BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
(ADJUDICATION ORDER NO: Order/AK/VP/2022-23/22827)

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

Shashi Kant Dalmia
(PAN–AMSPD0413A)
A 401, Dreamcity,
Mullewadi Road, A/P Manchar,
Tal Ambegaon, Pune 410 503
sdalmia1986@gmail.com

IN THE MATTER OF PARAG MILK FOODS LIMITED

BACKGROUND OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') had conducted an investigation for the period from January 23, 2018 to April 18, 2018 (hereinafter referred to as **'Investigation Period/IP'**) to ascertain whether any entity has prima-facie violated the provisions of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as **'SEBI Act'**) or SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as **"PIT Regulations"**) while trading in the scrip of Parag Milk Foods Limited (hereinafter also referred to as **"Parag"/ "the Company"**).

2. SEBI observed that Shashi Kant Dalmia (hereinafter referred to as **"Noticee"**) had traded in the scrip of Parag while in possession of Unpublished Price

Sensitive Information (hereinafter referred to as **"UPSI"**) thereby allegedly violated Section 12A (d) and 12A (e) of SEBI Act, Regulation 4(1) r/w 4(2) of PIT Regulations and Clause 6 of Schedule B ("Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders"), r/w Regulation 9(1) of PIT Regulations.

APPOINTMENT OF ADJUDICATING OFFICER

3. Upon being satisfied that there were sufficient grounds to inquire and adjudicate upon the violation of provisions of the SEBI Act and PIT Regulations by the Noticee, SEBI initiated adjudication proceedings against the Noticee, in exercise of powers u/s 19 r/w Section 15-I of SEBI Act and rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as the **"Adjudication Rules"**). SEBI appointed Ms. Geetha G, as Adjudicating Officer (**AO**), vide order dated April 04, 2022 to inquire into and adjudge the alleged violations by the Noticee. Pursuant to the transfer of Ms. Geetha G, SEBI appointed the undersigned as AO, vide order dated August 29, 2022, to inquire into and adjudge the alleged violations by the Noticee.

SHOW CAUSE NOTICE, REPLY AND HEARING

4. Show Cause Notice ref. no.EAD-6/AK/VP/51352/1/2022 dated October 6, 2022 (hereafter referred to as "**SCN**") was issued to the Noticee in terms of the provisions of rule 4(1) of the Adjudication Rules r/w Section 15-I of SEBI Act, requiring the Noticee to show cause as to why an inquiry should not be held against him and why penalty, if any, should not be imposed on him under the provision of Section 15G of SEBI Act for the alleged violations. The Noticee, vide email dated 24.10.2022, requested 10 days' time to submit its reply to the SCN.

5. The allegations against the Noticee are given in brief as under:

5.1 The Noticee, by executing trade while in possession of UPSI, violated Section 12A (d) and 12A (e) of SEBI Act and Regulation 4(1) r/w 4(2) of PIT Regulations.

5.2 The Noticee, despite being a designated person of Parag, traded in the scrip of Parag with value greater than 5 lakhs (nearly 13 lakhs) without taking pre-clearance of trade from compliance officer and violated Clause 6 of Schedule B ("Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders") r/w Regulation 9(1) of PIT Regulations and Section 12A (e) of SEBI Act.

6. The Noticee, vide letter dated 09.11.2022, submitted its reply to the SCN. An opportunity of personal hearing was granted to the Noticee on 14.11.2022, vide Hearing Notice dated 31.10.2022. The Noticee, vide email dated 11.11.2022 requested to adjourn the hearing and accordingly the hearing was rescheduled on 24.11.2022. The Noticee appeared in person and reiterate the submission made, vide letter dated 09.11.2022.

CONSIDERATION OF ISSUES AND FINDINGS

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

I. What was UPSI in the instant matter, when did the UPSI come into existence and what was the UPSI Period. Whether the Noticee was an "insider" of Parag, in terms of provisions of the PIT Regulations. If yes, whether the Noticee violated Sections 12A (d) and 12A (e) of SEBI Act, Regulation 4(1) r/w 4(2) and Clause 6 of Schedule B ("Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders"), r/w Regulation 9(1) of PIT Regulations.

II. Does the violations, if any, attract monetary penalty u/s15G of the SEBI Act?

III. If so, what should be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act r/w Rule 5(2) of the Adjudication Rules?

8. Before moving forward, it is pertinent to refer to the relevant provisions which are alleged to have been violated by the Noticee. The said provisions are reproduced hereunder:

<u>SEBI Act.</u>

Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.

12A. *No person shall directly or indirectly—*

d) engage in insider trading;

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

<u>PIT Regulations</u>

2(1) (d) "connected person" means, -

(i) any person who is or has during the six months prior to the concerned act been associated with a company, directly or indirectly, in any capacity including by reason of frequent communication with its officers or by being in any contractual, fiduciary or employment relationship or by being a director, officer or an employee of the company or holds any position including a

professional or business relationship between himself and the company whether temporary or permanent, that allows such person, directly or indirectly, access to unpublished price sensitive information or is reasonably expected to allow such access.

(ii) Without prejudice to the generality of the foregoing, the persons falling within the following categories shall be deemed to be connected persons unless the contrary is established, -

(a) an immediate relative of connected persons specified in clause (i).

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;

Regulation 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.

Trading when in possession of unpublished price-sensitive information.

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

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 promoters 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.

(ii) 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;

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

NOTE: 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. The reasons for which he trades or the purposes to which he applies the proceeds of the transactions are not intended to be relevant for determining whether a person has violated the regulation. He traded when in possession of unpublished price sensitive information is what would need to be demonstrated at the outset to bring a charge. Once this is established, it would be open to the insider to prove his innocence by demonstrating the circumstances mentioned in the proviso, failing which he would have violated the prohibition.

4.(2) In the case of connected persons the onus of establishing, that they were not in possession of unpublished price sensitive information, shall be on such connected persons and in other cases, the onus would be on the Board.

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.*

NOTE: It is intended that every company whose securities are listed on stock exchanges and every market intermediary registered with SEBI is mandatorily required to formulate a code of conduct governing trading by its employees. The standards set out in the schedule are required to be addressed by such code of conduct.

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Clause 6 of Schedule B ("Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders") of SEBI PIT Regulations

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.

Issue I. What was UPSI in the instant matter, when did the UPSI come into existence and what was the UPSI Period. Whether the Noticee was an "insider" of Parag, in terms of provisions of the PIT Regulations. If yes, whether the Noticee violated Sections 12A (d) and 12A (e) of SEBI Act, Regulation 4(1) r/w 4(2) and Clause 6 of Schedule B ("Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders"), r/w Regulation 9(1) of PIT Regulations.

9. I note that the term UPSI has been defined in Regulation 2(1)(n) of the PIT Regulations, as 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. Further, such information includes information related to 'expansion of business' as per the said provisions. In the instant matter, Parag had made announcement pertaining to expansion of its business on April 19, 2018.

10. I note from the facts stated in the SCN that following corporate announcements were made during the IP

(Source: BSE)

Date and Time	Announcement
January 31, 2018, 10:43:41	Intimation of board meeting on February 08, to consider quarterly results for December 2017
February 08, 2018 , 19:33:51	Outcome of Board Meeting on February 08, 2018- Board approved unaudited financial results for quarter ended December 31, 2017
February 08, 2018 , 19:46:28	Announcement of financial results for quarter and nine months ended December 31, 2017
February 26, 2018, 11:32:34	Intimation of board meeting to be held on March 01 2018
March 01, 2018, 12:42:26	Outcome of Board Meeting – Board approved reclassification of promoter group and increase of investment limits for non-resident individuals
April 18, 2018, 19:11:10	Intimation of board meeting to be held on April 26 2018
April 19, 2018 08:15:20	Parag Milk Foods Ltd announced expansion of its footprint in North India with the Acquisition of the manufacturing facility of Danone Foods and Beverages India Private Limited, a French dairy based MNC .

11. I note that chronology of important events with respect to the UPSI is as under:

Event- Initial discussion

S. No.	Date	Description	Persons Involved
1	23/01/2018	Discussion held over call towards offer for sale/ purchase of targeted assets of Danone Foods & Beverages India Pvt. Ltd.	Robin Goel- Co- Manufacturing Lead Danone India and VPS Malik- V.P. -Institutional Sale- Parag Milk Foods Ltd.
2	23/01/2018	E-mail shared by Robin Goel- Co-manufacturing Lead of Danone India and provided format	Robin Goel- Co- Manufacturing Lead Danone India and VPS Malik- V.P. -Institutional Sale

		of NDA to move forward for transaction (purchase/sale of target).	Parag Milk Foods Ltd
3	23/01/2018	E-mail shared by Robin Goel- Co-manufacturing Head- provided time lines for offer for sale of target assets.	Robin Goel- Co- Manufacturing Lead Danone India and VPS Malik- V.P. -Institutional Sale Parag Milk Foods Ltd
4	23/01/2018	E-mail shared by Robin Goel- Co-Manufacturing Head- Danone India and placed request for signed NDA. Robin also shared target assets details and small PPT.	Robin Goel- Co- Manufacturing Lead Danone India and VPS Malik- V.P. -Institutional Sale Parag Milk Foods Ltd
5	23/01/2018	NDA was confirmed between Parag and Danone on the mail E-mail shared by VPS Mailk - V.P. Institutional Sale Parag Milk Foods for confirmation on provided draft NDA by Robin Goel- Co-Manufacturing	VPS Malik- V.P. - Institutional Sale and Robin Goel- Co-Manufacturing Lead Danone India -Danone India
6	28/01/2018	VPS Mail V.P. Institutional Sale- Parag Milk Foods sent a confirmation mail to Robin Goel- Co-Manufacturing Lead Danone India.	VPS Malik- V.P. - Institutional Sale and Robin Goel- Manufacturing Lead Danone India -Danone India
7	28/01/2018	Anil Tamar- Director Operation sent a confirmation mail to Parag's representatives on selection of Parag as a prospective buyer and instructed to submit best offer by 29th Jan, 2018. Danone also shared draft terms and conditions with the same mail.	Anil Tomar - Director- Operations Danone India VPS Mailk, Vimal Agarwal-CFO Sanjay Mishra- GM Operation
8	28/01/2018	Instructed to move forward on the transaction on certain terms and conditions.	Vimal Agarwal-CFO of Parag Milk VPS Milk -V.P. Institutional Sales Anil Tomar- Director Operation

			Danone
9	29/01/2018	Confirmation of deposit of Earnest money to the tune of 10% of total bid size in account of Danone India	Vimal Agarwal- CFO of Parag Milk Foods Ltd. Anil Tomar- Director Operation
10	30/01/2018	Confirmation mail sent by Vimal Agarwal to Anil Tomar- Director Operation and shared RTGS details for deposit of earnest money. Terms and Conditions sheet signed between Parag and Danone.	Vimal Agarwal-CFO Parag Milk Foods Ltd. Anil Tomar- Operation Danone India

Event- Engagement of Consultants for Due Diligence

S. No.	Date	Description	Persons Involved
11	06/02/2018	Parag discussed with M/s Rajani Associates for Legal Due Diligence of target assets unit of M/s Danone India Foods and Beverages Pvt. Ltd. and signed Mandate Letter for due diligence on 06th Feb, 2018.	Vimal Agarwal- CFO Parag Milk Foods Ltd. Dharmendra Kumar Vyas Manager Legal Parag Milk Foods Ltd. Prem Rajani- Partner- Rajani Associates, Advocates & Solicitors
12	07/02/2018	Parag discussed with M/s KPMG India Private Ltd. for financial Due Diligence of target assets unit of M/s Danone India Foods and Beverages Pvt. Ltd. and signed LOE for due diligence on 07th Feb, 2018	Vimal Agarwal- CFO Parag Milk Foods Ltd. Dharmendra Kumar Vyas Manager Legal Parag Milk Foods Ltd. Nilesh Dalal- Partner, Transaction Services- KPMG India Private Ltd.
13	07/02/2018	KPMG Submitted its financial due diligence report to Parag.	Vimal Agarwal- CFO Parag Milk Foods Ltd. and Dharmendra Vyas- Manager Legal

			Nishesh Dalal- Partner-Transaction Services- KPMG India
14	08/02/2018	Rajani& Associates, Advocate and Solicitors submitted legal due diligence report to Parag Milk Foods Ltd. on e-mail.	Vimal Agarwal- CFO Parag Milk Foods Ltd. Dharmendra Kumar Vyas, Manager Legal Prem Rajani-Partner Rajani & Associates

Event-Approval of Board of Directors

S. No.	Date	Description	Persons Involved
15	08/02/2018	Consent of Board of Directors of Parag Milk Foods Ltd. taken in Board Meeting held on dated 08th Feb, 2018.	Devendra Shah- Chairman Pritam Shah- Managing Director B.M. Vyas- Non-Executive Director Sunil Goyal- Independent Director Ramesh Chandak- Independent Director Narendra Ambwani- Independent Director Nitin Dhavlikar- Independent Director Radhika Pereria- Independent Director
16	19/02/2018	Discussion held by Sourabh Metha Sr. Manager- Banking with Ms. Namrata Shipurkar for opening of Escrow Bank Account for transaction with BNP Paribas Bank.	Vimal Agarwal- CFO Parag Milk Foods Ltd Rachana Sanganeria – Compliance Officer Dharmendra Kumar Vyas, Manager-Legal Namrata Shipurkar, Manager - BNP Paribas Bank.

Event- Opening of Escrow account and signing of Agreement for Sale

S. No.	Date	Description	Persons Involved

17	23/03/2018	Email sent by Sourabh Mehta, Senior Manager, Finance requesting the Board Resolution for opening of Current Account.	Vimal Agarwal- CFO Parag Milk Foods Ltd Rachana Sanganeria – Compliance Officer Dharmendra Kumar Vyas, Manager- Legal
18	24/03/2018	Resolution passed by Board of Directors in the Finance Committee Meeting for opening of Current Account with BNP Paribas.	Devendra Shah- Chairman Pritam Shah- Managing Director Nitin Dhavlikar, Independent Director Vimal Agarwal- CFO Parag Milk Foods Ltd Rachana Sanganeria – Compliance Officer
19	30/03/2018	Email sent by Ms. Rachana Sanganeria attaching the Board Resolution	Sourabh Mehta- Sr. Manager- Banking Vimal Agarwal- CFO Parag Milk Foods Ltd
20	18/04/2018	Parag and Danone executed Agreement to Sell on dated 18thApril, 2018.	Devendra Shah- Chairman Pritam Shah- Managing Director B.M. Vyas- Non-Executive Director Sunil Goyal- Independent Director Ramesh Chandak, Independent Director Narendra Ambwani, Independent Director Nitin Dhavlikar, Independent Director Radhika Pereria, Independent Director
21	18/04/2018	Parag Milk Foods Ltd., Danone Foods & Beverages India Pvt. Ltd. and BNP Paribas Bank has signed Escrow Agreement for opening of Escrow Account with BNP Paribas Bank	Sourabh Mehta- Sr. Manager- Banking Vimal Agarwal- CFO Parag Milk Foods Ltd. Dharmendra Kumar Vyas, Manager Legal Namrata Shipurkar, Manager - BNP Paribas Bank.

22	19/04/2018	Information was uploaded on National Stock Exchange Ltd. and BSE Ltd and Public announcement was made by Parag Milk Foods Ltd. on dated 19th April, 2018.	

12. I note that on April 19, 2018 at 08:15:20 a.m. on BSE and at 08:16 a.m. on NSE, Parag announced expansion of its footprints in North India by acquisition of Danone's manufacturing facility in Sonipat. The price of the shares of the company moved from Rs. 273 (closing price) on April 18, 2018 to Rs. 287.45 (closing price) on April 19, 2018 on NSE which was 6.49% increase compared to closing price of previous trading day. Accordingly, the aforesaid corporate announcement was considered positive. The aforementioned announcement relating to acquisition of Danone's manufacturing facility was UPSI as per Regulation 2 (n)(iv) of PIT Regulations.

13. I note that discussions for acquisition of the manufacturing facility of Danone started from January 23, 2018 onwards with Non-Disclosure Agreement (NDA) between Parag and Danone was signed the said facts was confirmed through e-mail dated on January 23, 2018. The announcements with respect to said acquisition were published on April 19, 2018 at 08:15:20 a.m. on BSE. Therefore, the UPSI pertaining to the expansion of business came into existence on January 23, 2018 and the period from January 23, 2018 to April 18, 2018, was the UPSI period.

14. I note that, vide email dated February 05, 2021 explanation was sought by the Investigating Authority from Parag for including Noticee in the list of person in possession of UPSI as per its reply dated June 28, 2019. Parag, vide email dated February 11, 2021, inter-alia, stated that the name of Noticee was mentioned in the list of person in possession of UPSI in his capacity as General Manager (Finance) at Parag. I note from the chronology of important events that Vimal Agarwal – CFO of Parag was involved in the Danone acquisition

process from initial days of UPSI i.e. January 28, 2018. The other two members from finance department at Parag given in the list were Deepak Jain-GM (Finance) and Ravi Rajoria- Sr. Manager(Finance). As per submissions of Parag, dated February 19, 2021, Noticee reported directly to Vimal Agarwal during IP.

15. Board of Directors of Parag, on February 08, 2018, authorized Parag to go ahead with acquisition of Danone manufacturing plant. Vide email dated December 02, 2021, Parag inter-alia, submitted list of persons with whom said agenda/ minutes of meeting were shared. Noticee was amongst the 14 persons with whom said agenda/ minutes of Parag Board meeting dated February 08, 2018 were shared.

16. I note that the trading details of Noticee across all scrips during UPSI period, one month before UPSI period and one month after UPSI period on NSE are as under;

Period	Parag Milk Foods		Other Scrips		
	Gross Buy Value (Rs.)	Gross sale value (Rs.)	Gross Buy Value (Rs.)	Gross sale value (Rs.)	No. of scrips
Before UPSI Period (December 21, 2017 to January 22, 2018)	15,57,475	6,95,000	24,01,312	21,33,998	Buy – 12, Sell – 16
During UPSI Period (January 23, 2018 to April 18, 2018)	13,41,375	0	9,47,352	10,69,752	Buy – 12, Sell – 14
After UPSI Period (April 19, 2018 to	0	18,57,634	40,72,368	6,22,247	Buy-12, Sell-14

May 18, 2018)					

17. The trading details of the Noticee across all scrips during UPSI period, one month before UPSI period and one month after UPSI period on BSE are as under;

Period	Parag Milk Foods		Other Scrips		
	Gross Buy Value (Rs.)	Gross sale value (Rs.)	Gross Buy Value (Rs.)	Gross sale value (Rs.)	No. of scrips
Before UPSI Period (December 21, 2017 to January 22, 2018)	0	0	3,17,500	81,279	Buy – 02, Sell – 01
During UPSI Period (January 23, 2018 to April 18, 2018)	0	0	0	0	Buy -0, Sell-0
After UPSI Period (April 19, 2018 to May 18, 2018)	0	0	0	0	Buy-0, Sell-0

18. The trading details of the Noticee in the scrip of Parag during UPSI period, one month before UPSI period and one month after UPSI period on NSE are as under;

Trade Date	Gross Buy Quantity	Gross Buy Value	Gross Sell Quantity	Gross Sell Value
Before UPSI Period (December 21, 2017 to January 22, 2018)				
12-01-2018	4000	1163575	0	0
15-01-2018	900	257400	0	0
16-01-2018	500	136500	0	0
22-01-2018	0	0	2400	695000

Total	5400	1557475	2400	695000
During UPSI Period (January 23, 2018 to April 18, 2018)				
18-04-2018	5000	1341375	0	0
Total	5000	1341375	0	0
After UPSI Period (April 19, 2018 to May 18, 2018)				
30-04-2018	0	0	100	31100
02-05-2018	0	0	95	29034
14-05-2018	0	0	5500	1797500
Total	0	0	5695	1857634

19. I note that the Noticee did not trade in the scrip of Parag on BSE. From the trading details of the Noticee, I note that he bought 5,000 shares of Parag on April 18, 2018, the day when Agreement of Sale and Escrow Agreement between Danone and Parag was executed. The said information was announced on April 19, 2018 at 08:15:20 hrs i.e. one day after he bought 5,000 shares of Parag. Noticee sold these shares by May 14, 2018 i.e. within one month after disclosure of UPSI on exchanges (BSE & NSE), thereby earned a profit of Rs 145,875.

20. I note that, vide email dated December 20, 2019 to Noticee, reasons/ explanation were sought for trading during UPSI period despite possessing UPSI. Noticee, vide email dated December 27, 2019, denied having done any transaction during UPSI Period. Vide email dated January 01, 2021 the transaction details of Noticee were shares with him (trading on April 18, 2018) and the reason for said trade while in possession of UPSI were sought from him. Noticee, vide email dated January 16, 2021, inter-alia, submitted that he was not aware about the development of Danone plant acquisition. He further, submitted that he bought shares in regular course, based on broker's recommendation.

21. I also note that Noticee despite being a designated person of Parag, traded in the scrip of Parag with value greater than Rs. 5 lakhs (nearly Rs. 13 lakhs) without taking pre-clearance of trade from compliance officer. As per the policy for Prohibition of Insider Trading of Parag, any designated person doing trade in any scrip with value greater than Rs 5 lakhs, should obtain pre-clearance of trade from the compliance officer of Parag before executing the trade.

22. Accordingly, vide email dated January 19, 2021 the details of communication with broker regarding recommendation to buy Parag shares as submitted by Noticee and reason for not applying pre-clearance of trade despite being a designated person were sought by the investigation team. Noticee, vide email dated February 05, 2021, inter-alia provided screenshot of some recommendations from the broker w.r.t. buy/ sell of certain scrips. On perusal of same, name of Parag was not appearing in such recommendations by the broker.

23. Noticee's name was included in the list of persons who were having access to and/or in possession of UPSI as per Parag submissions, hence it was inferred that not only Noticee was aware about the said acquisition of Danone manufacturing plant but also was aware about day to day update of the said acquisition process. It was found that Noticee submitted misleading information during investigation. His trading pattern showed that he bought shares of Parag immediately one day before the disclosure of said UPSI on exchanges (bought shares on April 18, 2018 and on April 19, 2018 at 08:45 a.m. disclosure was made) and did not take pre-clearance of trade from compliance officer of Parag. Further his name was amongst those recipients who got email from Compliance Officer regarding closure of trading window by the virtue of being designated person of the company. Noticee despite being a designated person of Parag, traded in the scrip of Parag with value greater than Rs. 5 lakhs without taking pre-clearance of trade from compliance officer, required as per Parag's policy.

24. Based on above facts, it was alleged in the SCN that the Noticee, by executing trade while in possession of UPSI, thus, violated Section 12A (d) and 12A (e) of SEBI Act and Regulation 4(1) r/w 4(2) and Clause 6 of Schedule B ("Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders") r/w Regulation 9(1) of PIT Regulations and Section 12A (e) of SEBI Act.

25. I note from the provision of Section 12A of SEBI Act and Regulation 4 of PIT Regulations that and insider is prohibited from entering into trades in securities that are listed or proposed to be listed on a stock exchange when in possession of unpublished price sensitive information.

26. The Noticee, in its reply to the SCN, submitted, inter alia, as under;

26.1 Summary of Noticee's trades in script of Parag Milk Foods Limited:

Stock Name	*Quantity*	*Buy Date*	*Sell Date*	*Holding Period Days*
PARAGMILK	*2695*	*18/04/2022*	*14/05/2018*	*26*
PARAGMILK	*305*	*18/04/2022*	*20/06/2018*	*63*
PARAGMILK	*2000*	*18/04/2022*	*27/07/2018*	*100*

26.2 Noticee was working at Parag Milk Foods limited, at its Manchar factory and was designated as General Manager- Finance & Accounts of the Company from April 11, 2016, to August 6, 2019. The major role of the Noticee, during that time, included looking after day-to-day accounts operation of the Company &coordinating with the Auditors of the Company for the smooth and effective Audit of the Company. The Noticee was always one of the members reporting to the Chief Financial Officer (CFO) of the Company. The Executive management and Key managerial personnel of the Company were based at the Corporate Office in Nariman Point, Mumbai and the management of the Company's operations were being handled from there. As mentioned earlier the Noticee's was based out of the Company's Manchar plant.

Accordingly, it is clear that Noticee did not have access to any operational information/decisions and had limited informational access relating to the said transaction as per his role and instructions provided by the CFO, his superior Officer.

26.3 *It is also relevant to set out a brief chronology of Important events that have transpired which has resulted into the present proceedings under the SCN.*

Date	*Event*
23/01/2018	*Initial Discussion with respect to offer for sale/purchase of Targeted Asset of Danone Foods and Beverages India Pvt. Ltd.*
28/01/2018	*To and from Confirmation over mail for carrying out the transaction*
29/01/2018 & 30/01/2018	*Confirmation of Deposit of EMD equals to 10% of total bid size to the Account of Danone India and confirmation sent by Vimal Agarwal to Anil Tomar (operations danone India)*
08/02/2018	*Consent of Board of Directors of Parag Milk foods Limited in there meeting held on same day*
19/02/2018 – 30/03/2018	*Process for opening of Escrow Account*
18/04/2018	*Parag and Danone Executed the Agreement &Transaction in shares of Parag by notice*
19/04/2018	*Information disseminated to NSE, BSE and Public Announcement was made by Parag Milk Foods Limited & Trading Window Closure start date*
28/04/2018	*Trading Window Closure end date*

26.4 *Further, the noticee confirms that the aforementioned event details are as provided in the SCN and noticee does not admit the same. During the alleged UPSI period Parag had closed the trading window for trading in the shares of the company numerous times and Noticee has clearly adhered to the blackout periods and not traded in the Shares of the Company at any time during the said blackout period i.e. closure of the Trading Window*

26.5 It is merely due to organizational structure and due to the Noticee's responsibility involved in Coordinating with the Auditors of the Company that the name of the Noticee has been added in the list of Designated person's list having UPSI. All Discussions/ planning and decisions regarding the said Danone transactions were taken from the Corporate offices of Parag at Mumbai. Furthermore, the agreement/s with respect to the Danone transaction under discussion has been executed at Delhi with no involvement and without information of the Noticee.

26.6 At point No. 16 of show-cause notice, the Adjudicating Officer has stated that Parag vide replied dated 11th February, 2021 has informed them that the name of the Noticee was mentioned in the list of person in possession of UPSI in his capacity as General manager (Finance) at the Company. It is humbly submitted by the Noticee that in the same email "The Compliance officer of Parag Milk Foods Limited further states that Mr. Shashikant Dalmia was mentioned under Sr. No. 19 in the list of person in possession of UPSI in the capacity as General manager (Finance) as he was taking care of daily operations at the Manchar plant and was not involved in the Danone transaction or in communication with the Danone team or any terms thereof."

26.7 At point No. 17 of show-cause notice, SEBI has alleged that the Noticee has helped the CFO to release payments amounting to Rs. 1.51 crore on 30th January, 2018. It is humbly submitted by the Noticee that it was his duty towards Parag and the CFO as he was bound by the order of the Hierarchy for carrying out the payment Transaction as instructed by the CFO and further he was co coordinating with the auditor to provide the required information with respect to carrying out the Audit, due to which the Noticee was being informed about the payment transactions to be made in day to day operation. However, mere being informed about the execution of payment does not amount to having the whole information which shall be considered as UPSI. The payments and banking transaction were looking after by Mr. Sourabh Metha, Treasury Head, based at corporate office at Nariman Point, Mumbai. I was being in kept in loop by Mr. Vimal Agarwal the CFO as the banks of the Company being located at the Manchar, Pune region only to insure the payment and audit trail.

26.8 *It is alleged in the show-cause notice that the Noticee is among the 14 persons with whom agenda /minutes of Parag Board Meeting dated 8th February, 2018 was shared. It is humbly submitted by the Noticee that the agenda received was merely for the clerical purpose of keeping record. Further a quick perusal of the said agenda makes it clear that there was no agenda item relating to Danone and as such having the agenda shared with him the Noticee could not have gain any insight or update on the status of the said transactions. Further on perusal of the minutes of Board Meeting dated 8th February,2018, it is to be noted that the approval for the Danone transactions was taken under "Any other matter with the permission of the chair." It is also evidently clear from the minutes of the meeting that the Noticee neither attended the said meeting nor was present or connected to at any discussion of said transaction. Hence, the allegations that not only Noticee was aware of the said acquisition of Danone manufacturing plant but was also aware of the day-to-day update of the said acquisition process is erroneous and completely untenable in light of the evidence presented herewith.*

26.9 *The Noticee has traded in the equity shares of Parag milk foods limited in stock market in ordinary course and consequent to the bona fide recommendation to Noticee from his broker. The trade carried out by the Noticee was absolutely legal and the Noticee was well within his right to carry out the said trade.*

26.10 *Noticee was not adequately made aware of the provisions with respect to preclearance approval to be taken, at the time of executing the said trades, from the Compliance officer of the Company in case of the transaction crossing the monetary threshold of 5 lakhs Rs under the Code of Conduct adopted by Parag. Non-seeking of preclearance was an honest and genuine error of omission on the part of the noticee and has occurred without any malafide intent.*

26.11 *Further, I would like to draw your attention to "point 28" of the Judgement dated September 19, 2022 passed by Hon'ble Supreme Court in the matter of Securities and Exchange Board of India (Appellant) and Abhijit Rajan ('Respondent') where the Hon'ble Supreme court had stated that the following:*

"For instance, the sale by a person at a time when the price of the securities is likely to shoot up on account of price sensitive information coming into the public domain or the purchase by a person at a time when the price of the shares is likely to go downward due to price sensitive information getting published, cannot come under the category of insider trading. While it is true that the actual gaining of profit or sufferance of loss in the transaction, may not provide an escape route for an insider against the charge of violation of Regulation 3, one cannot ignore normal human conduct. If a person enters into a transaction which is surely likely to result in loss, he cannot be accused of insider trading. In other words, the actual gain or loss is immaterial, but the motive for making a gain is essential".

27. I note from the definition of insider defined in section 2 (g) of PIT Regulation that, any person who is a connected person or a person in possession of or having access to unpublished price sensitive information is an insider. Noticee has admitted that he was working with Parag, at its Manchar factory and was designated as General Manager- Finance & Accounts of the Company from April 11, 2016, to August 6, 2019. I note from the email dated February 09, 2022 of Parag that on January 29, 2018, Vimal Agarwal informed Noticee to make the plan ready for a payment of Rs. 1.01 crore to Danone account for which Noticee replied that he had considered this in next day cash flow, and he would release this payment after getting Vimal Agarwal's confirmation. On January 30, 2018 at 3:39 pm, Vimal Agarwal (CFO) again wrote to Noticee that:

"As discussed, you are requested to please help release Rs 1.51 cr as EMD to the following: Bank details of the Seller Danone Foods and Beverages India Pvt. Ltd. BNP Paribas 0906511229000175 IFSC – BNPA0009065".

Further, the Noticee on January 30, 2018 at 5:42 pm confirmed the payment to Vimal Agarwal and provided RTGS payment details to him.

Based on the above, it is clear that not only Noticee was aware about the said acquisition of Danone manufacturing plant but also was aware about day to day update of the said acquisition process. Hence, it is established that the Noticee was an insider of Parag in terms of provisions of the PIT Regulations and was in possession of UPSI. I note that noticee has not disputed that he was an insider and also not disputed that he had traded in the scrip of Parag on April 18, 2018 and May 14, 2018.

28. I am not inclined to accept the submission of the Noticee that it did not have access to any operational information/ decisions and had limited informational access relating to the said transaction as per his role and instructions provided by the CFO, his superior Officer, because the Noticee has admitted that he was a senior officer of Parag and his major role was looking after day-to-day accounts operation of the Company & coordinating with the Auditors of the Company for the smooth and effective Audit of the Company, which involved making payment for various activities of Parag including acquisitions etc.

29. As per PIT Regulations a "connected person" is one who is associated with a company which allows such person, directly or indirectly, access to the UPSI or reasonably expected to allow such access. I note that in the reply dated 11th February, 2021, the Compliance officer of Parag Milk Foods Limited stated that Mr. Shashikant Dalmia was not **directly** involved in the Danone transaction or in communication with the Danone team or any terms thereof, which appears to have been deliberately ignored by the Noticee in its reply to the SCN. The reply dated 11th February, 2021, however, doesn't imply that the Noticee was not involved at all in the Danone transactions and was neither aware nor in the possession of UPSI relating to the Danone transactions.

30. The Noticee submitted that he was reporting to the CFO in the organizational hierarchy of the Company but was looking after daily operations at Manchar plant & audit coordinations. In view of the findings at para 27 above, I am not inclined to accept the submissions of the Noticee that he was in the loop just for

making arrangement of the payment to the Danone transactions and was not having knowledge or the information that the Company was in a process of acquiring the manufacturing facility of Danone Foods and Beverages India Private Limited.

31. With respect the submission of the Noticee that the agenda received was merely for the clerical purpose of keeping record, I am not inclined to accept the submissions of the Noticee since the Noticee was occupying a senior position and was not expected to be involved in just clerical job and not evaluate the matters entrusted upon him.

32. With regard to the submission of the Noticee that he traded in the scrip of Parag on the bona fide recommendation to Noticee from his broker, I note that the same was examined during the investigation and the scrip of Parag was not in the list of recommendations made by the broker of the Noticee. Hence, I do not accept the submission of the Noticee in this regard.

33. In light of the findings stated above and the trading pattern of the Noticee, it is conclusively established that the Noticee was an insider, who traded in the scrip of Parag based on UPSI, which was a positive news, regarding the expansion of business of Parag by acquiring the manufacturing facilities of Danone, with an intention to gain from the positive news and by executing trade while in possession of UPSI, has violated Section 12A (d) and 12A (e) of SEBI Act and Regulation 4(1) r/w 4(2) of PIT Regulations.

34. I note that the Noticee has cited the judgment of Hon'ble Supreme Court in the matter of SEBI (Appellant) Vs. Abhijit Rajan (Civil Appeal No. 563 of 2020) decided on September 19, 2022. However, the facts of each case of insider trading are different and the judgement in one case may not be a true precedence for the other case. I find that the facts of the instant case are totally different from the facts of the case mentioned by the Noticee. I note from the facts of the case in Abhijit Ranjan that UPSI is based on the facts that,

Gammon Infrastructure Projects Limited (GPIL) had entered into two shareholder's agreements with Simplex Infrastructure Limited(SIL) and after some period of time on 9.08.2013 the BoD of GIPL passed a resolution authorizing the termination of both shareholder's agreements. Where as in the case in the present case the UPSI is based on the expansion of the business Parag at Danone which if published had materially affect the price of the securities of Parag. I further note that, in Abhijit Ranjan case the respondent i.e. Abhijit Rajan was in dire need to sell the shares at that time for the purpose of CDR (Corporate Debt Restructuring) package and if the CDR package had not gone through successfully, the parent company of GIPL namely, Gammon India Ltd., could have gone for bankruptcy as respondent had made distress sale before the information could have a positive impact on the price of the GPIL. However, in the present case there is no such unwarranted situation. Hence, I note that the judgment relied upon by the Noticee is not relevant.

35. With respect to non-compliance with Clause 6 of Schedule B ("Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders") r/w Regulation 9(1) of PIT Regulations and Section 12A (e) of SEBI Act, I note from the submissions of the Noticee that he has admitted that there was an error of omission on his part. The Noticee has submitted that it was not made adequately aware by the compliance officer of the Company on the processes and procedures to be followed for applying for Pre-clearance before transacting in the Shares above the threshold value. It is a well-established legal maxim that "Ignorantia juris non excusat", or "ignorance of the law excuses no one". The Noticee who was the designated employee of Parag was expected to comply with the extant regulatory and statutory requirements. I note that in the instant matter, the Noticee failed to exercise reasonable care and diligence while trading in the scrip of Parag.

ISSUE No. II: Does the violations attract monetary penalty u/s15G of the SEBI Act?

36. In the light of findings and observations made against the Noticee brought out in the foregoing paragraphs, it is established that the Noticee has violated the provisions of Section 12A (d) and 12A (e) of SEBI Act and Regulation 4(1) r/w 4(2) and Clause 6 of Schedule B ("Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders") r/w Regulation 9(1) of PIT Regulations and Section 12A (e) of SEBI Act and is liable for monetary penalty under the provisions of section 15G of the SEBI Act.

37. The contents of the said provisions of law is reproduced hereunder:

SEBI Act

Penalty provisions under SEBI Act.

15G. *If any insider who, —*

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

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

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

shall be liable to a penalty which shall not be less than ten lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher.

Issue III. If so, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act r/w Rule 5(2) of the Adjudication Rules?

38. While determining the quantum of penalty, it is important to consider the factors stipulated in Section 15J of the SEBI Act which reads as under:-

15J – Factors to be taken into account by the adjudicating officer

While adjudging quantum of penalty under 15-I or section 11 or section 11B, the Board or the adjudicating officer shall have due regard to the following factors, namely :—

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default.

39. The consequences of violations committed by the Noticee are grave in nature and are prejudicial to the interests of the investors in the securities market. If violations of this nature are not dealt seriously with a firm hand, then investors will lose faith in the Indian Securities Market. I note that the Noticee made a profit of Rs. 1,45,875/-. However, it is not possible from the material on record to determine the consequent loss caused to investors as a result of the aforesaid violation. With respect to the repetitive nature of the default, I find that there is nothing on record to indicate any past violation committed by the Noticee.

ORDER

40. Considering the facts of the matter, response of the Noticee, violations established against the Noticee, the profit earned by the Noticee, and the time elapsed since the said profit is earned, exercising the powers conferred upon me u/s 15-I of the SEBI Act r/w rule 5 of Adjudication Rules, I hereby impose the following penalty on the Noticee;

Noticees (PAN)	Violation of provisions	Penalty u/s	Penalty
Shashi Kant Dalmia (AMSPD0413A)	Section 12A (d) and 12A (e) of SEBI Act and Regulation 4(1) r/w 4(2) of PIT Regulations	Section 15G of the SEBI Act	Rs. 12,00,000/- (Rupees Twelve Lakhs Only)
	Clause 6 of Schedule B ("Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders") r/w Regulation 9(1) of PIT Regulations and Section 12A (e) of SEBI Act		

I feel that the said penalty is commensurate with the violations committed by the Noticee in this case.

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

ENFORCEMENT → ORDERS → ORDERS OF AO → PAY NOW

42. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to "The Division Chief (Enforcement Department-1 DRA-V), Securities and Exchange Board of India, SEBI Bhavan II, Plot No. C – 7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051." The Noticee

shall also provide the following details while forwarding DD / payment information:

Case Name :	
Name of Payee :	
Date of Payment:	
Amount Paid :	
Transaction No. :	
Bank Details in which payment is made :	
Payment is made for: (like penalties/ disgorgement/ recovery/ settlement amount etc.)	Penalty

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

44. In terms of Rule 6 of the Adjudication Rules, a copy of this order is sent to the Noticee and also to the Securities and Exchange Board of India.

AMIT KAPOOR

Digitally signed by AMIT KAPOOR
Date: 2023.01.13 12:57:41 +05'30'

Place: Mumbai

Date: January 13, 2023

AMIT KAPOOR

ADJUDICATING OFFICER