BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER No. Order/GR/PU/2022-23/ 20860-20861

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. **Mr. Parthiv Dalal (PAN: AHJPD3958L)**
2. **Ms. Shruti Vora (PAN: AKZPM7724N)**

In the matter of circulation of unpublished price sensitive information through WhatsApp messages with respect to ITC Ltd.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Board of India (hereinafter referred to as "**SEBI**") carried out an investigation in the matter of circulation of unpublished price sensitive information (hereinafter referred to as "**UPSI**") in the scrip of ITC Ltd. (hereinafter referred to as "**Company/ITC**") 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 October 01, 2016 to October 26, 2016 (hereinafter referred to as "**Investigation Period**").

2. During investigation SEBI observed violation of securities laws by Parthiv Dalal (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 its quarterly and half yearly financial results ending September 2016 on October 2016 (on BSE @ hours and on NSE @ 15:21 Hours). The impact of announcements of above financial results made by ITC, on BSE and NSE, during IP on the price of the scrip are given as follows:

<table>
<tr><th>Date, Exchange & Time</th><th>Announcement / News</th><th>Price Volume (BSE/NSE) (Price in ₹)</th></tr>
<tr>
<td>26/10/2016

BSE @ 13:52

NSE @ 13:56</td>
<td>ITC Ltd. has announced the following Unaudited Standalone results for the quarter ended September 30, 2016</td>
<td>
On BSE
<table>
<tr><td>Date</td><td>O</td><td>H</td><td>L</td><td>C</td><td>Vol</td></tr>
<tr><td>25-10-16</td><td>241.95</td><td>242.35</td><td>237.85</td><td>238.75</td><td>9,24,084</td></tr>
<tr><td>26-10-16</td><td>239.95</td><td>242.45</td><td>233.60</td><td>238.90</td><td>22,06,598</td></tr>
<tr><td>27-10-16</td><td>240.10</td><td>244.55</td><td>239.80</td><td>243.30</td><td>26,98,3669</td></tr>
</table>
On NSE
<table>
<tr><td>Date</td><td>O</td><td>H</td><td>L</td><td>C</td><td>Vol</td></tr>
<tr><td>25-10-16</td><td>242.90</td><td>242.90</td><td>238.15</td><td>238.75</td><td>59,48,249</td></tr>
<tr><td>26-10-16</td><td>239.85</td><td>242.50</td><td>233.50</td><td>238.75</td><td>2,39,31,286</td></tr>
<tr><td>27-10-16</td><td>241.20</td><td>244.80</td><td>239.65</td><td>243.10</td><td>1,53,52,545</td></tr>
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4. The corporate announcement of unaudited financial results (Standalone & Consolidated) for the quarter ended September 30, 2016 was made to the exchanges on October 26, 2016 (at 13:52 Hours on BSE and at 13:56 Hours on NSE) by ITC after the meeting of Board of Directors of the Company held on October 26, 2016. Accordingly, the said financial results was considered to be Price Sensitive Information (PSI), which came into existence on October 01, 2016. Therefore, the period from October 01, 2016 to October 26, 2016 is considered as the period of UPSI (unpublished price sensitive information) and October 26, 2016 was taken as the date when the ITC had made the aforesaid price sensitive information public. The definition of '*unpublished price sensitive information*' as prescribed under Regulation 2(1)(n) of the SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as "**the PIT Regulations**") is as follows:

PIT Regulations, 2015

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.*

5. Accordingly, SEBI carried out an investigation in the matter of circulation of UPSI through WhatsApp messages with respect to ITC, which revealed that the Noticees allegedly communicated the UPSI related to ITC viz; Revenue, PBT, PAT, Depreciations, Finance Cost, Other Income and Total Comprehensive Income for QE September 2016 through WhatsApp messages. From the WhatsApp chat of the Noticee No.2 (retrieved from her device – Apple iPhone 6s, IMEI: 355767073570777) on October 26, 2016, a chat was observed stating "ITC revenue from operations 13500 Pbt 3825 Pat 2500 Dep 268 Finance Cost 11 Other Income 476 Total comprehensive income 2475"

6. In the following table, financial figures circulated on WhatsApp pertaining to ITC are compared with actual figures disclosed subsequently on exchange to gauge the deviation between two sets of figures.

S. No.	Figure name	Circulated	Disclosed by Company	%age Deviation

1	Revenue from Operations	13500	13491.37	0.00
2	Profit Before Tax (PBT)	3825	3836.94	0.31
3	Profit After Tax (PAT)	2500	2500.03	0.00
4	Depreciation (Dep)	268	268.44	0.16
5	Finance Cost	11	10.72	2.55
6	Other Income	476	475.35	0.14
7	Total Comprehensive Income	2475	2474.84	0.01

* % ge deviation is calculated as per the following methodology:
%ge Deviation = (Figure in WhatsApp message-Actual Figures disclosed on exchange)*100/(Figure in WhatsApp message)

7. The financial figures of ITC circulated through WhatsApp closely matched with those disclosed subsequently by ITC on stock exchanges (deviation in financial figures was within a range of 0.00% to 2.55%). Hence, the aforesaid message related to ITC would fall under UPSI and such circulation of financial figures through WhatsApp has been considered as communication of UPSI.

8. The details of communication of WhatsApp message related to ITC as observed from WhatsApp Chat retrieved from the Noticee No.2's device Apple iPhone 6s, IMEI: 355767073570777) are tabulated below;

Entities from whom the Noticee No. 2 received the message		**Date and Time of receipt of message by the Noticee No. 2 (After adding 5.30 hours)**		**Entities to whom the Noticee No. 2 communicated the message**		**Date and Time of communicating of message by the Noticee No. 2 (After adding 5.30 hours)**	
Name	**Tel. Number**	**Date**	**Time**	**Name**	**Tel. Number**	**Date**	**Time**
Parthiv Dalal	9820393691	26/10/2016	11:26:18	Sumeet Hinduja	8104350126	26/10/2016	11:28:08
				Divesh Kumar	9833532366	26/10/2016	11:56:56
				Parikshit Shah	8800333788	26/10/2016	11:27:01
				Only Trades, No Bkwas	(Group)	26/10/2016	11:27:06
				Vikas Gupta	9811149040	26/10/2016	11:27:14
				Neeraj Antique	9004089401	26/10/2016	11:27:20
				Navjeevan Khosla	+852-97006939	26/10/2016	11:27:27

	Arpit Sikka	9711190113	26/10/2016	11:27:37
	Anurag Jain	9560444557	26/10/2016	11:27:45
	Anmol Ganjoo	9833246483	26/10/2016	11:52:07
	Gajendra Devpura*	8108105199	26/10/2016	15:19:32
	Sunil Kumar	9820808438	26/10/2016	11:27:58

9. From the above table, it is observed that the financial figures of ITC were communicated through WhatsApp prior to the announcement on stock exchanges. The timing of the incoming message as per extract chat was 05:56:18 hours. However, expert agency, hired for retrieval and backup of the data from the instruments/devices seized, vide email dated March 12, 2018 informed SEBI that their forensic tools generate zero G.M.T. timing by default, so add +5.30 hours as our Indian G.M.T in all the report generated.

10. As a result, the Noticees who were in possession of the UPSI were termed as Insiders as per regulation 2 (1) (g) of the PIT Regulations the provisions of which are furnished hereunder:

PIT Regulations, 2015

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.*

11. In view of the above it was observed that the Noticees being insiders had communicated the UPSI relating to ITC to other person(s) through Whatsapp messages. Therefore, the Noticees 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.

B. APPOINTMENT OF ADJUDICATING OFFICER

12. Shri Amit Pradhan was appointed as Adjudicating Officer, vide order dated September 23, 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 Sections 12A (d) and (e) of SEBI Act and Regulation 3(1) of PIT Regulations committed by the Noticees under Section 15G of the SEBI Act. Pursuant to the deputation of the erstwhile AO, the undersigned has been appointed as the Adjudicating Officer vide order dated June 21, 2021.

C. SHOW CAUSE NOTICE, REPLY AND HEARING

13. The show cause notice (hereinafter referred to as "**SCN")** bearing no. EAD-2/AP/VS/16652/1/2020 dated October 08, 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 (e) of SEBI Act and Regulation 3(1) of PIT Regulations. The said SCN was served through SPAD and was duly delivered to the Noticees.

14. Subsequently, the Noticees had sought for the inspection of documents and the same was provided to them on July 26, 2022, additionally soft copies of certain annexures were provided to the Noticees vide e-mail dated August 01, 2022. Subsequently, an opportunity of personal hearing was granted to the Noticees on August 23, 2022 served vide hearing notice dated August 05, 2022. The Noticees vide their separate e-mails dated August 19, 2022, had sought for an

adjournment of the said hearing stating that SEBI had appealed to the Hon'ble Supreme Court of India against the orders of the Hon'ble SAT in identical matters and they were in turn filing their appeal in the Hon'ble Supreme Court of India with regard to the same.

15. The said Appeal of SEBI was dismissed by the Hon'ble Supreme Court of India vide its order dated September 26, 2022 and accordingly, the Noticees had filed their short reply to the SCN vide their individual e-mails dated October 04, 2022. Pursuant to which, a last and final opportunity of hearing was provided to the Noticees on October 18, 2022 vide e-mail dated October 7, 2022. Accordingly, the hearing was conducted on October 18, 2022 *via* video conferencing on WebEx platform and the Authorized representative (AR) of the Noticees had appeared and reiterated the submissions made by the Noticees vide their reply dated October 04, 2022 and sought time of one week to file their detailed reply in the matter. In this regard the reply of Noticee No.2 dated October 21, 2022 was received vide e-mail dated October 25, 2022 and the reply of Noticee No. 1 dated October 27, 2022, was received vide e-mail on the same day.

D. 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 (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 *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, 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.”

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 the 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.,* Mr. Parthiv Dalal (Noticee 1) & Ms. 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: October 31, 2022
Place: Mumbai

G. RAMAR
ADJUDICATING OFFICER