SHOW CAUSE NOTICE, REPLY AND HEARING

3 The show cause notice (hereinafter referred to as "**SCN")** bearing no. EAD5/MC/HP/12683/2021 dated June 17, 2021 was served upon the Noticees under Rule 4(1) of the SEBI Adjudication Rules to show cause as to why an inquiry should not be held and penalty not be imposed against them under Section 15G of the SEBI Act for the alleged violation of Sections 12A (d) and (e) of SEBI Act and Regulation 3(1) and 4(1) of PIT Regulations. The said SCN was served through SPAD and was duly delivered to the Noticees.

Allegations in the SCN

4 The contents of the SCN and allegations levelled against the Noticees in the SCN are summarised below:

I. Details of the major corporate announcement made by Axis Bank, on BSE and NSE, during Investigation Period and their impact on the price of the scrip are given below:

<u>On BSE</u>

<table>
<tr><th>S.No.</th><th>Date-Time</th><th>Announcement/News</th><th>Price Impact/Shares Traded</th><th>Remarks</th></tr>
<tr><td>1.</td><td>04/07/2017 (10:59:05)</td><td><u>Notice of 23rd Annual General Meeting of Axis Bank Limited</u>
In continuation of our letter dated 26th April 2017 intimating the date of the 23rd Annual General Meeting (AGM) of the Bank, please find attached herewith a copy of the Notice of the 23rd AGM of the Bank to be held on Wednesday, 26th July 2017 at J. B. Auditorium, Ahmedabad Management Association, AMA Complex, ATIRA, Dr. Vikram Sarabhai Marg, Ahmedabad - 380 015, Gujarat, in terms of Regulation 30 read with Para A of Schedule III of SEBI Listing Regulation.

The Notice of 23rd AGM, Annual Report for the financial year 2016-17 and Business Responsibility Report for the financial year 2016-17 are also available on the website of the Bank at: https://www.axisbank.com/shareholders-corner/shareholder's-information</td><td><table>
<tr><th>Date</th><th>O</th><th>H</th><th>L</th><th>C</th><th>No. of shares traded</th></tr>
<tr><td>03.07.2017</td><td>517.00</td><td>521.00</td><td>515.30</td><td>517.75</td><td>2,73,203</td></tr>
<tr><td>04.07.2017</td><td>510.15</td><td>517.55</td><td>506.50</td><td>509.00</td><td>1,68,309</td></tr>
</table></td><td>The number of shares of Axis Bank traded recorded a decrease by 0.61 times</td></tr>
<tr><td>2.</td><td>25/07/2017 (16:22:56)</td><td><u>Unaudited Financial Result of the Bank, For The Quarter Ended 30th</u> June 2017.
Axis Bank Ltd has informed BSE that ,at the meeting of the Board of Directors of the Bank held today, the Board has reviewed and approved the Unaudited Financial Results of the Bank and the Unaudited Consolidated Financial Results, for the Quarter ended 30th June 2017, which was subjected to a Limited Review by the Statutory Auditors of the Bank.</td><td><table>
<tr><th>Date</th><th>O</th><th>H</th><th>L</th><th>C</th><th>No. of shares traded</th></tr>
<tr><td>25.07.2017</td><td>533.60</td><td>547.00</td><td>529.40</td><td>544.65</td><td>5,21,525</td></tr>
<tr><td>26.07.2017</td><td>542.00</td><td>543.85</td><td>525.00</td><td>528.85</td><td>7,75,208</td></tr>
</table></td><td>Close to close price decreased by 2.9% after declaration of Financial result.</td></tr>
</table>

On NSE

<table>
<tr><th>S. No.</th><th>Date-Time</th><th>Announcement/News</th><th>Price Impact/Shares Traded</th><th>Remarks</th></tr>
<tr><td>1.</td><td>04/07/2017 (10:57)</td><td><u>Shareholders meeting</u>

Axis Bank Limited has informed the Exchange regarding Notice of Annual General Meeting to be held on July 26, 2017</td><td><table>
<tr><th>Date</th><th>O</th><th>H</th><th>L</th><th>C</th><th>No. of shares traded</th></tr>
<tr><td>03.07.2017</td><td>517.10</td><td>521.80</td><td>515.00</td><td>517.25</td><td>37,01,949</td></tr>
<tr><td>04.07.2017</td><td>516.80</td><td>517.55</td><td>506.55</td><td>509.50</td><td>32,85,021</td></tr>
</table></td><td>Number of shares of Axis Bank traded recorded a decrease by 0.88 times</td></tr>
<tr><td>2.</td><td>25/07/2017 (16:23)</td><td><u>Financial Result Updates</u>

Axis Bank Limited has submitted to the Exchange, the financial results for the period ended June 30, 2017</td><td><table>
<tr><th>Date</th><th>O</th><th>H</th><th>L</th><th>C</th><th>No. of shares traded</th></tr>
<tr><td>25.07.2017</td><td>533.50</td><td>547.50</td><td>529.95</td><td>544.95</td><td>81,81,916</td></tr>
<tr><td>26.07.2017</td><td>538.90</td><td>543.95</td><td>525.40</td><td>528.85</td><td>1,20,85,057</td></tr>
</table></td><td>Close to close price decreased by 2.95% after declaration of Financial result.</td></tr>
</table>

II. Chronology of events pertaining to financial results of quarter ended June 30, 2017

Date	Key events/meeting
21.06.2017	Closure of the trading window.
01.07.2017	Generation of first cut data relating to financial results for the quarter ended 30.06.17
01.07.2017	Masking of the first cut financial results with dummy adjustments.
03.07.2017	Commencement of limited review by M/s. S R Batliboi & Co. LLP , Statutory Auditors
06.07.2017	Generation of raw system reports on NPA accounts.
07.07..2017	Generation of second cut data relating to financial results(other than NPAs and provisioning) for the quarter ended 30.06.17 with dummy adjustments for masking.
07.07..2017	Informal Meeting – Discussions pertained to Provisional Profit & Loss account of the Bank and Balance sheet figures such as advances CASA, growth etc.
10.07.2017	Generation of Reports/ Commencement of “quiet period” before declaration of quarterly reports.
10.07.2017	Generation of financial results with first cut NPAs and provisioning for the quarter ended 30.06.17 with dummy adjustments for masking.
14.07.2017	Discussions related to Profit & Loss account ,Balance sheet figures such as advances, CASA, growth and NPAs
20.07.2017	Generation of final financial results for the quarter ended 30.06.17 including NPAs and provisioning

Date	Key events/meeting
21.07.2017 To 24.07.2017	Finalization of Board notes and Presentations
22.07.2017	Sharing of final financial statements with statutory auditors through secure protection under password
25.07.2017	Conclusion of limited review by Statutory Auditors
25.07.2017	Meeting of ACB – Approval of Q1 results of the Bank
25.07.2017	Declaration of results for Q1FY18 , submission to stock exchanges, hosting of results on website

III. From the chronology of events, it was observed that the trading window was closed on June 21, 2017 and preparation of draft preliminary financial statements started from July 01, 2017. The corporate announcement of audited financial results for the quarter ended June 30, 2017 was made to the exchanges, NSE on July 25,2017 at 16:23 hours and BSE on July 25, 2017 at 16:22:56 hours. Hence, the period of UPSI for financial results was taken to be June 21, 2017 to 16:22:56 hours on July 25, 2017.

IV. Financial figures circulated on WhatsApp pertaining to Axis Bank are compared with actual figures disclosed subsequently on exchange to gauge the deviation between two sets of figures. The details are as under:

Date and time of WhatsApp message	Figures in WhatsApp message	Date and time of disclosure on Exchange	Actual figures disclosed on Exchange
25/07/2017 09:12 hours	GNPA 5.03% NNPA 2.30% NIM 3.63% Write off 2300 cr CASA 48.33%	25/07/2017 (16:23 NSE) (16:22:56 BSE)	GNPA 5.03% NNPA 2.30% NIM 3.63% Write off 2341.93 cr Casa 49%

V. From the above table, it can be observed that the deviation in financial figures was observed only in write off and Current Account Savings Account (CASA) figures, however, the deviation was miniscule i.e. 1.79% for write off and 1.36% for CASA figures.

VI. Therefore, the information on financial results prior to disclosure by the Company was treated as UPSI as per Regulation 2(1) (n) of PIT Regulations and the circulation of financial figures of the Company through WhatsApp amounts to communication of UPSI.

Noticee Nos. 1 to 5

VII. It was observed that the WhatsApp message related to Axis Bank ("*Gnpa 5.03 Nnpa 2.30 Nim 3.63 Slippages 8000cr-only 35 percent from wishlist Write off 2300 cr Casa 48.33 This HOS is going around for Axis*") was communicated by Noticee 1 through "Only stocks" WhatsApp group. Thereafter, Noticee 2 (one of the group members of "Only stocks" group) communicated the WhatsApp message to another WhatsApp group namely "Sharing Ideas". Thereafter, Noticee 3 (one of the group members of "Sharing ideas" group) communicated the WhatsApp message to another WhatsApp group namely "Greed and Fear". Also, Noticee 3 allegedly forwarded the said message to Noticee 5, who in turn forwarded it to Noticee 4. Noticee 4 in turn forwarded it to group "Sharing Ideas".

VIII. Therefore, Noticee Nos. 1 to 5 were in possession of the UPSI and hence, were termed as Insiders as per regulation 2 (1) (g) of the PIT Regulations. Thus, by forwarding the aforementioned Whatsapp message, the Noticees 1 to 5 were alleged to have violated the provision of section 12A (d) and (e) of the SEBI Act, 1992 and regulation 3(1) of the PIT Regulations.

IX. Further, SEBI examined the trading activities of the suspected entities in the scrip for the period when WhatsApp message was communicated till announcement of quarterly results i.e. (July 24, 2017 – July 25, 2017). The suspected entities include entities involved in communicating message i.e. Noticees 1 to 5, immediate relatives of Noticees 1 to 5 and Group members of three WhatsApp Groups namely, "Only Stocks", "Sharing Ideas" and "Greed and Fear".

X. Out of aforesaid suspected entities, Noticee Nos. 6 to 11 were found to have traded in the scrip on July 24 and July 25, 2017 in alleged violation of SEBI Act and PIT Regulations. The trading details of the Noticee Nos. 6 to 11 are mentioned below:

Notice 6

Trade Date	Expiry Date	Buy Qty	Buy Price (Rs.)	Sell Qty	Sell Price (Rs.)	Buy Value (Rs.)	Sell Value (Rs.)	Profit (Rs.)	Concentration
25-Jul-2017	31/08/2017	7,200	545.72	7,200	549.01	39,29,160.00	39,52,860.00	23,700	0.06%

XI. From the above table, it was observed that Noticee 6 made profit of Rs. 23,700 by trading in the scrip of Axis Bank while in possession of UPSI.

XII. It was observed that although Noticee 6 vide email reply dated March 17, 2020 stated that Mr. Vikram Kotak (partner at Noticee 6 and responsible for the said trades) was not active member of the "Sharing Ideas" WhatsApp group, Noticee 6 was privy to information shared on the "Sharing Ideas" whatsapp group by virtue of its partner, Vikram Kotak being a member of the group. Hence, Noticee 6 was in possession of UPSI. Further, Noticee 6 had traded while in possession of UPSI. Hence, it was alleged that Noticee 6 had violated Section 12A(d) & 12A(e) of SEBI Act and Regulation 4(1) of PIT Regulations.

Noticee 7

Trade Date	Expiry Date	Buy Qty	Buy Price (Rs.)	Sell Qty	Sell Price (Rs.)	Buy Value (Rs.)	Sell Value (Rs.)	Profit/Loss (Rs.)	Concentration
24-Jul-2017	27/07/2017	2,400	534.30	-	-	12,82,320.00	-	-	0.01%
25-Jul-2017	27/07/2017	91,200	542.11	27,600	543.02	4,94,40,720.00	1,49,87,280.00	-	0.19%
Total *		**93,600**	**-**	**27,600**	**-**	**-**	**-**	**(3,81,840)**	**-**
26-Jul-2017**	27/07/2017	33,600	535.72	99,600	535.66	-	-	**-**	-

(*Total of Buy and Sell quantity on 24th&25th in Axis Bank FUTSTK, ** outside UPSI period given for reference for sell price)

Day Date	Expiry Date	Buy Quantity	Sell Quantity	Buy Price(Rs.)	Sell Price(Rs.)	Buy Value(Rs.)	Sell Value(Rs.)	Profit/Loss (Rs.)
25-Jul-2017	27-Jul-2017	1,28,400	16,800	23.87	28.95	30,65,100.00	4,86,300.00	
25-Jul-2017	27-Jul-2017	1,200	1,200	18.30	22.20	21,960.00	26,640.00	-
25-Jul-2017	27-Jul-2017	0	12,000		4.35	0.00	52,200.00	-
Total *	-	**1,29,600**	**30,000**	-	-	-	-	**(9,76,944)**
26-Jul-2017**	27-Jul-2017	12,000	1,11,600	0.45	13.89	0.00	-	

(*Total of Buy and Sell quantity on 25th in Axis Bank OPTSTK-CE, ** outside UPSI period given for reference)

XIII. It was observed that Noticee 7 had traded in Futures of Axis Bank. On July 24, 2017, it had bought 2,400 Axis Bank FUTSTK at Rs. 534.30 and later covered its position by selling it at Rs. 535.66 on July 26, 2017, thereby earned a profit of Rs. 3,264. Similarly, on July 25, 2017, Noticee 7 bought 91,200 Axis Bank FUTSTK at Rs. 542.11 and sold 27,600 Axis Bank FUTSTK at Rs. 543.02, and earned a profit of Rs. 25,116 for buying and selling of 27,600 Axis Bank FUTSTK. On July 26, 2017 Noticee 7 covered remaining 63,600 Axis Bank FUTSTK by selling it at Rs.535.66, and thereby suffered a loss of Rs.4,10,220. Thus, in total Noticee 7 suffered a loss of Rs. 3,81,840 by trading in Axis Bank futures, while in possession of UPSI i.e. on July 24, 2017 and Jul 25, 2017.

XIV. Further, Noticee 7 had also traded in Options of Axis Bank. On July 25, 2017, it had bought and sold 16,800 Axis Bank OPTSTK-CE with Strike Price of Rs. 520 at Rs.23.87 and Rs 28.95 respectively, and made a profit of Rs. 85,344. Noticee 7 covered remaining 1,11,600 of Axis Bank OPTSTK-CE with Strike Price Rs. 520 by selling the same at Rs.13.89 and thus, suffered a loss of Rs.11,13,768. It also bought and sold 1,200 Axis Bank OPTSTK-CE with Strike Price Rs.530 earning a profit of Rs.4680. It sold 12,000 Axis Bank OPTSTK-CE with Strike Price of Rs.560 at Rs.4.35 and later covered its position by buying same quantity on July 26, 2017 at Rs.0.45, thereby earned a profit of Rs. 46,800. Thus, in total Noticee 7 suffered a loss of Rs. 9,76,944 by trading in Axis Bank options while in possession of UPSI.

XV. It was observed that although the Noticee 7 vide its email reply dated March 20, 2020 stated that it had not done any trade based on such message of the said WhatsApp group, Noticee 7, through Mr. Bharat Bhanushali (who took decision on behalf of Noticee 7 and was a part of WhatsApp Group “Sharing Ideas”), had traded while in possession of UPSI as brought out above. Hence, it was alleged that Noticee 7 traded in the scrip of Axis Bank while in possession of UPSI and is in violation of Section 12A(d) & 12A(e) of SEBI Act and Regulation 4(1) of PIT Regulations.

Noticee 8

Day Date	Expiry Date	Buy Quantity	Sell Quantity	Buy Avg Price (Rs.)	Buy Value (Rs.)	Notional Profit/Loss
25/07/2017	27/07/2017	1,200	0	4.90	5,880.00	(5,880)#

(#Call option was not exercised hence total loss is equal to premium paid)

XVI. It was observed from the above table that Noticee 8 had traded in Axis Bank OPTSTK-CE. On July 25, 2017, she had bought 1,200 Axis Bank OPTSTK-CE at the total premium of Rs. 5,880. But, Noticee 8 did not exercise the call option due to fall in share price of Axis Bank post the announcement of result. Hence, her notional loss was total premium paid i.e. Rs. 5,880.

XVII. It was observed that although Noticee 8, vide email reply dated March 16, 2020 stated that she may not have read the post, Noticee 8 was privy to information shared on the "Sharing Ideas" Whatsapp group by virtue of being a member of the group. Hence, Noticee 8 was in possession of UPSI. Further, Noticee 8 had traded while in possession of UPSI. Hence, it is alleged that Noticee 8 is in violation of Section 12A(d) & 12A(e) of SEBI Act and Regulation 4(1) of PIT Regulations.

Noticee 9

Trade Date	Expiry Date	Buy Qty	Buy Price (Rs.)	Sell Qty	Sell Price (Rs.)	Buy Value (Rs.)	Sell Value (Rs.)	Profit (Rs.)	Concentration
24-Jul-2017	27/07/2017	2,400	540.00	2,400	534.90	12,96,000.00	12,83,760.00	(12,240.00)	0.01%
25-Jul-2017	27/07/2017	4,800	532.30	4,800	540.31	25,55,040.00	25,93,500.00	38,460.00	0.02%
Total		**7,200**	**-**	**7,200**	**-**	**38,51,040**	**38,77,260**	26,220.00	**-**

XVIII. It was observed from the above table that Noticee 9 had traded in Futures of Axis Bank. On July 24 and 25, 2017, he had bought 7,200 Axis Bank FUTSTK and later sold it, thereby earned a profit of Rs. 26,220.

XIX. As per the details shared by Noticee 2, it was observed that Noticee 9 was the member of WhatsApp group "Sharing Ideas", hence Noticee 9 was privy to information shared on the "Sharing Ideas" Whatsapp group by virtue of being a member of the group. Hence, Noticee 9 was in possession of UPSI. Further, Noticee 9 had traded while in possession of UPSI. Hence, it was alleged that Noticee 9 is in violation of Section 12A(d) & 12A(e) of SEBI Act and Regulation 4(1) of PIT Regulations.

Noticee 10

Trade Date	Expiry Date	Buy Qty	Buy Price (Rs.)	Sell Qty	Sell Price (Rs.)	Buy Value (Rs.)	Sell Value (Rs.)	Nominal Profit/Loss (Rs)	Concentration
24-Jul-2017	27/07/2017	1,200	533.90	-	-	6,40,680.00	-	(5,340)	0.01%

Date	Symbol	Series	Buy Quantity	Sell Quantity	Buy Value	Sell Value	Profit (Rs.)
24-Jul-2017	AXISBANK	EQ	120	90	64,502	48,503	-
25-Jul-2017	AXISBANK	EQ	130	170	69,701	86,192	-
Total			**250**	**260#**	**1,34,203**	**1,39,992**	**407.2**

(# 250 sell qty is taken to calculate actual profit/loss and remaining qty of 10 shares is taken for calculating Notional Profit/loss as entity sold extra shares than bought)

XX. It was observed from the above table that Noticee 10 had traded in Futures of Axis Bank and also in cash market. On July 24 2017, she had bought 1,200 Axis Bank FUTSTK at Rs.533.90 which got settled on July 26, 2017 at the settlement price of Rs.529.45, thereby incurred a loss of Rs. 5,340. In cash market, Noticee 10 earned profit of Rs.407.20 by buying and selling 250 shares of Axis Bank while in possession of UPSI. Apart from earning a profit of Rs.407.2, she also avoided notional loss of Rs.93.2 by selling 10 shares on July 25, 2017 at Rs 538.17 instead at a closing price Rs 528.85 on July 26, 2017.

XXI. As per the details shared by Noticee 2, it was observed that Noticee 10 was the member of WhatsApp group “Sharing Ideas” where message related to financial result of Axis Bank was circulated. Hence, Noticee 10 was privy to information shared on the “Sharing Ideas” Whatsapp group by virtue of being a member of the group. Therefore, Noticee 10 was in possession of UPSI. Further, Noticee 10 had traded while in possession of UPSI. Hence, it was alleged that Noticee 10 is in violation of Section 12A(d) & 12A(e) of SEBI Act and Regulation 4(1) of PIT Regulations.

Noticee 11

Trade Date	Expiry Date	Buy Qty	Buy Price (Rs.)	Sell Qty	Sell Price (Rs.)	Buy Value (Rs.)	Sell Value (Rs.)	Profit/Loss (Rs)	Concentration
25-Jul-2017	27/07/2017	4,800	543.21	4,800	542.13	26,07,420.00	26,02,200.00	(5,220)	0.02%

XXII. It was observed from the above table that Noticee 11 had traded in Futures of Axis Bank. On July 25, 2017, he had bought 4,800 Axis Bank FUTSTK at Rs.543.21 and later sold the same at Rs.542.13, thereby incurred a loss of Rs. 5,220.

XXIII. As per the details shared by Noticee 2, it was observed that Noticee 11 was the member of WhatsApp group “Only Stocks” where message related to financial result of Axis Bank was circulated. Hence, Noticee 11 was privy to information shared on the “Sharing Ideas” Whatsapp group by virtue of being a member of the group. Therefore, Noticee 11 was in possession of UPSI. Further, Noticee 10 had traded while in possession of UPSI. Hence, it was alleged that Noticee 10 is in violation of Section 12A(d) & 12A(e) of SEBI Act and Regulation 4(1) of PIT Regulations.

5 Reply of the Noticees

I. Vide their separate emails/letters dated between June 28 to July 19,2021 Noticee Nos. 1 to 8 and 11 denied the allegations made against them by SEBI. Noticee Nos. 1 and 2 made a reference to the order passed by the Hon’ble Securities Appellate Tribunal (hereinafter referred to as “**SAT**”) in the matter of Shruti Vora vs SEBI (Appeal no. 308), dated March 22, 2021 wherein Hon’ble SAT quashed the order passed by Adjudicating officer based on similar facts.

II. Further, Noticee Nos. 1, 2, 4 and 5 submitted that they were not aware that the information contained in the aforesaid message was UPSI. Noticee nos. 1 and 4 submitted that they were not benefitted financially from the information contained in the aforesaid Whatsapp message.

III. Noticee No. 8 submitted that she wasn't a part of any of the Whatsapp groups mentioned in the SCN and her trades in the scrip of Axis Bank were not based on any information contained in the aforesaid Whatsapp message.

IV. Noticee Nos. 9 and 10 did not submit any reply to the SCN.

6 CONSIDERATION OF ISSUES AND EVIDENCE

I. I have considered the allegations levelled in the SCN, the relevant material brought on record, and replies/ submissions of the Noticees made during the instant proceedings before the undersigned.

II. Before proceeding further, I would like to refer to the relevant provisions of SEBI Act and PIT Regulations:

Relevant provisions:

SEBI Act

12A. No person shall directly and indirectly-

…………………………………………………..

(d) engage in insider trading;

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

PIT Regulations

2(1)(g) *"insider" means any person who is:*

(i) A connected person, or

(ii) in possession of or having access to unpublished price sensitive information

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

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

(i) financial results

(ii) dividends

(iii) change in capital structure

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

(v) changes in key managerial personnel; and

(vi) material events in accordance with the listing agreement

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

3 (1) Communication or procurement of unpublished price sensitive information

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

4 (1) Trading when in possession of unpublished price sensitive information

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

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

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

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

Provided that such unpublished price sensitive information was not obtained under sub-regulation (3) of regulation 3 of these regulations. Provided further that such off-market trades shall be reported by the insiders to the company within two working days. Every company shall notify the particulars of such trades to the stock exchange on which the securities are listed within two trading days from receipt of the disclosure or from becoming aware of such information.

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

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

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

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

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

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

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

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

7 Further, before going into the merits of the case, it would be appropriate to consider the order passed by the Hon'ble SAT dated March 22, 2021 (Appeal Nos. 308, 309, 310, 311, 312, 313, 341, 342, 343, 344 and 283 of 2020), in the matter which are similar in terms of facts and circumstances, as found in this case. In the aforesaid order, Hon'ble SAT *inter alia* had held that –

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

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

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

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

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

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

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

9 I note subsequently, an appeal was filed by SEBI with reference to the aforesaid SAT order dated March 22, 2021, before Hon'ble Supreme Court. Thereafter, the Hon'ble Supreme Court in the matter of SEBI vs Shruti Vora & Ors. (Civil appeal nos. 2252-2262/2021) dated September 26, 2022, while declining to interfere with the aforesaid order of the Hon'ble SAT, had *inter alia* held that: -

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

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

10 Thus, taking cognizance of the aforesaid orders passed by the Hon'ble SAT and the Hon'ble Supreme Court, I note that the AOs in identical matters such as Mindtree Ltd., Bata Ltd., Ultratech Cement Ltd., Infosys Ltd., TCS Ltd. and ITC Ltd. have also dropped the allegations qua the entities and disposed of the appeal SCNs issued in those matters. As the facts giving rise to the allegations in the appeal SCNs are identical to the facts presented before me, I note that the decision of the Hon'ble Supreme Court in the appeal SCNs applies to the present proceedings.

11 In view thereof, I find that the allegations levelled against Noticees in the SCN issued in the present matter do not sustain. Consequently, the charge of violating regulation 4(1) levelled against Noticees 6-11 alleged on the strength of Noticee nos. 1 to 5 being insiders, having communicated the UPSI to Noticee no. 6-11 who in turn is alleged to have traded in the shares of the Company while in possession of UPSI is also liable to be dropped. In view of my aforesaid findings exonerating the Noticees from the rigor of the charges levelled against them in the SCN, I do not find it relevant to deal with other submissions made by the Noticees in their replies/submissions as recorded above.

12 Considering the similar nature of facts and circumstances and the aforesaid judgements of higher courts, I do not find any merit in adjudication of similar set of facts. Hence, as such, the SCN alleging the violation of Section 12A(d) and (e) of

SEBI Act read with Regulation 3(1) and 4(1) of PIT Regulations is being disposed of without any consideration.

13 ORDER

I. In view of above, I find it appropriate to conclude the instant adjudication proceeding by disposing of the SCN *qua* Noticees *i.e.,* Amish Arvind Malbari (Noticee 1), Amrish Suresh Vakil (Noticee 2), Fanil Motiwalla (Noticee 3), Kunaal Raman Khanna (Noticee 4), Gaurav Girish Dedhia (Noticee 5), Kotak Capital Partners (Noticee 6), Hinglaj Enterprise (Noticee 7), Nidhi Mehra (Noticee 8), BharatKumar V. Bagrecha (Noticee 9), Mita Mahendra Shah (Noticee 10) and Roshan Vivian Saldanha (Noticee 11), without imposition of any monetary penalty.

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

Date: January 02,2023 **SAHIL MALIK**

Place: Mumbai **ADJUDICATING OFFICER**