BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/SM/AD/2022-23/ 17480-17484]

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

In respect of

1. **M/s. SRBC & Co. LLP [PAN: ACHFS9117R]**
2. **Mr. Shamsuddin Valani [PAN: AGCPV4142J]**
3. **Ms. Sejal Shokataly Pirani [PAN: CQLPP3452Q]**
4. **Mr. Rachit Shrenikbhai Jhaveri** [**PAN: AHBPJ5662P]**
5. **Mr. Vijeet Kothari [PAN: CJAPK1958E]**

In the matter of Infibeam Avenues Limited.

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') conducted an investigation with respect to trading in the scrip of Infibeam Avenues Limited**.** (hereinafter referred to as '**Infibeam/Company/IAL'**) for the period, August 01, 2016 to June 30, 2017 (hereinafter referred to as "**Investigation period/IP"**). Infibeam is a company whose shares are listed on BSE Ltd (hereinafter referred to as "**BSE**") and National Stock Exchange of India Ltd (hereinafter referred to as "**NSE"**). The focus of investigation was to ascertain, *inter-alia*, any violation of the provisions of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act'**) and SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as "**PIT Regulations"**) in respect of trading in the scrip of Infibeam during the Investigation period. During investigation, it was observed that Company has alleged that one of the joint statutory auditors i.e. M/s SRBC & CO. LLP (hereinafter referred to as "**Noticee 1/ By Name/SRBC**"), had shared information containing financial results, which was unpublished price sensitive information

(hereinafter referred to as “**UPSI**”), on multiple occasions leading to breach of trust and loss of faith in their internal processes and systems. Noticee 1 had also admitted that emails containing financial information had either been forwarded to the personal email IDs of team members or inadvertently forwarded to some email ID of their other client, Mr Hiren Patel. On conclusion of investigation, SEBI observed violations of the provisions of PIT Regulations and SEBI Act by Noticee 1 and certain other entities. Therefore, SEBI initiated adjudication proceedings against these entities for violations of PIT Regulations and SEBI Act.

APPOINTMENT OF ADJUDICATING OFFICER

2. Vide order dated March 13, 2020 SEBI appointed Ms. Sangeeta Rathod as the Adjudicating Officer under Section 15I of the SEBI Act read with Section 19 of the SEBI Act and Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as ‘**Adjudication Rules’**). Subsequent to transfer of Ms. Sangeeta Rathod, Mr. Prasanta Mahapatra was appointed as the Adjudicating Officer in the matter. Thereafter, vide Order dated December 04, 2020 undersigned was appointed as Adjudicating Officer in the matter to inquire into and adjudge under:
   A. Section 15G(ii) of SEBI Act, the alleged violation of provisions of Section 12A (e) of SEBI Act read with Regulation 3(1) of PIT Regulations by Noticee 1 and Mr. Shamsuddin Valani (hereinafter referred to as “**Noticee 2 / By Name**“) ;
   B. Section 15HB of SEBI Act, the alleged violation of provisions of Clause 4 of Schedule B of PIT Regulations read with Regulation 9(1) of PIT Regulations by Noticee 2 and the alleged violation of provisions of Clauses 4 and 5 of Schedule B of PIT Regulations read with Regulation 9(2) of PIT Regulations by Mr. Rachit Shrenikbhai Jhaveri (hereinafter referred to as “**Noticee 4/ By Name**” and Mr. Vijeet Kothari (hereinafter referred to as “**Noticee 5/By Name**”) ;
   C. Section 15HB of SEBI Act, the alleged violation of provisions of Regulation 3(2) of PIT Regulations by Ms. Sejal Shokataly Pirani (hereinafter referred to as “**Noticee 3/By Name**”) and
   D. Section 15G(i) of SEBI Act, the alleged violation of provisions of Section 12A (d) and (e) of SEBI Act read with Regulation 4(1) of PIT Regulations by Noticees 3 and 4

I(Noticees 1 to 5 are hereinafter collectively referred to as "**Noticees**") .

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. A common show-cause notice dated September 27, 2021 (hereinafter referred to as '**SCN**') was issued to Noticees under Rule 4 of the Adjudication Rules to show-cause as to why an inquiry should not be initiated against Noticees and penalty, if any, not be imposed upon them for the aforesaid violations alleged to have been committed by them. Later on, a Supplementary Show Cause Notice dated March 03, 2022 (SSCN) providing additional clarifications was issued in respect of Noticee 5. Vide the SSCN, it was clarified that Noticee 5 was an employee of BSR & Co. LLP during IP and it had been inadvertently mentioned in the SCN that Noticee 5 was the employee of Noticee 1. The SCN and SSCN are both being collectively referred to as SCN.

4. The SCN was sent to Noticees through Speed Post Acknowledgement due (herein after referred to as '**SPAD**') as well as through digitally signed email dated September 28, 2021. The SCN sent to Noticee 1 through SPAD returned undelivered, however the same was duly delivered through digitally signed email. Further, on request of Sukrut S Mehta, Partner of Noticee 1, SCN was delivered to its new address through SPAD. The SCN was duly served upon Noticees. The SSCN was duly served on Noticee 5 through SPAD.

5. Noticees were given fifteen (15) days' time from the date of receipt of SCN to make their submissions in respect of the allegations made in the SCN. Vide email dated October 11, 2021, Noticee 5 requested additional time of 15 days for filing his reply to the SCN, which was acceded to by the undersigned. Thereafter, Noticee 5 vide letter dated October 26, 2021 filed his reply to the SCN.

6. Vide email dated November 17, 2021, Noticee 1 had requested for inspection of documents relied upon in the present matter. The aforementioned request of Noticee 1 for inspection of documents was acceded to and vide email dated November 22, 2021, Noticee 1 was granted an opportunity of inspection on December 17, 2021. Noticee 1 availed the opportunity of inspection of documents granted to it on December 17, 2021. Thereafter, as requested by Authorised Representative (AR) of Noticee 1 during inspection, a CD containing SCN along with annexures to the SCN was sent to AR of Noticee 1.

7. Thereafter, in the interest of natural justice, an opportunity of personal hearing was granted to Noticee 1 on February 08, 2022 vide hearing notice dated February 02, 2022. The aforementioned hearing notice was duly served on Noticee 1 through SPAD as well as through digitally signed email. On request of Noticee 1 made through email dated February 02, 2022, the hearing scheduled on February 08, 2022 was adjourned. Noticee 1, vide letter dated February 16, 2022, filed its reply to the SCN.

8. In the interest of natural justice, another opportunity of personal hearing was granted to Noticee 1 on March 11, 2022 vide hearing notice dated March 02, 2022. The hearing notice was duly served on Noticee 1. On the scheduled date of hearing, ARs of Noticee 1, Mr Sagar Divekar, Advocate Abimanyu Mhapankar and Advocate Pranati Dabholkar appeared on behalf of Noticee 1 and reiterated the contents of Noticee 1's earlier reply dated February 16, 2022. At the time of hearing, Noticee 1 was granted time for making additional written submissions in the matter. Noticee 1 vide its letter dated March 15, 2022 made additional written submissions in the matter.

9. Noticees 2 and 3 vide their letters dated October 16, 2021 and October 19, 2021 had requested for certain additional documents/information including the investigation report in the matter. Vide, emails dated January 07, 2022 and January 13, 2022, Noticee 2 was provided the information/documents requested by him excluding the Investigation Report and vide, emails dated January 03, 2022, Noticee 3 was provided the information/documents requested by her excluding the Investigation report. Noticees 2 and 3 were denied Investigation Report in the matter on the ground that the relevant extracts of Investigation Report was already provided as part of the SCN. Later on, vide email dated May 23, 2022, Noticees 2 and 3 were provided with redacted Investigation Report in the matter (i.e. redacted with respect to third party information).

10. In response to the SCN, Noticees 2 and 3 filed their reply dated February 03, 2022 and January 24, 2022 vide email dated February 10, 2022 and January 24, 2022 respectively. A hardcopy of the aforementioned replies were also received. I note that vide emails dated December 02, 2021, Noticees 2 and 3 informed that they had filed application for settlement under SEBI (Settlement Proceedings) Regulations, 2018 with regard to the present adjudication proceedings. The same was also intimated by the concerned department of SEBI vide email dated February 02, 2022. Thereafter, vide email dated May 20, 2022, concerned department of SEBI informed that the aforementioned applications

of settlement of Noticees 2 and 3 were rejected and the same was also intimated to Noticees 2 and 3 by the department *vide* email dated May 20, 2022.

11. Subsequently, in the interest of natural justice, an opportunity of personal hearing before the undersigned was granted to Noticees 2 and 3 on May 31, 2022 vide hearing notices dated May 20, 2022. The aforementioned hearing notices were duly served on Noticees 2 and 3 through SPAD as well as digitally signed email. On the scheduled date of hearing, Authorized Representative of Noticees 2 and 3, Mr. Rushin Kapadia, Advocate, appeared on behalf of Noticees 2 and 3 and reiterated the contents of their earlier replies. During the hearing, Noticees 2 and 3 were granted additional time for making written submissions in the matter. Thereafter, vide email dated June 03, 2022, Noticees 2 and 3 jointly filed additional written submissions in the matter.

12. In the interest of natural justice, an opportunity of personal hearing was granted to Noticee 5 on February 08, 2022 vide hearing notice dated February 01, 2022. The said hearing notice was sent to Noticee 5 through SPAD and through email dated September 02, 2022 and was duly served upon Noticee 5. I note that additional documents relied upon in the matter was served on Noticee 5 vide email dated February 02, 2022 and Noticee 5 was also given opportunity to file additional written submissions in the matter. Vide the same email, Noticee 5 was also informed that hearing scheduled on February 08, 2022 was adjourned to a later date. Noticee 5 vide letter dated March 03, 2022 filed additional written submissions in the matter. Vide, hearing notice dated April 04, 2022, an opportunity of personal hearing was granted to Noticee 5 before the undersigned on April 21, 2022. On the scheduled date of hearing, Noticee 5 appeared before the undersigned and reiterated the contents of his earlier replies.

13. In the interest of natural justice, vide hearing notice dated February 01, 2022, Noticee 4 was granted an opportunity of personal hearing before the undersigned on February 08, 2022. The aforesaid hearing notice was sent to Noticee through SPAD and also through digitally signed email on February 02, 2022, and was duly served upon him. Noticee 4 made a short reply to SCN vide emails dated February 02, 2022. Noticee 4 appeared for hearing on the scheduled date and reiterated his earlier submissions made vide emails dated February 02, 2022. Further, during the hearing, Noticee 4 stated that he was not in receipt of SCN. Therefore, vide email dated February 08, 2022, Noticee 4 was sent again

the SCN in the present matter. Further, a hard copy of the SCN was also served on Noticee 4 through SPAD. Noticee 4 submitted his reply to SCN on February 10, 2022.

<u>Replies of Noticees</u>

<u>Reply of Noticee 1 dated February 16, 2022 and March 15, 2022</u>

- *SRBC submits that it was singularly made a target by the Company due to SRBC's refusal to back down from requesting for information regarding the advances to overseas subsidiaries of the Company with relation to Rs. 1223.1 million, which were forwarded by the overseas subsidiaries to their vendors, as there were allegations of diversion of IPO proceeds. The Company's reluctance to share the said information and Rs. 320 million revenue generated by the Company which had a substantial influence on the financials of the Company as there were allegations of inflation of revenue for the last two years.*

- *SRBC submits that one of the employees i.e. Mr. Yusuf Kapasi (who has left SRBC's employment since November 2017) had joined SRBC's employment on November 14, 2016. Mr. Kapasi's official email id had not been generated on November 14 and November 15, 2016. It is submitted that due to the time sensitive nature of the project of finalizing the financial results for September 2016 of the Company and to facilitate uninterrupted performance of SRBC's duties as joint statutory auditors, the UPSI was sent to Mr. Kapasi's personal email id for legitimate purpose for performing his duties and in discharge of his legal obligations towards the Company for carrying out the Company's time sensitive work on November 14 and 15, 2016. Subsequently, once the official email id was generated for Mr. Kapasi, he started using his official email id assigned by SRBC.*

- *SRBC further submits that senior officials i.e. Mr. Hiren Padhya, the CFO and Mr. Sunil Bhagat, the Vice President — Finance and Accounts of the Company, were marked on these emails and if the Company had any objections they should have raised the same in November 2016 itself and not waited till March 2019. In any event Mr. Kapasi has not shared this information with any third party and has only used this information in the performance of his duties*.

- *It is further submitted that with regard to use of personal email id of SRBC's other employee i.e. Mr. Rujal Shah in May 22, 2017; it is submitted that Mr. Shah has used his personal email id only once and the same was due to Mr. Shah facing internet connectivity issue at the relevant time. Considering the time sensitive nature of the work and to facilitate uninterrupted performance of SRBC's duties as joint statutory auditors, Mr. Kapasi shared the financial information on Mr. Shah's personal email id for Mr. Shah to perform his duties in discharge of his legal obligations towards the Company to carry outthe audit work. Mr. Kapasi had also marked Company's CFO Mr. Hiren Padhya and Mr. Sunil Bhagat the Vice President — Finance and Accounts on the said email. SRBC further submits that the Company officials were marked on this email and if the Company had any objection they should have raised the same in May 2017 itself and not waited till March 2019. In any event Mr. Shah has not shared this information with any third party and has only used this information in the performance of his duties.*

- *SRBC submits that there are 3 exceptions provided to Regulation 3(1) of the SEBI PIT Regulations; for prohibition of communication of UPSI except in furtherance of legitimate purposes, performance of duties and discharge of legal obligations*. *SRBC submits that the emails sent to personal email Ids of Mr. Kapasi and Mr. Shah were sent for a legitimate purpose in the performance of their duties and for the discharge of their legal obligations towards the Company in preparing the financial results of the Company, of which SRBC was a joint statutory auditor.*

- *SRBC's submits that Mr. Yusuf Kapasi, while sending an email containing UPSI to Mr. Sunil Bhagat the Vice President — Finance & Accounts of the Company, was to mark a copy to Mr. Hiren Padhya, CFO of the Company. However, while sending out the email, Mr. Kapasi inadvertently marked it to one Mr. Hiren Patel who shared the same first name as Mr. Hiren Padhya. SRBC submits that Mr. Kapasi inadvertantly sent the email to Mr. Patel as both shared the same first name i.e. Hiren. Mr. Patel was and still is a client of SRBC whom Mr. Kapasi was dealing with and handling Mr. Patel's matters at the same time. Mr. Kapasi would communicate with Mr. Patel for other legitimate professional purposes. The said incident was an inadvertent error made by Mr. Kapasi.*

- *SRBC submits that Mr. Kapasi inadvertently sent out the aforementioned email marking Mr. Hiren Patel on February 07, 2017 at 10:15 p.m. SRBC submits that Mr. Kapasi upon* *noticing the said inadvertent error immediately sent an email to Mr. Hiren Patel on the next day i.e. February 08, 2017 at 10:04 a.m. informing Mr. Hiren Patel that the said email was sent to him erroneously and requested Mr. Hiren Patel to ignore the said email.*

- *SRBC submits that Mr. Kapasi also telephoned Mr. Hiren Patel and explained the inadvertent error to Mr. Patel and requested Mr. Patel not to use, forward or share the said email including the said information (UPSI) with any other person or entity.*

- *SRBC immediately on February 08, 2017 sent an employee personally to meet with Mr. Hiren Patel and requested him to delete the said email and attachment from his mail inbox. Accordingly, Mr. Hiren Patel deleted the said email and attachment in the presence of SRBC's said employee on February 08, 2017 itself.*

- *SRBC submits that Mr. Hiren Patel confirmed in writing to SRBC that the said email and attachment has been deleted and the information contained in the said email has neither been used by him for any purpose whatsoever nor has been forwarded to any other person or entity party.*
- *SRBC submits that following the aforementioned inadvertent error, SRBC took immediate corrective measures to rectify the said inadvertent error and hence ensuring that no loss was caused to Company or public at large or the interest of investors.*

- *It is further submitted that there is no evidence in the Show Cause Notice to show that Mr. Hiren Patel or any other related party to Mr. Hiren Patel had used the said information in the said email (UPSI) in any manner for his benefit or any other party related to him nor are there any allegations or evidence in the Show Cause Notice to show that Mr. Hiren Patel or any other party related to him had dealt with the securities of the Company based on the information which was inadvertently shared with Mr. Hiren Patel.*

- *It is submitted that the purpose of Section 12A (e) of the SEBI Act read with Regulation 3(1) of PIT Regulations is not to penalize an inadvertent error done firstly, for a legitimate purpose; or, secondly, in the performance of duties; or, thirdly, in discharge of legal obligations.*

- *SRBC has also taken immediate corrective and preventive measures in order to ensure that such inadvertent instance does not occur again. SRBC submits that it has been* *making frequent communications to its employees' of ensuring safeguards while using emails comprising sensitive client data in addition to trainings. As an additional safeguard, SRBC has also implemented a system since 3 years, wherein any emails forwarded to public mail domains including personal mail domains from SRBC's mail servers initiate an alert to the user for confirmation for business requirement before the email can be sent out. The said confirmation may also be used for analysis of such emails.*

- *In this regard, SRBC places reliance on the Order dated May 15, 2019 passed by the Hon'ble Securities Appellate Tribunal(SAT), in the matter of Piramal Enterprises Limited versus SEBI and Ajay G. Piramal & Ors. Versus SEBI reported in 2019 SCC Online SAT 134.*

<u>Reply of Noticee 2 dated February 03, 2022</u>

- *The allegations against me under the Notice are premised on the assumption that at the time of undertaking the Relevant Trades, Ms. Sejal Shokatali Pirani was my wife. In this regard, it is relevant to note that I did not share a spousal/ marital relationship with Ms. Sejal Shokatali Pirani during the Relevant Period, given that our marriage was solemnized only on November 4, 2017 and registered on November 21, 2017 i.e. almost 9 months after the Relevant Period. Evidently, during the Relevant Period, Ms. Sejal Shokatali Pirani and I were not married. It may also be noted that during the Relevant Period, we were not even involved in a relationship. In any event, during the Relevant Period, no discussions took place between me and Ms. Sejal Shokatali Pirani in respect of my work/ professional duties. Ms. Sejal Shokatali Pirani and I were not in a spousal/ marital relationship with each other, and therefore we would not qualify as "connected person" or "immediate relative", as defined in the PIT Regulations.*

- *I did not communicate any UPSI to Ms. Sejal Shokatali Pirani. In order to establish the charge of insider trading, it is necessary for SEBI to prove actual sharing/ tipping of information.*

- *In order to bring home a charge under Clause 4 of Schedule B of the PIT Regulations, it would necessarily have to entail trading by either the (i) designated person; or (ii) the immediate relative of the designated person, during the trading window closure period. In the present case: it is not even SEBI's case that I, being the designated person, traded* *during the trading window closure period; andas indicated above, Ms. Sejal Shokatali Pirani was not an 'immediate relative' as contemplated under the PIT Regulations during the Relevant Period. Thus, the Relevant Trades, which were executed by Ms. Sejal Shokatali Pirani in her individual capacity, independent of her association with me, cannot be viewed in any other light. Thus, in the present case, neither did the designated person i.e. me, nor my immediate relative, execute any trades during the trading window closure period. Therefore, the allegation that I have violated Clause 4 of Schedule B read with Regulation 9(1) of the PIT Regulations, stands unsubstantiated. As such, the onus of ensuring compliance with Clause 4 of Schedule B of the PIT Regulations for the execution of Relevant Trades by Ms. Sejal Shokatali Pirani being attributed to me, is wholly unreasonable and arbitrary.*

- *In this regard, I reiterate that I have not obtained any disproportionate gain or advantage specifically on account of any of the allegations made out in the Notice. I reiterate that there is no evidence, direct or indirect, that would suggest that I acted in a manner that caused any loss to a particular investor or group of investors of IAL. In this regard, I most respectfully submit that I have not committed any 'repetitive default' in the instant case.*

Reply of Noticee 3 dated January 24, 2022

- *I have no connection with or involvement in the affairs of IAL, and firmly deny any insinuation that I received any UPSI pertaining to IAL from Mr. Shamsuddin Valani. I did not have any UPSI pertaining to IAL or its securities at the time of executing the trades during the UPSI Period.*

- *In this regard, it is reiterated that I did not share a spousal/ marital relationship with Mr. Shamsuddin Valani during the UPSI Period, given that our marriage was solemnized only on November 4, 2017 and registered on November 21, 2017 i.e. almost 9 months after the UPSI Period. Evidently, during the UPSI Period, my husband and I were not married. It may also be noted that during the UPSI Period, we were not even involved in a relationship. In any event, during the UPSI Period, no discussions took place with my spouse in respect of his work/ professional duties. it can be readily observed that during the UPSI Period, Mr. Shamsuddin Valani and I were not in a spousal/ marital relationship with each other, and therefore we would not qualify as "connected person" or "immediate relative", as defined in the PIT Regulations. Consequently, any trades executed by me* *during the UPSI Period, were in my individual capacity and based on my own assessment of the publicly available information, independent of my association with my spouse, and would not attract the PIT Regulations, in any manner whatsoever.*

- *I did not procure any UPSI from Mr. Shamsuddin Valani, and did not undertake any trades in IAL while in possession of such UPSI. In this regard, SEBI has failed to place any evidence on record in order to clearly establish that during the UPSI Period, I was in possession of UPSI procured from Mr. Shamsuddin Valani and undertook trades while in possession of such UPSI.*

- *All the trades executed by me in the scrip of IAL during the UPSI Period were driven by my independent assessment of the securities market and the financial ecosystem.*

- *I have not obtained any disproportionate gain or advantage specifically on account of any of the allegations made out in the Notice. I reiterate that there is no evidence, direct or indirect, that would suggest that I acted in a manner that caused any loss to a particular investor or group of investors of IAL. I most respectfully submit that I have not committed any 'repetitive default' in the instant case.*

<u>Common reply of Noticee 2 and 3 dated June 03, 2022.</u>

- *There is nothing on record, other than a stray allegation of connection due to spousal relation, to show (a) connection between the Noticees; (b) communication from Noticee No. 2 to Noticee No. 3; and (c) trading by Noticee No. 3 on the basis of unpublished price sensitive information ("UPSI") of IAL. In fact, even the investigation report at page 27 categorically records as such.*

- *In addition to the factual error, the SEBI is also now ought to be guided by the instructive judgement of the Hon'ble Supreme Court in the matter of Balram Garg v. SEBI* (*Order dated April 19, 2022 in Civil Appeal Nos. 7054 and 7590 of 2021). This judgement makes it clear as to the fact that connection between parties and the fact of trade is not sufficient to bring a charge of insider trading under the PIT Regulations. In fact, the present matter is on a far superior footing, given the error in charging the Noticees only on account of them having spousal relationship, which, as conclusively shown in the respective replies, was not there at the time of the relevant trades.*

- *Trading Pattern of Noticee No. 3 is not indicative any intention to trade on the basis of UPSI.*

- *Noticees have no financial wherewithal to pay monetary penalty*

Reply of Noticee 4 vide emails dated February 02,2022

- *I have done two transactions of 50 shares each as a simple and small trader and there is no intention of insider trading. There is no any intention to damage or take undue benefit. I am individual having no relation with Infibeam except 4-5 days visit made at the company for audit work as an employee of SRBC & Co LLP.*

- *I have done this as a layman and not from the intention of any insider trading. If you look at the no. of shares traded are 50 shares only in each of the two trading transactions. I had just learned trading in shares that time and was doing such transactions in various companies also. My intention was not to do any unlawful things. However, I can understand now that it can be considered as not legal in the eyes of the law, but I can only tell you that the intention was not of insider trading. I could not have any social, moral and financial strength to involve in any legal case/issue.*

Reply of Noticee 5 vide email dated October 26, 2021 and March 03, 2022

- *I respectfully submit that my role as an associate of BRS & Co. LLP, the joint auditors, was significantly limited to only carrying out the routine operations and the primary role in taking key decisions including direct access to the UPSI was that of noticee No.1.*

- *As per Clause 2(1)(f), in order to be deemed to be a connected person it is also necessary to establish that my mother was either dependent financially on me or was consulting me in taking decisions relating to trade in securities.*

- *my father and mother have been independently managing their savings through various avenues, one major avenue being actively investing/trading in securities of listed companies. Thus, they are completely financially independent and cannot under any circumstances be regarded to be financially dependent on me. To establish my point I am attaching their income tax returns and also my income tax returns for FY 2014-15, 2015-16 and 2016-17, as ANNEXURE 2. It will be seen that the joint declared income of my* *father and mother is sufficient to ensure that they are able to financially take care of themselves. In fact the actual position is that being a young non earning son, I was completely financially dependent on them till FY 2014-15 and only form FY 2015-16 I started my regular earning.*

- *My mother has also never consulted me in taking decision relating to trading in securities. My mother Ms. Sunita Shrenik Kothari has been trading in stock market since long back from her own income based on her understanding and random tips from friends, stock brokers or stock experts; and also based on generally available information.*

- *The purchase transaction was executed on 11 August 2016 by my mother, of buying 19 equity shares of Infibeam at 806.65/share, at total transaction value of INR 15,387.52. However, it is equally pertinent to mention that my mother sold the said shares on 01.09.2016, by selling 19 equity shares of Infibeam at INR 847/share, total transaction value of INR 16,028.49 thereby generating total short-term gain of INR 640.97. The very fact that the said shares were immediately sold by her at such a small gain in itself also clearly establishes that she was not in any manner acting on the basis of the alleged UPSI as a connected person.*

- *I hereby state that I was under the employment of SRBC & Co LLP ("Noticee 1") during the period I have traded in the scrip of Infibeam. Noticee I was the Statutory Auditor of Infibeam for the financial year 2016-17.I was part of the team involved in the review of financial result for the quarter ended September 30, 2016 only. I was involved for review of Ind AS (Indian Accounting Standards) accounting transitlon treatment only for that quarter ended September 30,2016. I was not part of the team involved for the review of quarter ended December 31, 2016,and review/audit of quarter/year ended March 31, 2017, and hence, I was not in possession of UPSI at the time of trading in the scrip of UPSI. This above fact can be confirmed from the attendance records as well as review/audit documentation maintained by Noticee 1 for the review/audit of the quarter ended December 31, 2016, and for the quarter/year ended March 31, 2017 of Infibeam. As I am not under the employment of Noticee 1 as on the date of SCN/this reply, I could not have access to this information maintained by Noticee 1 and hence, I am unable to provide you with the supporting documents.*

- *The trade in the scrip of Infibeam was purely unintentional.*

CONSIDERATION OF ISSUES, EVIDENCE AND FINDINGS

14. I have carefully perused the charges levelled against Noticees, replies/submissions filed by Noticees and other documents/ evidence available on record. The issues that arise for consideration in the present case are:

I. Whether:

A. Noticee 1 has violated Section 12A (e) of SEBI Act read with Regulation 3(1) of PIT Regulations?

B. Noticee 2 has violated Section 12A (e) of SEBI Act read with Regulation 3(1) of PIT Regulations and Clause 4 of Schedule B of PIT Regulations read with Regulation 9(1) of PIT Regulations ?

C. Noticee 3 has violated Regulation 3(2) of PIT Regulations and Section 12 A (d) and (e) of SEBI Act read with Regulation 4(1) of PIT Regulations?

D. Noticee 4 has violated Clause 4 and Clause 5 of Schedule B of PIT Regulations read with Regulation 9(2) of PIT Regulations and Section 12 A (d) and (e) of SEBI Act read with Regulation 4(1) of PIT Regulations?

E. Noticee 5 has violated Clause 4 and Clause 5 of Schedule B of PIT Regulations read with Regulation 9(2) of PIT Regulations?

II. Do the violations, if any, attract monetary penalty under :

A. Section 15G(ii) of SEBI Act for the alleged violations committed by Noticee 1 and Noticee 2?

B. Section 15HB of SEBI Act for the alleged violations committed by Noticees 2,3,4 and 5?

C. Section 15G(i) of SEBI Act for the alleged violations committed by Noticees 3 and 4?

III. If the answer to issue no. 2 is in affirmative, then what should be the quantum of monetary penalty?

15. Before moving forward, it is pertinent to refer to the relevant provisions of the PIT Regulations and SEBI Act which were in force at the time of impugned transactions, which are reproduced as under:

Relevant provisions of SEBI Act

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;

Relevant provisions of PIT Regulations

Communication or procurement 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.

NOTE: This provision is intended to cast an obligation on all insiders who are essentially persons in possession of unpublished price sensitive information to handle such information with care and to deal with the information with them when transacting their business strictly on a need-to-know basis. It is also intended to lead to organisations developing practices based on need-to-know principles for treatment of information in their possession.

(2) No person shall procure from or cause the communication by any insider of unpublished price sensitive information, relating to a company or securities listed or proposed to be listed, except in furtherance of legitimate purposes, performance of duties or discharge of legal obligations.

NOTE: This provision is intended to impose a prohibition on unlawfully procuring possession of unpublished price sensitive information. Inducement and procurement of unpublished *price sensitive information not in furtherance of one's legitimate duties and discharge of obligations would be illegal under this provision.*

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***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.

***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.

(2) Every other person who is required to handle unpublished price sensitive information in the course of business operations shall formulate a code of conduct to regulate, monitor and report trading by 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: This provision is intended to mandate persons other than listed companies and market intermediaries that are required to handle unpublished price sensitive information to formulate a code of conduct governing trading in securities by their employees. These entities include professional firms such as auditors, accountancy firms, law firms, analysts, consultants etc., assisting or advising listed companies, market intermediaries and other capital market participants. Even entities that normally operate outside the capital market may handle unpublished price sensitive information. This provision would mandate all of them to formulate a code of conduct.

Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders given under Schedule B

4. Designated persons may execute trades subject to compliance with these regulations. Towards this end, a notional trading window shall be used as an instrument of monitoring trading by the designated persons. The trading window shall be closed when the compliance officer determines that a designated person or class of designated persons can reasonably be expected to have possession of unpublished price sensitive information. Such closure shall be imposed in relation to such securities to which such unpublished price sensitive information relates. Designated persons and their immediate relatives shall not trade in securities when the trading window is closed.

5. The timing for re-opening of the trading window shall be determined by the compliance officer taking into account various factors including the unpublished price sensitive information in question becoming generally available and being capable of assimilation by the market, which in any event shall not be earlier than forty-eight hours after the information becomes generally available. The trading window shall also be applicable to any person having contractual or fiduciary relation with the company, such as auditors, accountancy firms, law firms, analysts, consultants etc., assisting or advising the company.

<u>Issue No.I-</u> Whether:

A. Noticee 1 has violated Section 12A (e) of SEBI Act read with Regulation 3(1) of PIT Regulations?

B. Noticee 2 has violated Section 12A (e) of SEBI Act read with Regulation 3(1) of PIT Regulations and Clause 4 of Schedule B of PIT Regulations read with Regulation 9(1) of SEBI (PIT) Regulations, 2015?

C. Noticee 3 has violated Regulation 3(2) of PIT Regulations and Section 12 A (d) and (e) of SEBI Act read with Regulation 4(1) of PIT Regulations?

D. Noticee 4 has violated Clause 4 and Clause 5 of Schedule B of PIT Regulations read with Regulation 9(2) of PIT Regulations and Section 12A (d) and (e) of SEBI Act read with Regulation 4(1) of PIT Regulations?

E. Noticee 5 has violated Clause 4 and Clause 5 of Schedule B of PIT Regulations read with Regulation 9(2) of PIT Regulations?

16. At the outset, I find it pertinent to examine the UPSIs involved in the present issue as the issue involved in the present matter relates to charges of insider trading. In the present matter, I note that SCN has considered information relating to financial results of IAL for the quarter ended September 2016 as UPSI-I, information relating to financial results for the quarter ended December 2016 as UPSI-II and information relating to financial results for quarter and year ended March 2017 as UPSI-III. I note that in Regulation 2(1)(n), which provides the definition for UPSI, information relating to financial results of a company has been considered as UPSI. Moreover, it is well established that financial results of a company has the power to influence the price of the scrip of a Company in the market. In the light of the aforesaid definition of UPSI, I note that information relating to financial results of IAL for the quarter ended September 2016 can be considered as UPSI-I, information relating to financial results for the quarter ended December 2016 can be considered as UPSI-II and information relating to financial results for quarter and year ended March 2017 can be considered as UPSI-III (collectively referred to as UPSIs) in the present matter.

17. I note from the chronology of events submitted by IAL, *vide* its letter dated July 04, 2019 to SEBI that following are the periods of UPSIs:

<u>Periods of UPSIs</u>:

a) <u>UPSI - I:</u>

i) **When did PSI come into existence:** Based on chronology of events, I note that UPSI - I related to the financial results for the quarter ended September 2016 had come into existence on October 19, 2016.

ii) **When did PSI get published:** The corporate announcement of the financial results for the quarter ended September 2016 was made on the exchanges on November 17, 2016 after market hours.

iii) **Period of UPSI:** Based on the above paragraphs, I note that the period of UPSI - I would be October 19, 2016 to November 17, 2016.

b) UPSI - II:

i) **When did PSI come into existence:** Based on chronology of events, I note that UPSI - II related to the financial results for the quarter ended December 2016 had come into existence on January 16, 2017.

ii) **When did PSI get published:** The corporate announcement of the financial results for the quarter ended September 2016 was made on the exchanges on February 13, 2017 after market hours.

iii) **Period of UPSI:** Based on the above paragraphs, I note that the period of UPSI - II would be January 16, 2017 to February 13, 2017.

c) UPSI - III:

i) **When did PSI come into existence:** Based on chronology of events, I note that the UPSI - III related to the financial result for the quarter and year ended March 2017 had come into existence on May 02, 2017.

ii) **When did PSI get published:** The corporate announcement of the financial result for the quarter and year ended March 2017 was made on the exchanges on May 30, 2017 after market hours.

iii) **Period of UPSI:** Based on the above paragraphs, I note that the period of UPSI - III would be May 02, 2017 to May 30, 2017.

A. Whether Noticee 1 has violated Section 12A (e) of SEBI Act read with Regulation 3(1) of PIT Regulations?

18. It has been alleged in the SCN that Noticee 1, who was the statutory auditor of Infibeam, was grossly negligent in its acts while in possession of UPSI as UPSI had been shared by it on two occasions to the personal email ids of two employees and on one occasion with a client and it had failed to handle such information with care and strictly on a need to know basis. Thereby, it has been alleged in the SCN that Noticee 1 had violated the provisions of Section 12A (e) of SEBI Act read with Regulation 3(1) of PIT Regulations.

19. I note from the available records that Noticee 1 was one of the joint statutory auditors of Infibeam for the financial year 2016-17. I note that as per Regulation 2(1)(g) of PIT Regulations, “insider” means any person who is a connected person or in possession of or having access to UPSI. I note from the letter dated July 04, 2019 received from Infibeam by SEBI and from the letter/email dated July 05, 2019 received from Noticee 1 that Noticee 1 was in possession of UPSIs. Therefore, I find that Noticee 1 was an insider of Infibeam for the UPSI-I, UPSI-II and UPSI-III periods in terms of Regulation 2(1)(g) of PIT Regulations.

20. I note that Infibeam vide its letter dated July 04, 2019 had informed SEBI that audit team members of Noticee 1 had sent certain emails containing price sensitive information to personal email IDs of employees of Noticee 1 and also during the month of February 2017 an employee of Noticee 1 had forwarded information pertaining to financial results of Infibeam to one of the clients of Noticee 1.

21. I note that Noticee 1 in its letter to SEBI dated July 05, 2019 stated that it had shared draft financial results of Infibeam to the personal email IDs of the two of its employees namely, Mr. Yusufi Kapasi and Mr Rujal Shah, in the course of audit work of Infibeam and inadvertently to one of its client, namely Mr. Hiren Patel. The same has also been admitted by Noticee 1 in its reply to the SCN. The details of the aforementioned emails as noted from the letter of Noticee 1 to SEBI dated July 05, 2019 are as given hereunder:

Instances of sharing of financial information of Infibeam to personal email id of Mr. Yusufi Kapasi

Sr. No	Email sent date	From	To	Cc	subject	Comments / content of email
1.	14-Nov-16	YUSUFI KAPASI <yusufikapasi@gmail.com>	Abhishek Karia (EY), Rachit S Jhaveri (EY)	NA	Ind As	Email contains draft standalone financial results with Ind AS impact for the September 2016 quarter of Infibeam. The same was subjected to limited review and consequential adjustments. The final version of financial results was received on November 17, 2016 and was published on same date.
2.	14-Nov-16	Abhishek Karia (S R B C)	sunil.bhagat@infibeam.net	hiren.padhya@infibeam.net;Rachit S Jhaveri (SRBC), yusufikapasi@gmail.com	FW: Ind As	Email contains draft standalone financial results with Ind AS impact for the September 2016 quarter of Infibeam. The same was subjected to limited review and consequential adjustments. The same was shared with client for further updates. The final version of financial results was received on November 17, 2016 and was published on same date
3.	15-Nov-16	Rachit S Jhaveri (S R B C)	sunil.bhagat@infibeam.net	Abhishek Karia (S R B C), yusufikapasi@gmail.com	Sept'16 - Ind AS balance sheet & Result	Email contains draft standalone financial results with Ind AS impact for the September 2016 quarter of Infibeam. The same was subjected to limited review and consequential adjustments. The same was shared with client for further updates. The final version of financial results was received on November 17, 2016 and was published on same date.
4.	15-Nov-16	Rachit S Jhaveri (S R B C)	Abhishek Karia (S R B C), Anisha R Gupta (S R B C), yusufikapasi@gmail.com	NA	Final_INC Financials_Sep 2016 - IndAS (002).xlsx	Email contains draft standalone financial results with Ind AS impact for the September 2016 quarter of Infibeam. The same was subjected to limited review and consequential adjustments. The final version of financial results was received on November 17, 2016 and was published on same date
5.	15-Nov-16	Abhishek Karia (S R B C)	sunil.bhagat@infibeam.net	hiren.padhya@infibeam.net, Rachit S Jhaveri (S R B C), yusufikapasi@gmail.com	INC Financials_Sep 2016 - IndAS.xlsx	Email contains draft standalone financial results with Ind AS impact for the September 2016 quarter of Infibeam. The same was subjected to limited review and consequential adjustments. The same was shared with client for further updates. The final version of financial results was received on November 17, 2016 and was published on same date

6.	15-Nov-16	Abhishek Karia (S R B C)	Rachit S Jhaveri (S R B C), yusufikapasi@gmail.com	NA	FW: Consol financials with segment	The attachments in the email contains draft consolidated financials for September 2016 of Infibeam. These are draft financials which were subjected to review and were as per Indian GAAP i.e. did not contain adjustments on account of Ind AS required to be included for the purpose of preparation of financial results by the Company.

Instance of sharing of financial information of Infibeam to personal email id of Mr. Rujal Shah

Sr. No	Email sent date	From	To	Cc	subject	Comments / content of email
1.	22-May-17	Yusufi Kapasi (S R B C)	Hiren Padhya (Infibeam), Sunil Bhagat (Infibeam) Ashutosh Kejriwal (S R B C), shahrujal9440@gmail.com	Ashutosh Kejriwal (S R B C), shahrujal9440@gmail.com	FW: Ind AS Financial Statement - NSI and INC	Email contains draft standalone financial results with Ind AS impact for the year ended March 31, 2017. The same was subjected to further audit and consequential adjustments. The same was shared with client for further updates. The final version of financial results was received on May 30, 2017 and was published on same date.

Instance of sharing financial information of Infibeam to client Mr. Hiren Patel

Sr. No	Email sent date	From	To	Cc	subject	Comments / content of email
1	07-Feb-17	Yusufi Kapasi (S R B C)	hiren@varmoraplastech.com, sunil.bhagat@infibeam.net	NA	Infibeam Dec 2016 - Publication and Notes	The email was sent by Yusufi on February 7, 2017 at 22:15 PM to Sunil Bhagat on financial results for quarter ended December 31, 2016. While forwarding this email, the concerned team member intended to mark or copy Mr. Hiren Padhya on "hiren.padhya@infibeam. net, the CFO of Infibeam; however in doing so, the said email was

						inadvertently marked to one Mr Hiren Patel at the email address hiren@varmoranlastech.com who happens to be the Director of this entity Varmoraplastech, another client of the firm, and with whom the said team member used to communicate for official purpose. The same was subjected to limited review and consequential adjustments The final version of financial results was received on February 11, 2017 and was published on February 13, 201

22. I note from the material available on record that Mr.Yusufi Kapasi joined the employment of Noticee 1 on November 14, 2016 and was part of the audit team of Noticee 1 involved in audit of the financial results of Infibeam for the quarters ended September 30, 2016, December 31, 2016 and March 31, 2017. I note from the table above that on two days i.e. on November 14, 2016 and November 15, 2016, members of Audit team of Noticee 1, namely, Mr Abhishek Karia and Mr. Rachit S Jhaveri (Noticee 4) had sent emails from their official email IDs (5 in number) containing draft standalone financial results with Ind As (Indian Accounting Standards) impact for September 2016 quarter of Infibeam/draft consolidated financials for September 2016 to the personal email id of Mr.Yusufi Kapasi. I also note from the above table that on November 14, 2016, Mr.Yusufi Kapasi had sent an email from his personal email ID containing the draft standalone financial results with Ind As impact for September 2016 quarter of Infibeam to Mr Abhishek Karia and Mr. Rachit S Jhaveri (Noticee 4). I note that Noticee 1 in its letter to SEBI dated July 05, 2019 and in its reply to the SCN submitted that the information relating to financial results of Infibeam was shared on personal email id of Mr. Yusuf Kapasi as his official email id was not activated at that time as he had joined the Noticee 1 only on November 14, 2016.

23. I also note from the aforementioned table that on May 22, 2017, Mr.Yusufi Kapasi had sent an email containing draft standalone financial results with Ind AS impact for the year ended March 31, 2017 from his official email id to officials of Infibeam namely Mr. Hiren Padhya and Mr. Sunil Bhagat and copy of the same had been marked to official email id

of Ashutosh Kejriwal and personal email id of Rujal Shah (shahrujal9440@gmail.com), who are the employees of Noticee 1. I note that Noticee 1 in its letter dated July 05, 2019 informed SEBI that sharing of financial information of Infibeam to the personal email id of Mr. Rujal Shah was due to him facing internet connectivity issues. The same was also reiterated by Noticee 1 in its reply to the SCN.

24. I observe that on February 07, 2017, Mr.Yusufi Kapasi had sent an email containing financial results for quarter ended December 31, 2016 to Mr. Sunil Bhagat, official of Infibeam (sunil.bhagat@infibeam.net) and to Mr. Hiren Patel (hiren@varmoraplastech.com). I note that Noticee 1 in its letter dated July 05, 2019 stated that Mr Yusufi Kapasi was intending to send the aforementioned email to Mr. Hiren Padhya on "hiren.padhya@infibeam.net, the CFO of Infibeam; however while doing so, the said email was inadvertently marked to Mr Hiren Patel. I note that vide the aforementioned email, Noticee 1 also stated that Mr. Hiren Patel was the director of Varmoraplastech, client of Noticee 1 and Mr Yusufi Kapasi used to communicate with Mr. Mr. Hiren Patel for official purpose.

25. The issue to be determined here is whether the aforesaid acts of Noticee 1 in sharing financial statements of Infibeam to the personal email ids of its two employees and with the client would amount to violation of Section 12A(e) of SEBI Act read with Regulation 3(1) of PIT Regulations. In this regard, Noticee 1 has in its reply to the SCN has contended that the sharing of UPSI to the personal email ids of Mr. Yusufi Kapasi and Mr. Rujal Shah was for the legitimate purpose of preparing financial results of Infibeam, for which it was the statutory auditor. Noticee 1 has also stated that it had not intentionally shared any UPSI of the Infibeam to any third party. Further, Noticee 1 in its submissions has stated that act of sending UPSI to the personal email ids of its employees and client had not caused any impact whatsoever to the Company or public. Noticee 1 also contended that an inadvertent error or bonafide mistake committed in the course of performance of duties or during an activity undertaken for a legitimate purpose or discharge of legal obligation does not become an action outside the scope of three exceptions covered under Regulation 3(1) of PIT Regulations.

26. In this context, it is pertinent to understand the provisions of Section 12A(e) of SEBI Act and Regulation 3(1) of PIT Regulations and for the said the purpose, aforementioned provisions are reproduced hereunder:

***Communication or procurement 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.

NOTE: This provision is intended to cast an obligation on all insiders who are essentially persons in possession of unpublished price sensitive information to handle such information with care and to deal with the information with them when transacting their business strictly on a need-to-know basis. It is also intended to lead to organisations developing practices based on need-to-know principles for treatment of information in their possession.

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

12A. No person shall directly or indirectly—

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(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;

27. I note that Regulation 3 (1) of PIT Regulations prohibits an insider from communicating, providing or allowing access to UPSI relating to a company or securities listed or proposed to be listed, to any person including <u>other insiders except where such communication is in furtherance of legitimate purposes, performance of duties or discharge of legal obligations.</u> I note from the wordings of Regulation 3(1) of PIT Regulations that three exceptions are carved out in the Regulation with regard to communication of UPSI, which are as given under:

1) Communication in furtherance of legitimate purpose
2) Performance of duties
3) Discharge of legal obligations

28. I note that Explanation to Regulation 3(2A) of PIT Regulations had provided some clarity regarding the term legitimate purpose and the same is reproduced hereunder:

For the purpose of illustration, the term "legitimate purpose" shall include sharing of unpublished price sensitive information in the ordinary course of business by an insider with partners, collaborators, lenders, customers, suppliers, merchant bankers, legal advisors, auditors, insolvency professionals or other advisors or consultants, provided that such sharing has not been carried out to evade or circumvent the prohibitions of these regulations.

29. I note that the draft standalone and consolidated financial results of Infibeam for quarter ended September 2016, shared by officials of Noticee 1, vide emails dated November 14, 2016 and November 15, 2016 to the personal email ID of Mr.Yusufi Kapasi can be considered to fall under UPSI-I. It has been noted in the earlier part of Order that Mr.Yusufi Kapasi was part of the audit team of Noticee 1 involved in the audit relating to financial result of Infibeam for the quarters ended September 30, 2016, December 31, 2016 and March 31, 2017. I also note from the perusal of the impugned emails that the emails seem to be in nature of work place communications made for the purpose of audit work relating financial results of Infibeam and some of these emails are also sent to the officials of Infibeam. I also find it pertinent to mention that an email dated November 14, 2016 containing draft standalone financial results with Ind AS impact for the September 2016 quarter of Infibeam was sent from personal email id of Mr.Yusufi Kapasi to official email ids of Mr. Abhishek Karia and Rachit S Jhaveri, employees of Noticee 1. Thus, I note that Mr.Yusufi Kapasi was already in possession of UPSI-I on November 14, 2016 and was an insider of Infibeam in terms of Regulation 2(1)(g) of PIT Regulations. Therefore, I find that the impugned emails dated November 14, 2016 and November 15, 2016 sent by members of audit team of Noticee 1 to the personal email of Mr.Yusufi Kapasi, another member of audit team of Noticee 1 engaged in audit work of Infibeam for quarter ended on September 2016 were in nature of work place communication between them.

30. I note from material available records that Mr. Rujal Shah was part of the audit team of Noticee 1 involved in financial results of Infibeam for the quarter ended March 2017 and was an insider of Infibeam as per Regulation 2(1)(g) of PIT Regulations. As earlier noted, vide email dated May 22, 2017, Mr Yusufi Kapasi had shared draft standalone financial

results with Ind AS impact for the year ended March 31, 2017 to the personal email id of Mr. Rujal Shah. I note that draft standalone financial results with Ind AS impact for the year ended March 31, 2017 can be considered to fall under UPSI-III. I note from the perusal of impugned email dated May 22, 2017 that it is in the nature of workplace communication. The same can also been seen from the fact that aforementioned email was also marked to the officials of Infibeam Hiren Padhya and Sunil Bhagat and Ashutosh Kejriwal, employee of S R B C. Therefore, I find that impugned email dated May 22, 2017 was in nature of communication shared between insiders in the course of audit work relating to the financial statements of Infibeam for quarter ended March 2017.

31. Thus, I note that sharing of UPSI to Mr. Yusufi Kapasi and Mr. Rujal Shah by Noticee 1 was for the purpose of audit relating to financial statements of Infibeam. I am of the view that the mode of sharing of information, i.e., to the personal email id of the aforementioned employees, does not dilute the fact that aforementioned information was shared to the said employess in the course of performance of their official duties i.e. audit work relating to financial statements of Infibeam. Further, I find that there is nothing on record to indicate that said employees had traded on the basis of such UPSI. I note that Note to Regulation 3(1) of PIT Regulations provides that "*This provision is intended to cast an obligation on all insiders who are essentially persons in possession of unpublished price sensitive information to handle such information with care and to deal with the information with them when transacting their business strictly on a need-to-know basis……………".*

32. Given the circumstances presented by Noticee 1 concerning the use of personal email id by Noticee 1 i.e. email was sent to Mr. Yusufi Kapasi as his official email id was not activated at that time as he had joined the Noticee 1 only on November 14, 2016 and there was only a single instance of sharing of financial information to personal email id of Mr. Rujal Shah due to internet connectivity issues, I am not inclined to disagree with the contention of Noticee 1 that information with respect to financial information was shared for legitimate purpose and on need-to- know basis. I note that no other evidence or findings is available on record to indicate otherwise.

33. Thus, I find that impugned emails dated November 14, 2016, November 15, 2016 and May 22, 2017 being in nature of work place communication between members of audit team of Noticee in the course of audit of financial statements of Infibeam for quarters

ended September 2016 and March 2017 falls within the exception of “legitimate purpose” carved out in Regulation 3(1) of PIT Regulations.

34. As earlier mentioned in the Order, Noticee 1 in its reply to SCN and letter to SEBI dated July 05, 2019 stated that it had inadvertently shared email dated February 07, 2017 containing financial results for quarter ended December 31, 2016 to Mr. Hiren Patel. I note that financial results for quarter ended December 31, 2016 falls within the ambit of UPSI-II. Therefore, I note that Noticee 1 vide its email dated February 07, 2017 communicated UPSI-II to third party, i.e. Mr Hiren Patel. With regard to Noticee 1’s claim that aforementioned communication was inadvertent, I note from the material available on record that Mr. Yusufi Kapasi was in work related communication with Mr Hiren Padhya and Mr. Sunil Bhagat of Infibeam. For instance, I note that on May 22, 2017, Mr. Yusufi Kapasi had sent work related communication to Mr. Hiren Padhya and Sunil Bhagat relating to standalone financial results with Ind As impact for the year ended March 31, 2017. I also note that Mr. Hiren Patel and Mr. Hiren Padhya have similar names and the aforementioned email was also sent to Mr, Sunil Bhagat of Infibeam. I further note that Mr. Yusufi Kapasi was also having work related communications with Mr. Hiren Patel.

35. I note that Noticee 1 in its submissions has contended in its reply to the SCN that upon noticing the aforementioned inadvertent error Mr. Yusufi Kapasi had immediately sent an email to Mr. Hiren Paterl on the next day i.e. February 08, 2017 at 10.04 am, informing Mr Hiren Patel that the said email was sent to him erroneously and requested Mr Hiren Patel to ignore the said email. Further, Noticee 1 in his submissions has also contended that Mr. Kapasi had also telephoned Mr. Hiren Patel and explained the inadvertent error to Mr. Patel and requested Mr. Patel not to use, forward or share the said email including the said information (UPSI) with any other person or entity. Noticee 1 has further contended that immediately on February 08, 2017, it sent an employee personally to meet with Mr. Hiren Patel and requested him to delete the said email and attachment from his mail inbox and accordingly, Mr. Hiren Patel deleted the said email and attachment in the presence of SRBC’s said employee on February 08, 2017. Noticee 1 has also stated in their submissions that Mr. Hiren Patel had confirmed in writing to Noticee 1 that the said email and attachment had been deleted and the information contained in the said email had neither been used by him for any purpose whatsoever nor had been forwarded to any other person or entity party.I note that Noticee 1 in its submissions has also contended

that bonafide mistake committed in the course of performance of duties or during an activity undertaken for a legitimate purpose or discharge of legal obligation also fell under the exceptions carved out in the Regulation 3(1) of PIT Regulations. In light of above, I am inclined to accept the contention of Noticee 1 that the aforementioned/ impugned email could have been inadvertently sent by Mr. Yusufi Kapasi to Mr. Hiren Patel instead of Mr. Hiren Padhya.

36. I also note that Noticee 1 in its submissions has placed reliance on the decision of Hon'ble SAT in Piramal Enterprises Limited Vs. SEBI (Appeal No. 466 of 2016)(Order dated May 15, 2019) wherein Hon'ble SAT has held that "*Considering the aforesaid, we are of the opinion that the object of the Act is not only to protect the investors but also the securities market. The appellant is part of the securities market and its existence is required for the healthy growth of the securities market. SEBI is the watchdog and not a bulldog. If there is an infraction of a rule, remedial measures should be taken in the first instance and not punitive measures. In the absence of any direct or clinching evidence of insider trading or misuse of UPSI, a reasonable benefit of doubt should be extended to the PEL instead of mechanically imposing a penalty. Other factors should be considered including those stated in Section 23J of the Act which apparently was not considered*." In this regard, I note that facts and circumstances of the present case is clearly distinguishable from that in the aforementioned judgement of Hon'ble SAT.

37. I note that Infibeam vide its letter dated July 04, 2019 to SEBI stated that Noticee 1 had not informed it about the aforementioned sharing of financial results for quarter ended December 31, 2016 to Mr. Hiren Patel. I also note that Noticee 1's reply to the SCN also shows that Noticee 1 had not informed Infibeam about aforementioned leakage of UPSI to the third party. I am of the view that the fact that officials of the company are marked in the aforementioned email does not excuse the fact that Noticee 1 failed to intimate the Infibeam regarding such inadvertent sharing of UPSI-II by Mr. Yusufi Kapasi. In this regard, I note that Noticee 1 being an auditor of listed company, entrusted with task of auditing financial statements, which are a price sensitive information, had a duty to take appropriate care of such information. As earlier noted, Note to Regulation 3(1) of PIT Regulations provides that "*This provision is intended to cast an obligation on all insiders who are essentially persons in possession of unpublished price sensitive information to handle such information with care and to deal with the information with them when*

transacting their business strictly on a need-to-know basis. This provision is also intended to impose an obligation not to make selective disclosures of such information except within the framework for fair disclosure set out in these regulations. This standard is intended to lead to organisations developing practices based on need-to know principles for treatment of information in their possession." Considering the above, I am of the view that Noticee 1 should had have a mechanism in place to ensure to prevent leakage of UPSI even inadvertent ones. However, from the aforesaid observations, I note that Noticee 1 did not have any such mechanism in place nor did Noticee 1 deal with such UPSI with care as mandated under Note to Regulation 3(1) of PIT Regulations.

38. On account of the aforementioned observations, I am of the view that allegation in the SCN that Noticee 1 has violated Section 12A (e) of SEBI Act read with Regulation 3(1) of PIT Regulations stands established.

Whether :

B. Noticee 2 has violated Section 12A(e) of SEBI Act read with Regulation 3(1) of PIT Regulations and Clause 4 of Schedule B read with Regulation 9(1) of PIT Regulations ?

C. Noticee 3 has violated Regulation 3(2) of PIT Regulations and Section 12 A (d) and (e) of SEBI Act read with Regulation 4(1) of PIT Regulations?

39. I note that Infibeam vide its letter dated July 04, 2019 to SEBI had provided, *inter alia*, a list of persons who had access to/or in possession of UPSI relating to the financial results for the quarter ended September 2016, quarter ended December 2016 and for quarter and year ended March 2017. I note from the aforesaid letter that Noticee 2 was included in the aforementioned list of persons who had access to/or in possession of UPSI relating to the financial results for the quarter ended September 2016, quarter ended December 2016 and for quarter and year ended March 2017. I note that as per Regulation 2(1)(g) of PIT Regulations, "insider" means any person who is a connected person or in possession of or having access to UPSI. In light of the fact that Noticee 2 was in possession of UPSI relating to the financial results for the quarter ended September 2016, quarter ended December 2016 and for quarter and year ended March 2017, I note that Noticee 2 was an insider in terms of Regulation 2(1)(g) of PIT Regulations with regard to the aforementioned UPSIs.

40. I note from trade logs on NSE available on record that Noticee 3 had traded in the scrip of IAL during the period from January 16, 2017 to February 15, 2017. The trading details of Noticee 3 as noted from the tradelogs during the relevant period are as given below:

Client name	Date	Buy Quantity	Sell Quantity	Avg Buy Price	Avg Sell Price	Buy amount	Sell Amount	P/L
Ms. Sejal Shokataly Pirani,	January 25, 2017		47	NA	1270.21		59,699.65	4288.05
Ms. Sejal Shokataly Pirani,	January 30, 2017	25		1256.45		31,411.25		
Ms. Sejal Shokataly Pirani,	January 31, 2017	20		1250.95		25,019		
Ms. Sejal Shokataly Pirani,	February 06, 2017		45		1306.17		58,777.50	2347.25
Ms. Sejal Shokataly Pirani,	February 14, 2017	2	NA	1396.00	NA	2792.00	NA	

41. From the table above, I note that Noticee 3 had traded in the scrip of IAL on January 25, 2017, January 30, 2017, January 31, 2017 and February 06, 2017 which fall under UPSI–II Period (i.e. January 16, 2017 to February 13, 2017). The aforementioned trades has also been admitted by Noticee 2 and 3 in their replies to the SCN.

42. With regard to allegations levelled against them, Noticee 2 and 3 in their reply to the SCN have contended that Noticee 2 and Noticee 3 were not in spousal/ marital relationship with each other during the UPSI-II period when the impugned trades were executed by Noticee 3 and that their marriage was solemnized only on November 4, 2017 and was registered on November 21, 2017 i.e. almost 9 months after the impugned trades. Further, Noticee 2 in his submission has contended that he did not communicate any UPSI to Noticee 3 and SEBI had not placed any evidence on record to show that there had been communication of UPSI-II from Noticee 2 to Noticee 3. Noticees 2 and 3 have also

contended that in order to prove the aforementioned charge, it is necessary to establish actual sharing/tipping of information. I note that Noticees 2 and 3 in support of their contentions have placed reliance on the decision of Adjudicating Officer, SEBI in the in respect of Sanjay D. Gala in the matter of Navneet Publication India Ltd (Order dated December 02, 2016, Hon'ble Supreme Court's judgment in the case of Chintalapati Srinivasa Raju v. SEBI, decision of Hon'ble SAT in Samir Arora v SEBI etc. I note that Noticees 2 and 3 in their submissions have further contended that since they did not have spousal/marital relationship during the UPSI-II period, they do not fall under the definition of "connected person" and "immediate relative" under Regulations 2(1)(d) and 2(1)(f) of PIT Regulations and therefore trades executed by Ms. Sejal Shokatali Pirani during the Relevant Period, were in her individual capacity and based on her own assessment of the publicly available information.

43. I note from the emails dated August 09, 2019 and September 23, 2019 received by SEBI from Infibeam that Infibeam had stated Noticee 3 is the wife of Noticee 2. I also note that Noticee 2 and Noticee 3 in their replies to the SCN have enclosed a copy of Certificate of Registration of Marriage dated November 29, 2017 along with their replies to the SCN. On perusal of the aforementioned Certificate of Registration of Marriage, I note that marriage of Noticees 2 and 3 was solemnized on November 04, 2017 at Anjar, Gujarat and the same was registered on November 21, 2017. It has been noted earlier in the Order that UPSI–II Period was from January 16, 2017 to February 13, 2017. Therefore, taking into account the fact that marriage of Noticees 2 and 3 were solemnized on November 04, 2017, I find that Noticees 2 and 3 were not in marital/spousal relationship during the UPSI-II period.

44. Regulation 2(1)(f) of PIT Regulations states that " *"immediate relative" means a spouse of a person, and includes parent, sibling, and child of such person or of the spouse, any of whom is either dependent financially on such person, or consults such person in taking decisions relating to trading in securities".* I note that Regulation 2(1)(d) of PIT Regulations states that *"(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, -

<u>(a).an immediate relative of connected persons specified in clause (i);</u> or

(b).a holding company or associate company or subsidiary company; or

(c).an intermediary as specified in section 12 of the Act or an employee or director thereof; or

(d).an investment company, trustee company, asset management company or an employee or director thereof; or

(e).an official of a stock exchange or of clearing house or corporation; or

(f).a member of board of trustees of a mutual fund or a member of the board of directors of the asset management company of a mutual fund or is an employee thereof; or

(g).a member of the board of directors or an employee, of a public f inancial institution as defined in section 2 (72) of the Companies Act, 2013; or

(h).an official or an employee of a self-regulatory organization recognised or authorized by the Board; or

(i).a banker of the company; or

(j).a concern, firm, trust, Hindu undivided family, company or association of persons wherein a director of a company or his immediate relative or banker of the company, has more than ten per cent. of the holding or interest;

45. In the light of the fact that Noticees 2 and 3 were not in marital/ spousal relationship during the UPSI-II period, I find that Noticee 3 does not fall under the definition of "immediate relative" and deemed to be "connected persons" under Regulation 2(1)(f) of PIT Regulations and Regulation 2(1)(d) of PIT Regulations respectively.

46. I am of the view that allegation in the SCN that there was communication of UPSI-II from Noticee 2 to Noticee 3 and that Noticee 3 had procured UPSI-II from Noticee 2 was based on the premise that Noticee 3 was the spouse of Noticee 2 and there was trading in the scrip of Infibeam during UPSI-II period by Noticee 3. As noted hereunder, since Noticees 2 and 3 were not married during the relevant period, they were neither “immediate relative” nor deemed to be “connected persons” under Regulation 2(1)(f) of PIT Regulations and Regulation 2(1)(d) of PIT Regulations respectively. I further note that there is no evidence available on record to indicate Noticee 2 and 3 were in communication with each other at the time of UPSI. I further note that there is no material available on record to indicate that there was actual communication of UPSI-II from Noticee 2 to Noticee 3 or Noticee 2 had procured UPSI-II from Noticee 3. In this regard, I find it pertinent to refer to the decision of Hon’ble Supreme Court of India in Balram Garg v. SEBI (Order dated April 19, 2022 in Civil Appeal Nos. 7054 and 7590 of 2021) wherein the Hon’ble Supreme Court has held as under:

“ 40. We are also of the opinion that in the absence of any material available on record to show frequent communication between the parties, there could not have been a presumption of communication of UPSI by the appellant Balram Garg…….”

47. In light of the above observations and in light of the ratio laid down by Supreme Court of India in the aforementioned judgement, I find that allegation in the SCN that Noticee 2 has violated Section 12A(e) of SEBI Act read with Regulation 3(1) of PIT Regulations does not stand established.

48. It has also been alleged that on account of execution of trades in the scrip of IAL by Noticee 3 during the trading window closure period i.e. on January 25, 2017 and February 14, 2017, Noticee 2 has violated Clause 4 of Schedule B read with Regulation 9(1) of the PIT Regulations. I note that as per Clause 4 of Schedule B read with Regulation 9(1) of the PIT Regulations “……………..*Designated persons and their immediate relatives shall not trade in securities when the trading window is closed*.” I note that compliance officer of Infibeam, Mr. Shyamal Trivedi vide his email dated December 26, 2019 to SEBI has also stated that Noticee 2 was a designated person of the Infibeam for the aforementioned period. I also note that vide the aforementioned email, Infibeam had specified its trading window closure period for the financial year 2016 – 2017. In this regard, I note that Clause 4 of Schedule B of PIT Regulations read with Regulation 9(1) of the PIT Regulations is

applicable to designated persons of Infibeam and their immediate relatives. It has already been established that during the relevant period, Noticee 3 was not an immediate relative of Noticee 2 as per Regulation 2(1)(f) of PIT Regulations. Therefore, trading of Noticee 3 would not fall under the ambit of Clause 4 (1) of Schedule B of PIT Regulations. Therefore, I find that allegation in the SCN that for the trades executed by Noticee 3 during the window closure period of IAL, Noticee 2 has violated Clause 4 of Schedule B of PIT Regulations read with Regulation 9(1) of PIT Regulations does not stand established.

49. It has been alleged in the SCN that Noticee 3 had procured UPSI-II from her spouse, Noticee 2 and had traded in the scrip of IAL while in possession of UPSI-II and therefore violated Regulation 3(2) of PIT Regulations and Sections 12A(d) and (e) of SEBI Act, read with Regulation 4(1) of PIT Regulations. I note that it has been already established that there has not been any communication of UPSI-II from Noticee 2 to Noticee 3. Therefore, I find that charge in the SCN that Noticee 3 has procured UPSI-II from Noticee 2 also fails. Therefore, allegation in the SCN that Noticee 3 has violated Regulation 3(2) of PIT Regulations does not stand established.

50. I observe that there is no evidence available on record to indicate that Noticee 3 was in possession of UPSI-II at the time of the impugned trades. As already established, material available on record also does not show that Noticee 3 had procured UPSI-II from Noticee 2. Further, there is no evidence available on record to indicate that Noticee 3 was in any way connected to Infibeam. In light of the above observations, I find that Noticee 3 cannot be considered as an "insider" of Infibeam in terms of Regulation 2(1)(g) of PIT Regulations during UPSI-II period. I note that Regulation 4(1) of PIT Regulations provides that *"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".* In the light of the fact that Noticee 3 was not an insider of Infibeam during UPSI-II period, I find that the impugned trades of Noticee 3 would not fall under the ambit of Regulation 4(1) of PIT Regulations.

51. Therefore, I note that allegation in the SCN that Noticee 3 has violated Section 12A(d) and (e) of SEBI Act read with Regulation 4(1) of PIT Regulations does not stand established.

D. <u>Whether Noticee 4 has violated Clause 4 and Clause 5 of Schedule B of PIT Regulations read with Regulation 9(2) of PIT Regulations and Section 12 A (d) and (e) of SEBI Act read with Regulation 4(1) of PIT Regulations?</u>

52. It has been alleged in the SCN that being a connected person, Noticee 4 has executed trades during window closure period of Infibeam and contravened the provisions of Clause 4 and Clause 5 of Schedule B of PIT Regulations read with Regulation 9(2) of PIT Regulations. Clause 4 of Schedule B of PIT Regulations reads as under: "*Designated persons may execute trades subject to compliance with these regulations. Towards this end, a notional trading window shall be used as an instrument of monitoring trading by the designated persons. The trading window shall be closed when the compliance officer determines that a designated person or class of designated persons can reasonably be expected to have possession of unpublished price sensitive information. Such closure shall be imposed in relation to such securities to which such unpublished price sensitive information relates. <u>Designated persons and their immediate relatives shall not trade in securities when the trading window is closed</u>".* Further, Clause 5 of Schedule B of PIT Regulations is as reproduced as under: "The *timing for re-opening of the trading window shall be determined by the compliance officer taking into account various factors including the unpublished price sensitive information in question becoming generally available and being capable of assimilation by the market, which in any event shall not be earlier than forty-eight hours after the information becomes generally available. <u>The trading window shall also be applicable to any person having contractual or fiduciary relation with the company, such as auditors, accountancy firms, law firms, analysts, consultants etc., assisting or advising the company</u>*"

53. On bare perusal of Clause 4 and Clause 5 of the Schedule B of the PIT Regulations, I note that trading window of a Company is applicable not only to its designated persons of the Company but also to persons having contractual or fiduciary relation with the company, such as auditors, accountancy firms, law firms, analysts, consultants etc. Therefore, I note that trading window of the Infibeam is applicable to not only to its designated persons of Infibeam but also to Noticee 1, who was the auditor of Infibeam and consequently also to the employees of Noticee 1.

54. I note from the email of the compliance officer of Infibeam that the trading window of Infibeam for quarter ended December 2016 was closed for the period February 07, 2017 – February 15, 2017. In this regard, I also note that vide email dated December 26, 2019, Noticee 1 had informed SEBI that it did not receive any communication from Infibeam during the period from September 2016 to March 2017, intimating Noticee 1 about its trading window closure period. In the said email, Noticee 1 also stated that it believed that Infibeam had informed the stock exchanges about trading window closure period. I also note from the aforementioned email that as per internal policy of Noticee 1, employees on the audit engagement team and partners of the firm cannot hold any shares in the audit client.

55. I note that Noticee 1 vide its email dated December 26, 2019 also informed SEBI that Noticee 4 was working as Assistant Manager in Noticee 1 during the period from September 2016 to March 2017. I note from the aforementioned email that Noticee 4 was not part of the core audit team, but was assigned task for all the Ind AS (Indian Accounting Standards) conversion projects for Ahmedabad location and was also involved in the Limited Review for quarter ended September 2016, quarter ended December 2016 and quarter/year ended March 2017 audit assignment for specific task of reviewing completeness of Ind As impact on the financial statements of Infibeam including the number impact on the Indian GAAP financials. I also note from the aforementioned email that Noticee 4 was considered as a "connected person" by Noticee 1 as per Clause 1.2 of the "India Code for Prevention of Insider Trading policy" of Noticee 1 in case of Infibeam for the period September 2016 to March 2017 by Noticee 1. In this regard Clause 1.2 of the India Code for Prevention of Insider Trading policy of Noticee 1 which provides definition for "connected person" is reproduced hereunder:

*1.2 "**Connected Person"** shall mean the following categories of persons:*

1) *Every personnel who is a member of the Relevant Engagement team, or*
2) *Partners and other Personnel who though not part of the Relevant Engagement team are so associated with Relevant Engagement team that they have had access to Unpublished Price Sensitive Information of the client or its material affiliates or*
   Every Personnel who is or has, during six months prior to the Relevant Engagement (iii) being associated with a client, directly or indirectly in any capacity including by reason of frequent communication with client's officials, employees or by being in any

professional or business relationship, 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.

Without prejudice to the generality of the foregoing, the person following with the following categories shall be deemed to be Connected Persons unless the contrary is established;

(a) Immediate Relatives of Connected Persons specified in clause(i)

56. I note from the trade logs available on record that Noticee 4 had traded in the scrip of Infibeam during UPSI-II period. The trading details of Noticee 4, as noted from trade logs, are as given hereunder:

Client name	**Date**	**Buy Quantity**	**Sell Quantity**	**Avg Buy Price**	**Avg Sell Price**	**Buy amount**	**Sell Amount**	**P/L**
Mr. Rachit Shrenikbhai Jhaveri	January 27, 2017	50	50	1286.87	1296.54	64,343.25	64,826.90	483.65
Mr. Rachit Shrenikbhai Jhaveri	February 09, 2017	50	50	1373.70	1362.70	68685	68134.85	-550.15

57. I note from the table above that Noticee 4 had traded in the scrip of Infibeam on two trading days i.e. on January 27, 2017 and February 09, 2017 in the UPSI-II Period. I note that Noticee 4 in his reply to the SCN has admitted to his aforementioned trades in the scrip of Infibeam. I also note that trade executed by Noticee 4 on February 09, 2017 in the scrip of Infibeam was during the trading window closure period of Infibeam for the quarter ended December 2016 i.e. (February 07, 2017 – February 15, 2017).

58. I note that Noticee 4, being an employee of Noticee 1 and involved in the Limited Review for quarter ended September 2016, quarter ended December 2016 and quarter/year ended March 2017 and thus connected person of IAL, was prohibited from trading in securities of IAL when the trading window was closed in accordance with Clause 4 and Clause 5 of Schedule B of PIT Regulations read with Regulation 9(2) of PIT Regulations. In light of the above observations, I find that Noticee 4 by executing trade on February 09,

2017 has contravened the provisions of Clause 4 and Clause 5 of Schedule B read with Regulation 9(2) of PIT Regulations.

59. It has also been alleged in the SCN that Noticee 4 that by executing trades during UPSI-II period i.e. on January 27, 2017 and February 09, 2017 had violated Section 12 A (d) and (e) of SEBI Act read with Regulation 4(1) of PIT Regulations.

60. As earlier noted in the Order, Noticee 1 vide its email dated December 26, 2019 had informed SEBI that Noticee 4 was not part of the core audit team, but was assigned task for all the Ind AS conversion projects for Ahmedabad location and was also involved in the Limited Review for quarter ended September 2016, quarter ended December 2016 and quarter/year ended March 2017 audit assignment for specific task of reviewing completeness of Ind As impact on the financial statements of Infibeam including the number impact on the Indian GAAP financials. I also note that in its letter dated July 05, 2019, Noticee 1 has included the name of Noticee 4 in its list of employees having information on the financial results of IAL for the period September 30, 2016, December 31, 2016 and March 31, 2017. As earlier noted, Noticee 1 has also considered Noticee 4 as a “connected person” of IAL in terms of Clause 1.2 of its “India Code for Prevention of Insider Trading policy” for the aforementioned period.

61. However, I note that Noticee 4 in his reply to the SCN, has contended that he was part of the team of Noticee 1 which was involved in the review of financial result for the quarter ended September 30, 2016 only and that he was not involved in the review/audit of financial results of quarter ended December 31, 2016 and quarter/year ended March 31, 2017 of Infibeam and was not in possession of any UPSI of Infibeam for the aforementioned periods. Noticee 4 has also contended that since he is no longer in the employment of Noticee 1, he is not in a position to produce any documentary evidence for support of his aforementioned contention. In this regard, I also note that Infibeam, vide its letter dated July 04, 2019 to SEBI had provided the details of all persons including promoters/ directors/employees/key managerial personnel and/or any other persons (whether connected to IAL or not) who were having access to and/or in possession of UPSIs. I note that in the list provided by Infibeam, the name of Noticee 4 was not included within the employees of Noticee 1 who were having access to financial results. Further, I note that in the aforesaid letter, Infibeam has confirmed that other than people stated in

the said list, to the best of their knowledge, no other person whether connected to Infibeam or not, had access to and/or in possession of UPSI relating to the aforesaid financial results.

62. From the evidence placed on record, I note that Noticee 4 was involved in the limited review of financial results of quarter ended September 2016, quarter ended December 2016 and quarter/year ended March 2017 of IAL. In this regard, I note that as per Regulation 2(1)(d)(i) of PIT Regulations, connected person means "*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 <u>allows such person, directly or indirectly, access to unpublished price sensitive information or is reasonably expected to allow such access</u>.*" As earlier noted, Noticee 1 in its communication to SEBI had considered Noticee 4 as "connected person" in accordance with its "*India Code for Prevention of Insider Trading policy*". Considering the fact that Noticee 4, being employee of Noticee 1 who was the auditor of IAL and was involved in the limited review of financial results of quarter ended September 2016, quarter ended December 2016 and quarter/year ended March 2017 would fall within the definition of "connected person" under Regulation 2(1)(d) of PIT Regulations and thereby would satisfy the criteria of an "insider" in terms of Regulation 2(1)(g) of PIT Regulations.

63. However, I note that there are contradictions with regard to Noticee 4 being in possession of UPSI-II at the time of his trading in the shares of IAL. As noted earlier, Infibeam vide its letter dated July 04, 2019 to SEBI had not included the name of Noticee 4 in its list of people having access to and/or in possession of information on the financial results of IAL for the period September 30, 2016, December 31, 2016 and March 31, 2017. I note that even though Noticee 1, in its reply to the SCN dated February 16, 2022, had, *inter alia,* stated that for limited review of quarter ending December 2016 (period January 25, 2017 to February 13, 2017), Noticee 4 was not part of the core audit team and was involved with very specific task regarding Ind As accounting for fair valuation of Loans for which Noticee 4 had worked only for 2 hours on the task, it has contradicted its stand in its reply

dated July 5, 2019 to SEBI wherein it had included the name of Noticee 4 in its list of employees having information on the financial results of IAL for the period September 30, 2016, December 31, 2016 and March 31, 2017. Noticee 4 in its reply to the SCN has also contended that he was not involved in the review/audit of financial results of quarter ended December 31, 2016 and quarter/year ended March 31, 2017 of Infibeam and was not in possession of any UPSI of Infibeam for the aforementioned periods.

64. Considering the fact that Noticee 1 is the employer of Noticee 4, I am of the view that Noticee 1 is in the better position to state the role of Noticee 4 and his access to UPSI. From the aforesaid observations, it is seen that while on one hand, Noticee 1 has tried to establish that Noticee 4 was in possession of UPSI-II, on the other hand, in its reply to the SCN, Noticee 1 has clarified that Noticee 4 was not in possession of UPSI-II at the time of impugned trades. The aforesaid observations point to an element of contradiction in the evidence as available on record and as presented by Noticees 1 and 4 as regards the question of Noticee 4 being in possession of UPSI-II at the time of the impugned trades. In light of the aforesaid contradictory evidence/statements with respect to possession of UPSI-II by Noticee 4, I find it pertinent to examine trading pattern of Noticee 4 during UPSI-II period. I note that Noticee 4 had traded in the scrip of Infibeam during two trading days i.e. on January 27, 2017 and February 09, 2017. I note that Noticee 4 had made intraday trading, i.e. on each of these days Noticee 4 had bought and sold only 50 shares in the scrip of IAL. Further, I note that the total quantity of shares traded by Noticee 4 i.e. 200 shares of IAL and total profit made by Noticee 4 i.e. Rs. 1033.8 was miniscule and Noticee 4 had squared off his position on each of his trading days. In this context, it is pertinent to mention the judgement of Hon'ble SAT in Mr. Manoj Gaur vs. SEBI, (Appeal no. 64 of 2012), dated October 03, 2012, wherein it held that:

"*….. Even the trading pattern in respect of trading in the shares of the company shows that only 1000 shares werepurchased by Mrs. Urvashi Gaur on October 17, 2008 when she was already holding of 38,985 shareson that date and even thereafter she had been purchasing the shares of the company regularly. As on March 23, 2012, she was holding 59,045 shares of the company. She is the wife of Mr. Manoj Gaur, the Executive Chairman of the company. If Mr. Manoj Gaur had passed on UPSI to Mrs. Urvashi Gaur and she traded on the basis of that UPSI she would not have traded in 1000 shares only. We cannot lose sight of the fact that the company is a widely held listed company with a paid up capital divided into 212,64,33,182 equity shares out of* *which promoter group holds 44.44 per cent. It is a large infrastructure company engaged in highways, cement, power and education sector and the Executive Chairman of such company would not like to risk the reputation of himself and the company for 1000 shares. Similarly, Mr. Sameer Gaur is also a regular trader of shares of the company. Before trading on October 13,14 and 16, 2008 he was holding 1,10,250 shares of the company. The first sale of 1400 shares was made by him only on May 8, 2009. Till date, he is holding 62,882 shares. Looking at the trading pattern, the number of shares purchased and going by their status, it seems highly improbable that trading was done by them on the basis of UPSI. On the other hand, it is more probable that they traded in the normal course of business. If the intention of Mrs. Urvashi Gaur and Mr. Sameer Gaur had been to capitalize on the UPSI allegedly communicated by Mr. Manoj Gaur, the quantum of purchase wouldnot have been so small. Both the appellants are financially independent and trade independently which is clear from their trading pattern that they have been buying the shares in similar quantities in the immediate past as well as on later dates.(emphasis supplied)………..”*

65. Having regard to the aforesaid judgement of Hon'ble SAT and considering the fact that Noticee 4 was not part of the core audit team of Noticee 1, Noticee 1's statement in its reply to the SCN that Noticee 4 was not in possession of UPSI-II at the time of impugned trades and the trading pattern of Noticee 4 (i.e. trading in very small quantity of shares which had been squared off at the end of day and for miniscule profit) , I am of view that benefit of doubt could be given to Noticee 4 that his trading in the scrip of Infibeam was not motivated by the possession of UPSI-II.

66. In light of the aforesaid, I find that allegation in the SCN that Noticee 4 has violated provisions of Section 12 A (d) and (e) of SEBI Act read with Regulation 4(1) of PIT Regulations does not stand established.

E. <u>Noticee 5 has violated Clause 4 and Clause 5 of Schedule B of PIT Regulations read with Regulation 9(2) of PIT Regulations?</u>

67. It has been alleged in the SCN that for the trade executed by Noticee 5's mother, Ms. Sunita Shrenik Kothari during trading window closure period, Noticee 5 is in violation of

Clause 4 and Clause 5 of Schedule B read with Regulation 9(2) of PIT Regulations. In this regard, Noticee 5 in his submissions has contended that his mother did not fall under the definition of immediate relative as provided in Regulation 2(1)(f) of PIT Regulations as she was neither depended financially on him nor consulting him in taking decisions relating to securities.

68. As noted in the earlier part of Order, I note that trading window of a Company is applicable not only to designated persons of the Company but also to persons having contractual or fiduciary relation with the company, such as auditors, accountancy firms, law firms, analysts, consultants etc (including their immediate relatives). In light of the aforementioned provisions, I note that trading window closure period of the Infibeam is also applicable to BSR & Co, LLP by virtue of them being the joint auditor of Infibeam and to employees of BSR & Co, LLP. I also note that Clause 4 of Schedule B of Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders states that "…………….*Designated persons and their immediate relatives shall not trade in securities when the trading window is closed*." Further, Clause 5 of Schedule B of PIT Regulations inter alia states that *"* …….. *The trading window shall also be applicable to any person having contractual or fiduciary relation with the company, such as auditors, accountancy firms, law firms, analysts, consultants etc., assisting or advising the company."*

69. I note that compliance officer of IAL, Mr. Shyamal Trivedi vide his email dated December 26, 2019 had provided trading window closure period for the financial year 2016 – 2017.The details of the aforementioned trading window closure period are as given below:

Sr. No.	Particulars	From	To
1.	FY 16-17 Q1 – Results (Date of the Board Meeting: August 12,2016)	August 4, 2016	August 14, 2016
2.	FY 16-17 Q2 – Results (Date of the Board Meeting: November 17, 2016)	November 10,2016	November19, 2016
3.	Preferential Issue of Warrants to BCCL (Date of	January 19, 2017	January 26, 2017

	Board Meeting: January 24, 2017)		
4.	FY 16-17 Q3, - Results (Date of Board Meeting: February 13, 2017)	February 7, 2017	February15, 2017
5.	FY 16-17 Q4 - Results (Date of Board Meeting: May 30, 2017)	May 23, 2017	June 1, 2017

70. I note from available records that Noticee 5 was an employee of BSR & Co, LLP, one of the joint auditors of the Infibeam. I observe from the letter dated July 04, 2019 from Infibeam to SEBI that Noticee 5 was considered to be a person having access to financial results of Infibeam for the quarters September 2016, December 2016, March 2017 and for the annual results of 2016-17. Considering the above, the trading window closure period of Infibeam for quarters ended September 2016, December 2016, March 2017 and for the annual results of 2016-17 was applicable to Noticee 5 in terms of Clauses 4 and 5 of Schedule B of PIT Regulations. I note from the email dated September 05, 2019 received by Infibeam from BSR & Co, LLP that Ms. Sunita Shrenik Kothari is the mother of Noticee 5.

71. I note from the trade logs available on record that Ms. Sunita Shrenik Kothari, mother of Noticee 5 has had traded in the scrip of Infibeam on August 11, 2016. The details of the aforementioned trades are as given hereunder:

Date	**Buy Quantity**	**Sell Quantity**	**Avg Buy Price**	**Avg Sell Price**	**Buy Amount**	**Sell Amount**
August 11, 2016	19	NA	806.65	NA	15326.35	NA

72. I note that the trades of Ms. Sunita Shrenik Kothari, which was on August 11, 2016 fall within the trading window closure period of Infibeam for the quarter ended June 2016 i.e. between August 04, 2016 to August 11, 2016.

73. As earlier noted, the trading window closure period of Infibeam for quarters ended September 2016, December 2016, March 2017 and for the annual results of 2016-17 of Infibeam was applicable to Noticee 5. However, there is no material available on record

to indicate that Noticee 5 or for that matter his employer, BSR & Co, LLP ,was engaged in audit of financial results for quarter ended June 2016 or was in possession of UPSI/an insider or designated person of IAL for the quarter ending on June 2016. As earlier noted, mother of Noticee 5 traded during trading window closure period for the quarter ended June 2016 [August 04, 2016 – August 14, 2016] of Infibeam). Therefore, on the basis of material on record, I am unable to ascertain whether the trading window closure period for the quarter ended June 2016 was applicable to Noticee 5. Since the applicability of trading window closure period to Noticee 5 itself is in doubt, I am of the view that there doesn't exist a need to examine whether Ms. Sunita Shrenik Kothari would fall under the definition of immediate relative under Regulation 2(1)(f) of PIT Regulations or for that matter whether, Noticee 5's mother had traded in the shares of IAL during the aforementioned trading window closure period.

74. In light of the above observations, I find that allegation in the SCN that Noticee 5 has violated Clause 4 and Clause 5 of Schedule B read with Regulation 9(2) of PIT Regulations does not stand established.

<u>Issue No. 2- Does the violation attract monetary penalty under Section 15G(ii) and 15HB of SEBI Act?</u>

75. I note that the Hon'ble Supreme Court of India in the matter of SEBI v/s Shri Ram Mutual Fund [2006] 68 SCL 216(SC) held that "*In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established..….*".

76. Therefore, in view of the above judgment and considering that Noticee 1 has violated Section 12A (e) of SEBI Act, 1992 read with Regulation 3(1) of PIT Regulations and Noticee 4 has violated provisions of Clauses 4 and 5 of Schedule B of PIT Regulations read with Regulation 9(2) of PIT Regulations as established in the foregoing paragraphs, I find that Noticee 1 would be liable for monetary penalty under Section 15G(ii) of SEBI Act and Noticee 4 would be liable for monetary penalty under 15HB of the SEBI Act. The text of Section 15G(ii) and Section 15HB of the SEBI Act is reproduced below:

<u>SEBI Act</u>

Penalty for insider trading.

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.

Penalty for contravention where no separate penalty has been provided.

15HB. *Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.*

Issue No.3 - What should be the quantum of monetary penalty?

77. While determining the quantum of penalty under Section 15G(ii) and 15HB of the SEBI Act, it is important to consider the factors as stipulated in Section 15J of the SEBI Act, which reads as under:-

SEBI Act

Factors to be taken into account by the adjudicating officer.

Section 15J - *While adjudging quantum of penalty under section 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.

***Explanation**- For the removal of doubts, it is clarified that the power to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.*

78. In view of the charges established and the facts and circumstances of the case, the quantum of penalty would depend on the factors referred in Section 15-J of the SEBI Act, stated as above. In the instant case, it is not possible from the material on record to quantify the amount of disproportionate gain or unfair advantage resulting from the default of Noticee 1 and Noticee 4.

79. In the present case, I note that sharing of UPSI by Noticee 1 was done inadvertently in the course of its duty as an auditor. Further, I note that the material available on record doesn't show that any trades have been done in consequence of such sharing of UPSI. I note that these can be considered mitigating factors in favor of Noticee 1 in the present case. Further, material available on record, doesn't show consequential loss caused to investors. With respect to the repetitive nature of default, I find that no prior action has been taken in the past against Noticee 1.

80. I note from materials available on record that Noticee 4 had made a profit of approximately Rs. 1033. I note that it is not possible from materials available on record to quantify the consequential loss caused to the investors as a result of the aforesaid default. Further, I find that there is nothing on record to indicate that default of Noticee 4 is repetitive in nature.

ORDER

81. Having considered all the facts and circumstances of the case, the material available on record, the submissions made by Noticees 1 and 4 and also the factors mentioned in

Section 15J of the SEBI Act, as enumerated above, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, hereby impose a penalty on Noticees 1 and 4 as given hereunder:

SL No.	Name of Noticee	Penalty Amount	Penalty under
1	M/s. SRBC & Co. LLP	₹10,00,000/-(Rupees Ten Lakhs Only)	Section 15G(ii) of SEBI Act
2	Mr. Rachit Shrenikbhai Jhaveri	₹ 1,00,000/-(Rupees One Lakhs Only)	Section 15HB of SEBI Act

82. I am of the view that the said penalty is commensurate with the lapse/omission on the part of Noticees 1 and 4.

83. Noticees 1 and 4 shall remit / pay the said amount of penalty within 45 days of receipt of this order 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. In case of any difficulties in payment of penalties, Noticee 1 and 4 may contact the support at portalhelp@sebi.gov.in.

84. The said confirmation of e-payment made in the format as given in table below should be sent to "The Division Chief, EFD – DRA - III, Securities and Exchange Board of India, SEBI Bhavan II, Plot no. C- 7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051" and also to e-mail id:- tad@sebi.gov.in

1. Case Name:	
2. Name of payee:	
3. Date of payment:	
4. Amount paid:	
5. Transaction no.:	
6. Bank details in which payment is made:	

7. Payment is made for:(like penalties/ disgorgement/ recovery/ settlement amount and legal charges along with order details)	

85. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under Section 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 of Noticees 1 and 4.

86. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to Noticees and also to SEBI.

Place: Mumbai **SOMA MAJUMDER**

Date: June 29, 2022 **ADJUDICATING OFFICER**