BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER No. Order/PM/NS/2022-23/19885-19886

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. **Shailendra Mehta (PAN: ALGPM2002F)**
2. **Shruti Vora (PAN: AKZPM7724N)**

In the matter of circulation of unpublished price sensitive information (UPSI) through WhatsApp messages with respect to Infosys Ltd.

A. BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") carried out an investigation in the matter of circulation of unpublished price sensitive information (hereinafter referred to as "**UPSI**") in the scrip of Infosys Ltd. (hereinafter referred to as "**Company**") 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 December 16, 2016 to January 15, 2017 (hereinafter referred to as "**Investigation Period**").

2. During investigation SEBI observed violation of securities laws by Shailendra Mehta (hereinafter referred to as "**Noticee 1**") and Shruti Vora (hereinafter referred to as "**Noticee 2**") (the aforesaid persons are hereinafter referred to by their respective names/serial numbers or collectively as the "**Noticees**").

3. It was observed that the Company had announced financial results for the quarter ended on December 31, 2016 on January 13, 2017 on BSE Ltd. (hereinafter referred to as “**BSE**”) and National Stock Exchange of India Ltd. (hereinafter referred to as “**NSE**”). The details of corporate announcement made by the Company on January 13, 2017 on BSE and NSE and its impact on the price of the scrip on BSE and NSE is given as follows:

<table>
<tr><th>Date</th><th>Announcement</th><th>Price movement in the scrip of</th><th>Impact on price</th></tr>
<tr>
<td>13-Jan-17

On BSE from 09:06 am to 09:23 am

On BSE at 10:32 am

On NSE from 09:04 am to 09:10 am</td>
<td>Company announced the following:
1. Standalone Q3 results
2. Consolidated Q3 results
3.Auditor’s report for the Quarter ended December 31, 2016.
4.Outcome of Board Meeting
5. Fact Sheet, IFRS-INR Press Release and IFRS-USD Press Release
6. Extract of Audited Consolidated financial results for the quarter and nine months ended December 31, 2016.

An update on INR press release

Company submitted to the exchange the following:
1. The financial results for the period ended December 31, 2016.
2. Outcome of Board meeting along with a copy of press release
3. Copy of Fact Sheet</td>
<td>BSE
<table>
<tr><th>Date</th><th>OP</th><th>HP</th><th>CP</th><th>Vol.</th></tr>
<tr><td>12/01/17</td><td>972.25</td><td>1004.4</td><td>1000.05</td><td>261761</td></tr>
<tr><td>13/01/17</td><td>1026.3</td><td>1045</td><td>975.15</td><td>1266558</td></tr>
<tr><td>16/01/17</td><td>965</td><td>965.5</td><td>955.7</td><td>274905</td></tr>
</table>

NSE
<table>
<tr><th>Date</th><th>OP</th><th>HP</th><th>CP</th><th>Vol.</th></tr>
<tr><td>12/01/17</td><td>977.55</td><td>1004.4</td><td>1000.05</td><td>5927870</td></tr>
<tr><td>13/01/17</td><td>1030</td><td>1040</td><td>975.8</td><td>15638123</td></tr>
<tr><td>16/01/17</td><td>965</td><td>965.45</td><td>955.65</td><td>6175686</td></tr>
</table>
</td>
<td>On 13/01/2017 (the day of announcement of result for QE Dec 2016), the scrip closed 2.48% below its previous day’s closing price on BSE.

On 13/01/2017 (the day of announcement of result for QE Dec 2016), the scrip closed 2.42% below its previous day’s closing price on NSE.</td>
</tr>
</table>

Date	Announcement	Price movement in the scrip of	Impact on price
On NSE at 10:24 am	Update on the INR press release included in the outcome of Board Meeting held on January 13, 2017		

4. The chronological events related to financial results for the quarter ended December 31, 2016 as furnished by the Company *vide* its letters dated August 13, 2018, August 28, 2018 and email dated September 11, 2018 are tabulated below:

Date	Particulars of events
December 15, 2016	Intimation of trading window closure to stock exchanges: Trading window was closed from December 16, 2016 to January 15, 2017. Intimation of meeting of board of directors on January 13, 2017 to consider the financial results.
December 16, 2016	Newspaper advertisement published and stock exchanges intimated of the same.
January 4-5, 2017	Confirmation taken from all the teams regarding when they will close all accounting entries pertaining to their respective areas.
January 05, 2017	Books closed for most of the areas and confirmed through email by corporate finance team to all finance teams. All subsequent entries were approved by the corporate finance team. For few items such as tax, reclassification *etc.,* the computation commenced post books closure.
January 06, 2017 onwards	Post consolidation of subsidiaries, financials/stock exchange releases prepared by technical accounting team. Corporate finance team prepared other documents relating to financial results- fact sheet, press releases, investor sheets. Documents are prepared and checked post closure of financials over the next few days to ensure accuracy.
January 08, 2017 onwards	Preparation of CFO presentation commenced and the financial numbers were inserted 3 days before the date of announcement.
January 10, 2017	Presentation by CFO and DY CFO to the CEO and COO to provide financial update.
January 10-11, 2017	Hard copy of financials shared only with designated statutory auditors for audit purposes.
January 11, 2017	Draft press releases prepared by investor relations team and circulated to the CFO and members of the corporate finance team. Stock exchange release, press releases and CFO presentation reviewed by CFO.
January 12, 2017	Stock exchange release, press releases and CFO presentation reviewed by the CEO and COO. Audit committee meeting was held in two parts. The first part commenced at 11:30 AM to discuss agenda items 1 to 16 and adjourned at around 1:30 PM. The second part was reconvened for the financials section at 7:00 PM to discuss agenda items from 17 to 22 and concluded at around 9:00 PM.

Date	Particulars of events
	Hard copies of stock exchange and press release were shared with audit committee and necessary sign-offs obtained before the results are announced to exchanges.
January 12-13, 2017	Board meeting was held in two parts. The first part commenced at 6:00 PM on January 12, 2017 to discuss business updates and was adjourned at around 07:00 PM. The second part was reconvened to discuss other agenda items on January 13, 2017 at 7:30 AM and concluded at 8:50 AM. Final sign-off on press releases, stock exchanges release obtained.
	Stock exchanges were intimated about the outcome of the board meeting on January 13, 2017 between 09:04 AM to 09:18 AM.

5. The definition of 'unpublished price sensitive information' as prescribed under regulation 2(1)(n) of PIT Regulations is as follows:

   "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: –

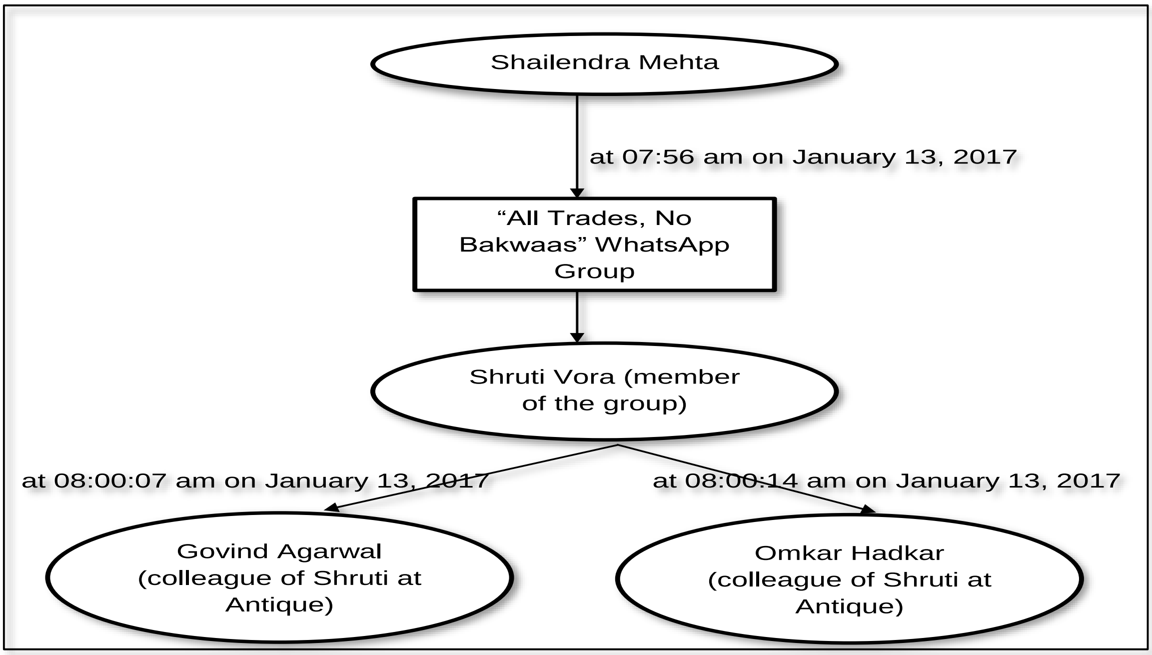
   i. *financial results*
   ii. *dividends*
   iii. *change in capital structure*
   iv. *mergers, de-mergers, acquisitions, delistings, disposals and expansion of business and such other transactions*
   v. *changes in key managerial personnel; and*
   vi. *material events in accordance with the listing agreement*

6. From the chronology of events as tabulated in paragraph 4 above, information relating to financial results was a price sensitive information (hereinafter referred to as "**PSI**") which came into existence on January 06, 2017 with the preparation of financial statements. The Company informed BSE and NSE of the PSI *i.e.,* financial results on January 13, 2017 between 09:04 AM to 09:18 AM. Therefore, the period from January 06, 2017 to January 12, 2017 is considered as UPSI period.

7. The investigation revealed that the Noticees communicated the UPSI related to financial results of the Company for quarter ended on December, 2016 to other

person(s) through WhatsApp messages. From the WhatsApp chat of Noticee 2 *i.e.,* Shruti Vora (retrieved from her device – Apple iPhone 6s, IMEI: 355767073570777) on January 13, 2017, a chat was observed *viz., "Infosys hearing $ Rev 2551 is final cc degrowth .4 pct. Rev 18093, pbt 5154, EPS 16.22, 4344 op profit Infosys"*. The said message was found in WhatsApp group namely, *"Only Trades, No Bakwaas",* wherein Noticee 2 was a member. The aforesaid message was sent in the group by Shailendra Mehta (who was also a member of the said group) on January 13, 2017 at 07:56 AM (timing as per the extracted chat is 02:26:21). The expert agency, Helik Advisory Ltd., hired for retrieval and backup of data from the seized devices, *vide* its email dated March 12, 2018, informed that their forensic tools generate zero G.M.T timing by default, hence 5:30 hours may be added for Indian G.M.T. It was found from the WhatsApp chats of Noticee 2 that she forwarded the said message on the same day, within few minutes of receipt, to two entities through private WhatsApp chat. The message was forwarded to Govind Agarwal, at 8:00:07 AM (timing as per chat is 02:30:07) and to Omkar Hadkar at 08:00:14 AM (timing as per chat is 02:30:14)

8. The pictorial representation of flow of the said message is given below:



9. In the following table, financial figures circulated on WhatsApp pertaining to the Company are compared with actual figures (standalone results) disclosed subsequently on exchange to gauge the deviation between two sets of figures.

WhatsApp message		**Company announcement**		**%age difference observed**
Date and Time:	13/01/2017 07:56 am	Date and Time:	13/01/2017 09:04-09:18 am	
Financial figures	**Values**	**Financial figures**	**Values**	
$ Rev	2551	$ Rev	$ 2,551 million	0
Cc degrowth	0.4 percent	QoQ decline in revenue in constant currency terms	0.3 percent	33.33%
Revenue	18093	Revenue (Total Income)	18,093 crore	0
PBT	5154	PBT	5,154 crore	0
EPS	16.22	EPS	16.22	0
Op profit	4344	Operating Profit	4334 crore	0.23%

PBT- Profit before Tax, EPS- Earnings per share

10. From the above table, it is observed that the financial figures of the Company were communicated through WhatsApp prior to their announcement on stock exchanges. The financial figures (*viz;* revenue in rupee and dollar terms, profit before tax, earnings per share) circulated through WhatsApp messages, matched exactly with those announced by the Company on exchanges, while the figure of operating profit in the said messages matched closely with that announced by the Company.

11. In light of the above, it is observed that the contents of the aforesaid WhatsApp messages related to financial results of the Company for quarter ended on December 2016 would fall under the definition of UPSI as per regulation 2(1)(n) of PIT Regulations. Circulation of financial figures of the Company through such WhatsApp messages has been considered as communication of UPSI.

12. The Noticees who were in possession of the UPSI were termed as “insiders” as per regulation 2(1)(g) of PIT Regulations, which furnished hereunder:

“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 as "insider" regardless of how one came in possession of or had access to such information…"

13. It is observed that the Noticees as insiders have communicated UPSI related to the Company (figures for revenue (in rupees and dollars), profit before tax, earnings per share, operating profit) for quarter ended on December 2016 to other person(s) through WhatsApp messages. Further, in the message communicated by the Noticees, no mention of the brokerage firm or institution which estimated/forecasted such financial figures of the Company was present. In view of the above, it is alleged that the Noticees have not demonstrated that the act of communication of said UPSI to various entities which includes communication of UPSI to WhatsApp group, colleagues, *etc.,* as mentioned above, was an act in furtherance of legitimate purposes, performance of duties or discharge of legal obligations.

B. APPOINTMENT OF ADJUDICATING OFFICER

14. Ms. Sangeeta Rathod was appointed as Adjudicating Officer, *vide* order dated September 08, 2020 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 "**SEBI Adjudication Rules**") to inquire into and adjudge the alleged violation of the provisions of section 12A (d) and 12 A(e) of SEBI Act and regulation 3(1) of PIT Regulations committed by the Noticees under section 15G of the SEBI Act. Pursuant to internal restructuring, the undersigned has been appointed as the Adjudicating Officer *vide* order dated October 28, 2020.

C. SHOW CAUSE NOTICE, REPLY AND HEARING

15. The show cause notice (hereinafter referred to as "**SCN")** bearing no. EAD-8/PM/NJMR/21001/2020/1&2 dated December 04, 2020 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 12A(d) and 12A(e) of SEBI Act and regulation 3(1) of PIT Regulations. The SCN was issued through SPAD and duly delivered to the Noticee 1 in terms of rule 7 of SEBI Adjudication Rules. Subsequently, Noticee 1 filed his reply through letter dated July 15, 2022. The aforementioned reply *inter alia* placed reliance on the order passed by Hon'ble Securities Appellate Tribunal (hereinafter referred to as "**SAT**") dated March 22, 2021 and Supreme Court judgement of Balram Garg vs SEBI, order dated April 19, 2022. Noticee 1 in his reply also stated that – "*impugned information of the Company was merely a news/ estimates and generally available information. He was never associated/connected in any matter whatsoever whether directly or indirectly with the Company or its promoter/director of the company. He just forwarded the WhatsApp message with no specific intention*".

16. The SCN was issued through SPAD and duly delivered to the Noticee 2 in terms of rule 7 of SEBI Adjudication Rules. Subsequently, Noticee 2 filed her reply through email sent on September 13, 2022. The aforementioned reply *inter alia* places reliance on the order of Hon'ble SAT dated March 22, 2021. Noticee 2 in her reply has further stated that – "*impugned information of the Company was merely a news/ estimates and generally available information. She was never associated/connected in any matter whatsoever whether directly or indirectly with the Company or its promoter/director of the company. She just forwarded the WhatsApp message with no specific intention*".

17. After giving several opportunities of hearing, the hearing was finally conducted on July 25, 2022 *via* video conferencing on WebEx platform for Noticee 1 and on September 15, 2022 for Noticee 2. On the scheduled date of hearing, the

authorized representatives of the Noticees appeared before me and reiterated the submissions made *vide* their letters/emails. The process of adjudication proceeding has been tabulated below:

Noticee	SCN	Inspection	Hearing concluded
Shailendra Mehta	December 04, 2020	July 14, 2022	July 25, 2022
Shruti Vishal Vora	December 04, 2020	July 18, 2022	September 15, 2022

D. RELEVANT PROVISIONS

18. **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;

19. **PIT Regulations**

2 (g) *"insider" means any person who is:*
i) a connected person; or
ii) in possession of or having access to unpublished price sensitive information;

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

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

(i) financial results;

(ii)dividends;

(iii)change in capital structure;

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

(v)changes in key managerial personnel.

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

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

E. CONSIDERATION

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

"….

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

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

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

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

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

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

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

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

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

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

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

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

F. ORDER

24. In view of above, I find it appropriate to conclude the instant adjudication proceeding by disposing of the SCN *qua* Noticees *i.e.,* Shailendra Mehta (Noticee 1) & Shruti Vora (Noticee 2), without imposition of any monetary penalty.

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

Date: September 30, 2022	**PRASANTA MAHAPATRA**
Place: Mumbai	**ADJUDICATING OFFICER**