



Prakash Steelage Ltd.

MANUFACTURER OF STAINLESS STEEL WELDED PIPES, TUBES & U-TUBES
An ISO 9001-2008, ISO 14001-2004, OHSAS 18001-2007, PED Certified Company

To
BSE Limited
Listing Department,
Phiroze Jeejeebhoy Towers,
Dalal Street,
Mumbai-400 001

To,
The National Stock Exchange of India Limited
Listing & Compliance Department,
Exchange Plaza, Plot No. C/1,
G Block, Bandra Kurla Complex,
Bandra (East),
Mumbai - 400 051

Ref.: **Scrip Code: 533239 (BSE); PRAKASHSTL (NSE)**

**Sub.: Disclosure under Regulation 30 of the Securities and Exchange Board of India
(Listing Obligations and Disclosure Requirements) Regulations, 2015 ("Listing
Regulations")**

This disclosure is being made pursuant to the amendments to the SEBI (Listing Obligations & Disclosure Requirements) Regulations, 2015 ("LODR") dated 14 June 2023, which came into effect from 14th July 2023. Pursuant to the amendment, we are required to disclose "Pendency of any litigation(s) or dispute(s) or the outcome thereof which may have an impact on the listed entity" including any continuing event or information which becomes material pursuant to notification of the amendment within thirty days from the effective date of the amendment.

Civil Appeal No. 1551 of 2024 was filed by Securities and Exchange Board of India on 12.02.2024 before Hon'ble Supreme Court of India, New Delhi for Ex-Parte Stay against the Order dated 06.11.2023 passed by Hon'ble Securities Appellate Tribunal in Appeal No. 709 of 2022 in the matter of suspected insider trading by Mr Prakash. C. Kanugo in the scrip of Prakash Steelage Ltd.

A Copy of said Civil Appeal is enclosed herewith as and by way of Disclosure under Regulation 30 of SEBI (Listing Obligations and Disclosure Requirements) Regulations 2015.

This is for your information and record.

Thanking you,
Yours faithfully
For Prakash Steelage Limited

Hemant P. Kanugo
Whole-Time Director
DIN: 00309894

Place: Mumbai
Date: 26.02.2024

IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL No. 1551 OF 2024

SECURITIES AND EXCHANGE
BOARD OF INDIA

... Petitioner(s)/Appellant(s)

VERSUS

PRAKESH C. KANUGO

... Respondent(s)

To,

1 PRAKESH C. KANUGO,
302, 3RD FLOOR, TARDEO TOWER, PANDIT
MADAN MOHAN MALVIYA ROAD, NEAR
A.C. MARKET,
MUMBAI - 400034

PID: 37485/2024 FOR R[1] IN C.A.
NO.1551/2024 (SEC XVII)

WHEREAS the CIVIL APPEAL with application for EX-PARTE STAY above mentioned (copy enclosed) filed in the Registry by M/S. KASHAR & CO., Advocate on behalf of the Appellant above named was listed for hearing before this Court on 09th February, 2024, when the Court was pleased to pass the following order:-

" Issue notice returnable in four weeks "

NOW, THEREFORE, TAKE NOTICE that the matter above-mentioned will be posted for hearing before this Court on 11th March, 2024 at 10.30 O'Clock in the forenoon or so soon thereafter as may be convenient to the Court when you may appear before this Court either in person or through an Advocate-on-record of this Court duly appointed by you and show cause to the Court as to why the appeal may not be allowed.

You may file your affidavit in opposition to the petition forthwith and shall do so only by setting out the grounds in opposition to the questions of law or grounds set out in the matter and may produce such pleadings and documents filed before the Court against whose order the appeal is filed and shall also set out the grounds for not granting interim order.

TAKE FURTHER NOTICE that if you fail to enter appearance as aforesaid, no further notice shall be given to you even after the grant of Civil appeal for hearing of the resultant appeal and the matter above-mentioned shall be disposed of in your absence.

Dated :14th February, 2024


ASSISTANT REGISTRAR

Copy to :-

1 M/s. K Ashar & Co. (adv.)
3, Tansen Marg, 1st Floor, Bengali Market, New Delhi
New Delhi , Delhi


ASSISTANT REGISTRAR

Important Notice
LEGAL AID

(1) Legal Services of an advocate is provided by the Supreme Court Legal Services Committee and the Supreme Court Middle Income Group Legal Aid Society to eligible litigants.

For further information, please contact the Secretary, Supreme Court Legal Services Committee or the Member Secretary, Supreme Court Middle Income Group Legal Aid Society, 107-108, Lawyers' Chambers,

R.K. Jain Block - Near Post Office, Supreme Court Compound, Tilak Marg, New Delhi-110001 (Tel Nos. 011-23116353,23116354 (Additional Building Complex) and 011-23381257 (Front Office))

MEDIATION

(2) The facility of amicable settlement of disputes by trained mediators in cases pending in the Supreme Court is now available in the Supreme Court.

For further information, please contact the Coordinator, Supreme Court Mediation Centre, 109, Lawyers' Chambers, R.K. Jain Block - Near Post Office, Supreme Court Compound, Tilak Marg, New Delhi-110001 (Tel No. 011-23071432)



SECTION - XVII

IN THE SUPREME COURT OF INDIA

CIVIL /CRIMINAL/ORIGINAL /APPELLATE JURISDICTION

SPECIAL LEAVE PETITION (CIVIL).....OF 2024

WRIT PETITION (CIVIL) NO..... OF 2024

CIVIL APPEAL NO. 1551 OF 2024

IN THE MATTER OF:-

SECURITIES AND EXCHANGE BOARD OF INDIA ...APPELLANT

VERSUS

PRAKASH C. KAUNGO & ANR. ...RESPONDENTS

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SRL NO.	PARTICULARS	COPIES	COURT FEE
1.	PROCESS FEE FILED ON BEHALF OF	1+1	NIL
2.	APPELLANT		
3.			
4.			
		TOTAL	NIL

FILED ON: 12.02.2024

I CARD NO. - 4844

PH- 09650412041

FILED BY


K. ASHAR & CO.
Advocate for the Appellant
3, Tansen Marg, 1st Floor
Bengali Market New
Delhi- 110001
Ph- 09891160544
C.CODE - 2148

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1551 OF 2024

(Civil Appeal under Section 15Z of the Securities and Exchange Board of India Act, 1992 against Impugned Judgement and final order dated 06.11.2023 passed by the Hon'ble SAT, Mumbai in Appeal No. 709 of 2022).

IN THE MATTER OF:-

SECURITIES AND EXCHANGE BOARD OF INDIA ...APPELLANT

VERSUS

PRAKASH C. KANUGO & ANR.

.....RESPONDENTS

WITH

I.A No. 27729 OF 2024

An application for Ex-Parte Ad Interim Stay

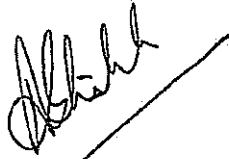
PAPER BOOK
(FOR INDEX PLEASE SEE INSIDE)

ADVOCATE FOR THE APPELLANT: K. ASHAR & CO.

DAIRY NO. 1897/2024

DECLARATION

All defects have been duly cured. Whatever has been added/deleted/modified in the petition is the result of curing of defects and nothing else. Except curing the defects, nothing has been done. Paper books are complete in all respects.

Signature: 

Advocate –on – Record: K ASHAR & Co.

Date: 01-02-2024

Contact No: 9891160544

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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 1551 OF 2024

IN THE MATTER OF:-

SECURITIES AND EXCHANGE BOARD OF INDIA

...APPELLANT

VERSUS

PRAKASH C. KANUGO & ANR.

.....RESPONDENTS

OFFICE REPORT ON LIMITATION

1. The Civil Appeal is within Limitation.
2. The Civil Appeal is barred by time and there is delay of _____ days in filing the same against order dated 06.11.2023 and petition for Condonation of _____ delay has been filed.
3. There is delay of _____ days in refiling the petition and petition for Condonation of _____ days in Re-filing has been filed.

BRANCH OFFICER

NEW DELHI

DATED: 12-01-2024

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PERFORMA FOR FIRST LISTING

SECTION- XVII

The case pertains to (Please tick / check the correct box):-

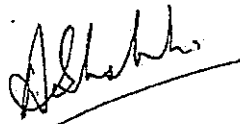
- Central: (Title): **Securities and Exchange Board of India Act, 1992**
- Section: **15Z**
- Central Rule: (Title) **SEBI (15HA. Penalty for fraudulent and Unfair trade practices)**
- Rule No(s): **12A, 13,16,18, 15HA, 15HB, 23H**
- State Act: (Title) **N.A**
- Section: **N.A**
- State Rule :(Title) **N.A**
- Rule No(s): **N.A**
- Impugned Interim Order: (Date) **N.A.**
- Impugned Final Order / Decree: (Date) **06.11.2023**
- High Court: (Name): **N.A.**
- Name of Judges: **Hon'ble Justice Tarun Agarwala Presiding Officer, Ms. Meera Swarup, Technical Member**
- Tribunal / Authority: (Name): **BEFORE THE SECURITIES APPELLATE TRIBUNAL, MUMBAI**

-
1. Nature of matter: Civil Criminal
 2. (a) Petitioner / appellant No. 1: **SECURITIES AND EXCHANGE BOARD OF INDIA**
 - (b) E-mail ID: **delhi@kasharindia.com**
 - (c) Mobile phone number: **9891160544**
 3. (a) Respondent No. 1: **PRAKASH C. KANUGO & ANR.**
 - (b) E-mail ID: **N.A.**
 - (c) Mobil phone number: **N.A.**

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4. (a) Main category classification: Company Law, MRTP, TRAI, SEBI
1008
(b) Sub classification: Appeals under section 15Z of SEBI Act
5. Not to be listed before: N.A.
6. (a) Similar disposed of matter with citation, if any, & case
Details: No Similar Matter is disposed of
(b) Similar pending matter with case details: CIVIL APPEAL NO. 7879
OF 2023 SEBI vs KAJALBEN KIRANBHAI TRIVEDI
7. Criminal Matter: N.A.
(a) Whether accused / convict has surrendered: Yes No
(b) FIR No. N.A. Date: N.A.
(c) Police Station: N.A.
(d) Sentence Awarded: N.A.
(e) Sentence Undergone: N.A.
8. Land Acquisition Matters: N.A.
(a) Date of Section 4 notification: N.A.
(b) Date of Section 6 notification: N.A.
(c) Date of Section 17 notification: N.A.
9. Tax Matters: State the tax effect: N.A.
10. Special Category (first petitioner / appellant only):
(i) Senior citizen > 65 years (ii) SC / ST
(iii) Woman / child (IV) Disabled
(v) Legal Aid case (VI) in custody
11. Vehicle Number (in case of Motor
Accident Claim matters N.A.

Dated: 12-01-2024


K. ASHAR & CO.
Advocate -on-Record for the Appellant
Registration No. 2148

B

SYNOPSIS

The present Statutory Appeal under Section 15Z of the Securities and Exchange Board of India Act, 1992 ("the SEBI Act"), is being filed by the Securities and Exchange Board of India ("SEBI") against common final order dated 06.11.2023 ("impugned order") passed by the Ld. Securities Appellate Tribunal, Mumbai ("SAT") in Appeal No. 709 of 2022, whereby the Ld. SAT without appreciating the legal position under the SEBI (Prohibition of Insider Trading) Regulations, 2015 ("PIT Regulations") has held that price sensitive information ("PSI") with regard to the financial results came in existence for the first time only on May 18, 2016, when the draft financial accounts was submitted to the management of the company and not on April 15, 2018 when the process of finalisation of accounts had started internally. Ld. SAT has thereby set aside the violation of the PIT Regulations and further without discussing the violations committed under the SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations 2015 (hereinafter referred to as the "PFUTP Regulations") and the Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as the "SCRA"), *sub-silentio* on the said aspects reduced the penalty to below the minimum threshold limits as provided for the said violations and imposed vide the Adjudication Order dated July 29, 2022.

The Appellant most respectfully submits that the penalty imposed on the Respondent vide the Order dated July 29, 2022 was essentially under Sections 15A(b), 15G, 15HA of the SEBI Act and Section 23H of the SCRA, for the violations of the provisions of Section 12A (d) and (e) of

C

the SEBI Act, Regulations 4(1) of the PFUTP Regulations, Regulations 4(1) and 7(2) (a) of the PIT Regulations and Section 2(i) r/w Section 13, 16, 18 of the SCRA wherein the minimum penalty as per the statute are than can could be imposed are being :-

Violations	Penalty Provision	Minimum Statutory Penalty as per Section
Regulation 4(1) of the PFUTP Regulations	Section 15HA of the SEBI Act	Rs. 5 Lakh
Regulation 7(2)(a) of the PIT Regulations	Section 15A (b) of the SEBI Act	Rs. 1 Lakh
Section 12A(d) & (e) of SEBI Act r/w Regulation 4(1) of the PIT Regulations	Section 15G of SEBI Act	Rs. 10 Lakh
Section 2(i) r/w Section 13, 16 and 18 of SCRA	Section 23H of the SCRA	Rs. 1 Lakh

It is humbly submitted that the Adjudicating Officer ('AO') of the SEBI had specifically dealt with the issue of unpublished price sensitive information ('UPSI') related to the financial results of Prakash Steelage Limited ('Prakash'/ the company') coming into existence on April 15, 2016 and the UPSI period being April 15, 2016 – May 30, 2016.

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The Respondent being one of the founder promoters and Chairman and Managing Director of the company, had significant influence by virtue of holding top position in the company for more than two decades i.e. since 1991. The details available on record clearly showed that he was an insider (in terms of the PIT Regulations) and reasonably expected to have access to UPSI related to the financial results of the company for the quarter ended March 2016. In this regard, it is relevant to refer to the brief chronology of events related to the financial results for the quarter ended March 31, 2016:

S.No.	Events	Date
1	Finalization of accounts internally	15.04.2016 to 30.04.2016
2	Commencement of statutory audit for FY 2015-16	03.05.2016
3	Submission of draft financial accounts to management	18.05.2016
4	Discussion with management	19.05.2016
5	Finalization of financial accounts	28.05.2016
6	Placing before the Board	30.05.2016

The above chronology, finds support from the company's own letter dated September 04, 2020, which clearly showed that the work related to party wise ledger scrutiny, internal verification of accounts, reconciliation

E

with confirmations, etc. was completed by April 25, 2016 and from the said date, internal audit had started giving auditors access to raw accounting data. Further, the finalization of results, updation of the data entry for sales, purchases, bank payments/ receipts, petti cash vouchers and journal vouchers were carried out about 15 days after the year end. The same shows that the UPSI in relation to financial results of the quarter ended March 2016, came in existence on 15.04.2016. The trading window for dealing in the securities of the Company was closed for the purpose of declaration of Audited Financial results of the Company for the quarter ending March 2016 on 21.05.2016 and the corporate announcement of Audited Financial Results (Consolidated and Standalone) for quarter and Financial Year ended March 2016 to NSE on 30.05.2016 at 20:47 hours and to BSE on 31.05.2016.

In the meantime, during the UPSI period the Respondent had entered into an off-market transaction with one Dumet Wire India Pvt Ltd ("Dumet") on 04.05.2016 for transfer of 25,00,000 shares of the company (a day after the commencement of statutory audit for FY 2015-2016). The chronology of events show that such off-market transaction of the Respondent was clearly motivated by the knowledge and awareness of the UPSI regarding the financials of the company.

Inspite of the clear sequence of events, submissions of the company, Ld. SAT has given an incorrect finding that the AO, SEBI was not sure of the UPSI period and has wrongly dropped the charge of insider trading by the Respondent and the penalty imposed under Section 15G of the SEBI Act for the same has been set aside by the Ld. SAT.

Further, vide the Impugned Order, the Ld. SAT has reduced the penalty imposed by AO, SEBI vide its Order dated 29.07.2022 (to the

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extent of Rs. 5 lakh and Rs. 1 lakh as stated above) to effectively, 'nil', which is against the principles of minimum penalty as prescribed under Section 15HA of the SEBI Act and Section 23H of the SCRA, without having any discussion regarding the same.

For the above said reasons, the Impugned Order deserves to be set aside on the ground of non-appreciation of available records and non-application of mind by the Ld. SAT. It is humbly submitted that in the Impugned Order there is no discussion regarding violations under the PFUTP Regulations inspite of holding that the Respondent had made wrong disclosure for vested reasons and taking note of his letter dated May 04, 2016. It is submitted that the Hon'ble SAT has failed to deal with the violations of section 2(i) r/w section 13, 16 and 18 of SCRA for failure to receive the consideration for off-market transfer of 25 lakh shares of the Company within the time specified for spot delivery contracts. Further, at paragraph 11 and 15 of the impugned order, Ld. SAT has upheld the false disclosure, however, it has not specifically dealt with the PFUTP violations and penalty imposed for the same.

The minimum penalty to be imposed on the Respondent under section 15A(b) [for non-disclosure] and section 15HA of SEBI Act [for PFUTP violations] and section 23H of SCRA [for non-spot delivery] comes to a total of Rs. 7 Lakh. Further, even if it is considered that the Ld. SAT has not dealt with the imposition of penalty under section 23H of the SCRA, the minimum penalty to be imposed under section 15A(b) and 15HA would amount to Rs. 6 Lakh. However, Ld. SAT has reduced the penalty to mere Rs. 5 Lakh which is below the minimum prescribed penalty under the said provisions.

G

The AO vide its order dated 29.07.2022 had in fact imposed only the minimum penalty upon the Respondent under the above mentioned Sections of the SEBI Act and SCRA. It is relevant to note that this Hon'ble Court in a similar matter of *Securities and Exchange Board of India vs Sandip Ray & Ors.* vide its Judgement dated 13.02.2023, passed in Civil Appeal (Diary No(s). 791/2023) had held as below:-

.....

"Learned counsel for the appellant submits that the Tribunal while upholding the violation of Section 15HB has reduced the penalty from Rs.3,00,000/- to Rs.75,000/- which was in conflict of the mandatory requirement and there is no discretion left with the authority to reduce the penalty below the minimum prescribed, as indicated under Section 15HB of the SEBI Act, 1992.

Learned counsel for appellant further submits that even review application filed to make a correction in the order and to justify that the order reducing the penalty below Rs. 1,00,000/- is not permissible under Section 15HB of the SEBI Act, 1992.

After we have heard learned counsel for the appellant, it clearly manifests that the Tribunal has not taken into consideration the effect and mandate of Section 15HB of the SEBI Act, 1992.

Taking into consideration the facts and circumstances of this case, there appears no justification in calling upon the respondent and we modify the order impugned dated 29.07.2022 and the penalty of Rs.75,000/- as inflicted upon noticee no.5 (Mr. Sandip Ray) and noticee no.6 (Mr. Rajkumar Sharma), as referred to in para no. 13 of the order impugned, is modified and substituted to Rs.1,00,000/- in terms of Section 15HB of SEBI Act, 1992 and with this modification the present appeals stand disposed."

I

the PIT Regulations is affirmed. The penalty of Rs.17 lakh is reduced to Rs. 5 lakh.”

It would not be out of place to mention that the Respondent in fact perpetrated a serious violation which has been recorded by the Ld. SAT in its impugned order as a passing averment, i.e. the Respondent made a wrong disclosure with regard to the off market transfer of shares to Dumet as only an encumbrance to the company, which essentially is a fraud as defined under Regulations 2(1)(c) of the PFUTP Regulations. Further, Ld. SAT while wrongly dropping the charge of insider trading and upholding the violation for non-disclosure has misconstrued the provisions under which the penalty should be imposed i.e. Regulation 4 of the PFUTP Regulation over and above the Regulation 7(2)(a) of the PIT Regulations.

It is humbly submitted that once the violation has been upheld, as per the scheme of the SEBI Act, 1992, penalty becomes *sine qua non* of the violations as held in the case of *Chairman, Securities and Exchange Board of India Vs. Sri Ram Mutual Funds (2006) 5 SCC 361*. Likewise, in the present case also, the Ld. SAT has essentially not dealt with the minimum penalty that can be imposed under Section 15HA of SEBI Act, 1992, even after upholding the violations of Respondent, and therefore such finding being in teeth with the express penalty provisions of the SEBI Act, 1992, wherein the minimum penalty that can be imposed is mentioned therein. Moreover, the penalties under Regulation 23H of the SCRA have also been completely ignored by the Ld. SAT while passing the impugned Order, therefore the Appellant has preferred the present appeal.

Conspectus of Facts:

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[Emphasis Supplied]

It is humbly submitted that the Ld. SAT in complete disregard to the statutory scheme of the minimum penalty as contemplated under the respective provisions of the SEBI Act and the SCRA, and as noticed by this Hon'ble Court in *Sandip Ray* (supra) has *simpliciter* reduced the penalty, without having any discussion and applying its mind to the violations under the PFUTP Regulations and the SCRA, thus violating the statutory scheme of minimum penalty as contemplated under the said provisions especially when the violations have been upheld by the Ld. SAT. The relevant portion of the said SAT order impugned before this Hon'ble Court is extracted as below:-

.....

"13. Admittedly, for the reasons best know, the Noticee No.1 made a wrong disclosure under Regulations 31 of the SAST Regulations whereas requisite disclosure was required to be made under Regulations 7(2)(a) of the PIT Regulations for which penalty could be imposed. The penalty for failure to furnish information is under Section 15A(b) of the SEBI Act wherein the penalty from Rs. 1 lakh to a maximum of Rs.1 crore could be imposed.

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15. In view of the aforesaid, considering the false disclosure made by the noticee No. 1 under Regulation 31 of the SAST Regulations instead of disclosing under Regulation 7(2)(a) of the PIT Regulations we are of the opinion that substantial justice would done if a penalty of Rs. 5 lakh is imposed.

16. In view of the aforesaid the appeal of noticee No.1 is partly allowed. The violation for non-disclosure of Regulation 7(2)(a) of

J

The facts in brief leading to and culminating in the present Appeal are set out below:

- i. The Appellant/SEBI conducted an investigation into the trading in the scrip of Prakash Steelage Limited ("Noticee No. 3/Company/PSL") during the period 15.04.2016 to 30.05.2016 ("Investigation Period").
- ii. The investigation *inter alia* revealed that Shri Prakash C Kanugo (Noticee No. 1/Respondent), the Managing Director of PSL, an insider, who while in possession of UPSI relating to the financial results of PSL for the period ended March 31, 2016 had traded/transferred (off-market) 25,00,000 shares of PSL to Dumet Wire India Pvt. Ltd. (Noticee No. 2/ Dumet) in violation of Section 12A(d) and (e) of the SEBI Act and Regulations 4(1) of the PIT Regulations.
- iii. Shri Prakash C Kanugo, had transferred the abovementioned shares on May 04, 2016 in off-market, however, it received consideration for the said shares from Dumet only on March 30, 2017 (Rs. 22,00,000) and on April 11, 2017 (Rs. 16,75,000), i.e. after a gap of almost a year from the transfer of shares. The same showed that consideration was not receive towards the aforesaid off-market transfer of 25,00,000 shares of PSL within the time period specified for the same.
- iv. Further, by not stating the consideration and by not providing any cogent reason/explanation in the Delivery Instruction Slip (DIS) for the transfer of 25,00,000 shares of PSL to Noticee No.2 on 04/05/2016 and disclosing the transaction wrongly to the stock exchanges, the Respondent had allegedly committed an act of deceit/fraud.
- v. Further, Shri Prakash C Kanugo, had also failed to make disclosures to the Company under Regulation 7(2)(a) of the SEBI (Prohibition of Insider

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Trading) Regulations, 2015 with respect to the aforesaid off-market transaction in the scrip of PSL during the UPSI period.

- vi. Pursuant to the completion of investigation, an Adjudicating Officer ("AO") was appointed by SEBI, who had issued a common Show Cause Notice dated 05.04.2022 to all the Noticees (including the Respondent). AO vide order dated 29.07.2022 imposed the following penalty for the violations mentioned as under:

Name	Violation	Penalty
Shri Prakash C Kanugo (Noticee No. 1)	Section 12A (d) and (e) of SEBI Act, 1992, regulation 4(1) of PFUTP Regulations, regulation 4(1) and 7(2) (a) of PIT Regulations and section 2(i) r/w section 13, 16 and 18 of SCRA.	Rs. 17 lakh

- vii. The Respondent being aggrieved by the said Order filed Appeal No. 709 of 2022 before the Ld. SAT challenging the said order dated 29.07.2022, passed by the AO, SEBI.

- viii. The Ld. SAT passed the final order dated 06.11.2023 in Appeal No. 709 of 2022, whereby the Ld. SAT erroneously concluded that the period of UPSI had stated not stated from April 15, 2016 and further without discussing the violations committed under the PFUTP Regulations and the SCRA, thereby *sub-silentio* on the aspect of violations under PFUTP and the SCRA, reduced the penalty to below the minimum threshold limit as

provided for violations under the PFUTP Regulations and the SCRA under Section 15HA of SEBI Act and Regulation 23H of the SCRA.

- ix. Hence the Appellant has preferred the present Appeal under Section 15Z of the SEBI Act.

Hence the present Appeal

LIST OF DATES & EVENTS

- 1996 Prakash Steelage Limited (hereinafter referred to as "the company / PSL") was incorporated.
- 25.08.2010 The shares of PSL were listed on Bombay Stock Exchange (BSE) and National Stock Exchange (NSE).
- 15.04.2016
to
30.05.2016 **Period of investigation:** Securities and Exchange Board of India ("SEBI" or "Appellant") conducted an investigation into the trading in the scrip of PSL, the period April 15, 2016 to May 30, 2016 (hereinafter referred to as "investigation period/IP").
- 08.02.2021 The Competent Authority of SEBI was *prima facie* of the view that there were grounds to adjudicate upon the alleged violations by the Noticees (including the Respondent). The Competent Authority of SEBI has, in exercise of powers conferred under the SEBI Act, 1992 read with Section 15-I(1) of the SEBI Act, 1992 and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as "Adjudication Rules"), appointed

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the Adjudicating Officer on 08.02.2021 to inquire into and adjudge under Section 15A(b), 15G, 15HA, 15HB of the SEBI Act, Section 23H of the SCRA and Section 19G of Depositories Act, 1996 for the aforesaid violations alleged to have been committed by the Noticees (including the Respondent).

05.04.2022

A common Show Cause Notice dated April 05, 2022 (SCN) was issued to the Noticees (including the Respondent) in terms of Section 15-I of the SEBI Act and Section 23E of the SCRA read with Rule 4 of SEBI Adjudication Rules and Rule 4 of SCR Adjudication Rules to show cause as to why an enquiry should not be initiated and penalty be not imposed under Section 15HA, 15HB, 15A(b) and 15G of the SEBI Act 1992 and/or under section 23H of the SCRA and/or under Section 19G of the Depositories Act, 1996, as applicable, for the alleged violations specified in the SCNs. The copies of the documents relied upon in the SCN were provided to Noticees (including the Respondent) along with the SCN as annexures. The said SCN and annexures issued to the Noticees were duly delivered through Speed Post (SPAD).

21.04.2022

The Notices for the Personal Hearing were duly served to all the noticees (including the Respondent), vide mail dated 21.04.2022.

21.06.2022

The Respondent filed his reply to the SCNs.

& 19.07.2022

15.07.2022

An opportunity of personal hearing was granted to the Noticees on July 15, 2022. All the Noticees (including the

N

Respondent) attended the said personal hearing through their Authorised Representatives.

- 29.07.2022 Subsequently, the AO, SEBI vide its Order dated 29.07.2022 held the Respondent to have violated the provisions of Section 12A(d) and (e) of the SEBI Act, Reg. 4(1) of PFUTP, Reg. 4(1) and 7(2) (a) of the PIT Regulations and Section 2(i) read with Section 13, 16 and 18 of the SCRA and consequently, a cumulative penalty of Rs. 17,00,000/- was imposed under Section 15A(b), 15G and 15HA of the SEBI Act, 1992 and Section 23H of SCRA for the said violations.
- 12.09.2022 The Respondent filed Appeal No. 709 of 2022 before the Ld. SAT challenging the said order dated 29.07.2022 passed by the AO, SEBI.
- 01.12.2022 The Appellant filed Affidavit in reply to the Appeal filed by the Respondent before Ld. SAT.
- 01.02.2023 The Respondent filed Rejoinder Affidavit before the Ld. SAT.
- 31.10.2023 After hearing the parties, the Ld. SAT had reserved its Order on 31.10.2023.
- 06.11.2023 The Ld. SAT passed the final order dated 06.11.2023 in Appeal No. 709 of 2022, whereby the Ld. SAT without discussing the violations committed under the PFUTP Regulations and SCRA, being *sub-silentio* on the aspect of violations under PFUTP Regulations and SCRA, reduced the penalty below the minimum threshold limit as provided for violations under the PFUTP Regulations and SCRA under Section 15HA of SEBI Act and Regulation 23H of the SCRA.
- 12.01.2024 Hence, the present Civil Appeal.

1

BEFORE THE SECURITIES APPELLATE TRIBUNAL
MUMBAI

Order Reserved on : 31.10.2023

Date of Decision : 06.11.2023

Misc. Application No. 1638 of 2022

And

Appeal No. 709 of 2022

1. Prakash C. Kanugo
302, 3rd Floor, Tardeo Tower,
Pandit Madan Mohan Malviya Road,
Near A.C. Market,
Mumbai – 400 034.

2. Prakash Steelage Limited
101, 1st Floor,
Shatrunjay Apartment,
26, Sindhi Lane,
Nanubhai Desai Road,
Mumbai – 400 004.

...Appellants

Versus

Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai – 400 051.

...Respondent

AND

Misc. Application No. 1639 of 2022

And

Appeal No. 710 of 2022

Palak Kohli Kochhar
159/1, Gokul Bldg.,
Sher-e-Punjab CHS,
Mahakali Caves Road,
Andheri (East),
Mumbai – 400 093.

...Appellant

Versus

Securities and Exchange Board of India,
SEBI Bhavan, Plot No. C-4A, G-Block,
Bandra-Kurla Complex, Bandra (East),
Mumbai – 400 051.

...Respondent

Mr. Prakash Shah, Advocate with Mr. Meit Shah, Authorised Representative i/b Prakash Shah and Associates for the Appellants.

Mr. Suraj Chaudhary, Advocate with Ms. Nidhi Singh, Ms. Deepti Mohan, Mr. Nishin Shrikhande, Ms. Komal Shah, Mr. Harish Ballani, Ms. Hubab Sayyed and Ms. Nidhi Faganiya, Advocates i/b Vidhii Partners for the Respondent.

CORAM : Justice Tarun Agarwala, Presiding Officer
Ms. Meera Swarup, Technical Member

Per : Justice Tarun Agarwala, Presiding Officer

1. There is a delay in the filing of the appeals. For the reasons stated in the applications, the delay is condoned. The applications are allowed.
2. Noticee nos. 1, 3 and 4 have challenged the order of the Adjudicating Officer ('AO' for short) of the Securities and

Exchange Board of India ('SEBI' for short) dated July 29, 2022 through two different appeals questioning the imposition of penalty. Noticee no.1 who is the Managing Director has been imposed a penalty of Rs. 17 lakh, noticee no. 3 which is the Company has been imposed a penalty of Rs. 1 lakh and noticee no. 4 who is the Compliance Officer has been imposed a penalty of Rs. 1 lakh.

3. The facts leading to the filing of the present appeal is, that the Show Cause Notice (SCN) alleged that noticee no. 1, being the Managing Director of Prakash Steelage Ltd. ('PSL' for short) noticee no. 3, was an insider and was in possession of Unpublished Price Sensitive Information ('UPSI' for short) relating to the financial results of PSL for the period ended March 31, 2016 and had transferred 25,00,000 shares of PSL to noticee no. 2. It was alleged that though the shares were transferred on March 31, 2016 the consideration was received only on March 30, 2017 and April 11, 2017 after a gap of almost one year. It was also alleged that noticee no. 1 failed to make necessary disclosures under Regulation 7(2)(a) of the SEBI (Prohibition of Insider Trading) Regulations, 2015 ('PIT Regulations' for short). It was also alleged that noticee no. 3 also failed to make necessary disclosures to the Stock Exchange

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under Regulation 7(2)(b) of the PIT Regulations and that noticee no. 4 being the Company Secretary and Compliance Officer of the Company failed to discharge her responsibility as Compliance Officer. Accordingly, a show cause notice dated April 05, 2022 was issued to show cause as to why an enquiry should not be initiated and why a penalty should not be imposed.

4. The AO after considering the material evidence on record held that there was no delay in the initiation of the proceedings. The AO held that the investigation for insider trading involved a very complex and lengthy procedure and huge amount of transactions was required to be examined which required extra diligence and effort. It was also stated that the process of investigation in such cases are complex and involved collection of data, examining that data and appreciation of evidence which took time. It was further held that there is no limitation prescribed under SEBI Act, 1992 for initiating proceeding for violation of securities laws and therefore there is no delay in the initiation of the proceedings.

5. The AO found that the UPSI period was from March 15, 2016 to May 30, 2016. The financial results were being

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prepared and noticee no. 1, being the Managing Director was in possession of UPSI. The AO found that the noticee no. 1 is an insider under the PIT Regulations and that he had traded on May 4, 2016 transferring 25,00,000 shares to noticee no. 2 while in possession of UPSI and therefore violated Section 12(A)(d) & (e) of the SEBI Act read with Regulation 4(1) and Regulation 7(2)(a) of the PIT Regulations. The AO found that the disclosure made by noticee no. 1 on May 9, 2016 to the Stock Exchange as well as to the Company under Regulation 31(1) and 31(2) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011 ('SAST Regulations' for short) was not applicable in as much as the disclosure was required to be made under Regulation 7(2)(a) of the PIT Regulations.

6. Similarly, the AO came to the conclusion that the Company, noticee no. 3 and the Compliance Officer, noticee no. 4 made wrong disclosures on May 9, 2016 under Regulation 31 of the SAST Regulations whereas they were required to be make the disclosure under Regulation 7(2)(a) of the PIT Regulations. The AO accordingly held that since there was violation of PIT Regulations and necessary disclosure had not been made and that the noticee no. 1 had traded while in

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possession of UPSI. The AO accordingly imposed penalties upon noticee nos. 1, 3 and 4.

7. We have heard Shri Prakash Shah, the learned counsel with Shri Meit Shah, Authorised Representative for the appellants and Shri Suraj Chaudhary, the learned counsel with Ms. Nidhi Singh, Ms. Deepti Mohan, Shri Nishin Shrikhande, Ms. Komal Shah, Shri Harish Ballani, Ms. Hubab Sayyed and Ms. Nidhi Faganiya, the learned counsel for the respondent.

8. The AO in paragraph 30 had referred the UPSI period from April 15, 2016 to May 30, 2016. How has he arrived at this period is not known. There is no discussion as to why the starting period of UPSI has been taken to be April 15, 2016. Presumably, the AO may have been influenced by the chronology of events relating to financial results for the quarter ended March 31, 2016 as depicted in the chart in paragraph 27 of the impugned order which states that finalization of accounts internally started from April 15, 2016 to April 30, 2016. In our view April 15, 2016 cannot be made the starting point of UPSI as there is nothing on record to indicate that UPSI came into existence on April 15, 2016. The chart in paragraph 27 only depicts that the finalization of the accounting started internally

with effect from April 15, 2016. It does not show that UPSI came into existence on that day itself. Item no. 2 indicates that the statutory audit commenced from May 3, 2016. Even this does not indicate that UPSI came into existence on May 3, 2016. Item no. 3 of this chart indicates that the draft financial accounts was submitted to the management on May 18, 2016. In the absence of any other details, we are of the opinion that the price sensitive information, if any, with regard to the financial results came into existence for the first time on May 18, 2016 when the draft financial accounts was submitted to the management. We also notice that the AO in paragraph 30 has itself held that there is a strong presumption that the transfer of shares by noticee no. 1 on May 4, 2016 was made on the basis of UPSI. This clearly indicates that even the AO was not sure of the UPSI period.

9. The noticee no. 1, being the Managing Director was a Key Managerial Personnel (KMP) and therefore was an insider under Regulation 2(g) of the PIT Regulations. However, the evidence that has come shows that the noticee no. 1 traded on May 4, 2016 on which date there was no UPSI in existence. Therefore the trade on May 4, 2016 was not on the basis of being in possession of a UPSI nor was it based on he being an

insider. Thus the finding of the AO that the noticee no. 1 had traded while in possession of UPSI on May 4, 2016 is patently erroneous.

10. According to the show cause notice, noticee no. 1 was required to make necessary disclosure of the transfer under Regulation 7(2)(a) of the PIT Regulations whereas the contention of the noticee no. 1 is, that he had only encumbered his shares to noticee no. 2 and necessary disclosure of encumbered shares was made under Regulation 31 of the SAST Regulations on May 9, 2016. It was stated that under Regulation 31(3) of the SAST Regulations the disclosure was required to be made within seven days which the noticee no. 1 had made within the stipulated period.

11. The arguments of the appellants appears to be attractive but we find that this submission cannot be accepted as we find that there is a letter dated May 4, 2016 issued by noticee no. 1 to noticee no. 2 intimating them that pursuant to the transfer of the shares noticee no. 2 becomes the absolute owner and that noticee no. 2 is free to sell the same. In view of this letter addressed to noticee no. 2 which is not disputed by noticee no. 1 we are of the view that noticee no. 1 had made wrong

disclosure for vested reasons to the Company and to the Stock Exchange on May 9, 2016 whereas the said noticee was required to make the appropriate disclosure under Regulation 7(2)(a) of the PIT Regulations. Admittedly, no disclosure was made under Regulation 7(2)(a) of the PIT Regulations, even though a wrong disclosure was made under Regulation 31 of the SAST Regulations.

12. The Company made the disclosure under Regulation 31 on May 9, 2016 on the basis of the letter given by the Managing Director. Noticee no. 4 also made the necessary compliance. The finding that the Company and the Compliance Officer were required to go into the nitty-gritty of the said transaction undertaken by noticee no. 1 and therefore noticee no. 4 did not exercise due care in performing her duties is patently erroneous. When the Managing Director makes a disclosure to the Company, the Compliance Officer forwards the said disclosure to the Stock Exchange under the relevant Regulations. It is not necessary for the Company or the Compliance Officer to go into the correctness of the transaction and verify as to whether the transactions had actually been done or not. In our view no violation has been committed by the Company, noticee no. 3 and by the Compliance Officer, noticee no. 4.

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13. Admittedly, for reasons best known, the noticee no. 1 made a wrong disclosure under Regulation 31 of the SAST Regulations whereas requisite disclosure was required to be made under Regulation 7(2)(a) of the PIT Regulations for which appropriate penalty could be imposed. The penalty for failure to furnish information is under Section 15A(b) of the SEBI Act wherein the penalty from Rs. 1 lakh to a maximum of Rs. 1 crore could be imposed.

14. Since we have held that noticee no. 1 has not traded while in possession of UPSI the minimum penalty imposed under 15G is not applicable.

15. In view of the aforesaid, considering the false disclosure made by noticee no. 1 under Regulation 31 of the SAST Regulations instead of disclosing under Regulation 7(2)(a) of the PIT Regulations we are of the opinion that substantial justice would be done if a penalty of Rs. 5 lakh is imposed.

16. In view of the aforesaid the appeal of noticee no. 1 is partly allowed. The violation for non-disclosure of Regulation 7(2)(a) of the PIT Regulations is affirmed. The penalty of Rs. 17

lakh is reduced to Rs. 5 lakh. The order imposing penalty against the Company, noticee no. 3 and the Compliance Officer, noticee no. 4 are set aside. Their appeals are allowed with no order as costs. //

Justice Tarun Agarwala
Presiding Officer

Ms. Meera Swarup
Technical Member

06.11.2023
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IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 1551 OF 2024

(Civil Appeal under Section 15Z of SEBI Act, 1992 against common final order dated 06.11.2023 passed by Securities Appellate Tribunal, Mumbai in Appeal No. 709 of 2022)

In the Matter of	Position of Parties	
	IN SAT	IN THIS COURT
Securities and Exchange Board of India <u>Registered Office at:-</u> Through its Chairman SEBI Bhavan, Plot No. C-4A, G-Block, Bandra Kurla Complex, Bandra (East) Mumbai – 400051.	Respondent	Appellant
Versus		
Prakesh C. Kanugo 302, 3 rd Floor, Tardeo Tower, Pandit Madan Mohan Malviya Road, Near A.C. Market, Mumbai-400 034	Appellant	Respondent

TO,
THE HON'BLE CHIEF JUSTICE AND HIS
COMPANION JUSTICES OF THE HON'BLE
SUPREME COURT OF INDIA, NEW DELHI.

THE HUMBLE APPEAL OF THE
APPELLANT ABOVE NAMED.

MOST RESPECTFULLY SHOWETH:-

1. The present Statutory Appeal under Section 15Z of the Securities and Exchange Board of India Act, 1992 ("the SEBI Act"), is being filed by the Securities and Exchange Board of India ("SEBI") against common final order dated 06.11.2023 ("impugned order") passed by the Ld. Securities Appellate Tribunal, Mumbai ("SAT") in Appeal No. 709 of 2022, whereby the Ld. SAT without appreciating the legal position under the SEBI (Prohibition of Insider Trading) Regulations, 2015 ("PIT Regulations") has held that price sensitive information ("PSI") with regard to the financial results came in existence for the first time only on May 18, 2016, when the draft financial accounts was submitted to the management of the company and not on April 15, 2018 when the process of finalisation of accounts had started internally. Ld. SAT has thereby set aside the violation of the PIT Regulations and further without discussing the violations committed under the SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations 2015 (hereinafter referred to as the "PFUTP Regulations") and the Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as the "SCRA"), *sub-silentio* on the said aspects reduced the penalty to below the minimum threshold limits as provided for the said violations and imposed vide the Adjudication Order dated July 29, 2022.

The Appellant most respectfully submits that the penalty imposed on the Respondent vide the Order dated July 29, 2022, was essentially under Sections 15A(b), 15G, 15HA of the SEBI Act and Section 23H of the SCRA, for the violations of the provisions of Section 12A(d) and (e) of the SEBI Act, Regulations 4(1) of the PFUTP Regulations, Regulations 4(1) and 7(2)(a) of the PIT Regulations and Section 2(i) r/w Section 13, 16, 18 of the SCRA wherein the minimum penalty as per the statute are as below:-

Violations	Penalty Provision	Minimum Statutory Penalty
Section 12A(d) & (e) of SEBI Act r/w Regulation 4(1) of the PIT Regulations	Section 15G of the SEBI Act	Rs.10 Lakh
Regulation 4(1) of the PFUTP Regulations	Section 15HA of the SEBI Act	Rs.5 Lakh
Regulation 7(2)(a) of the PIT Regulations	Section 15A(b) of the SEBI Act	Rs.1 Lakh
Section 2(i) r/w Section 13, 16 and 18 of SCRA	Section 23H of the SCRA	Rs.1 Lakh1 Lakh

It is humbly submitted that the Adjudicating Officer ('AO') of the SEBI had specifically dealt with the issue of unpublished price sensitive information ('UPSI') related to the financial results of Prakash Steelage Limited ('Prakash'/ the company') coming into existence on April 15, 2016 and the UPSI period being April 15, 2016 – May 30, 2016.

The Respondent being one of the founder promoters and Chairman and Managing Director of the company, had significant influence by virtue of

holding top position in the company for more than two decades i.e. since 1991. The details available on record clearly showed that he was an insider (in terms of the PIT Regulations) and reasonably expected to have access to UPSI related to the financial results of the company for the quarter ended March 2016. In this regard, it is relevant to refer to the brief chronology of events related to the financial results for the quarter ended March 31, 2016:

S.No.	Events	Date
1	Finalization of accounts internally	15.04.2016 to 30.04.2016
2	Commencement of statutory audit for FY 2015-16	03.05.2016
3	Submission of draft financial accounts to management	18.05.2016
4	Discussion with management	19.05.2016
5	Finalization of financial accounts	28.05.2016
6	Placing before the Board	30.05.2016

The above chronology, finds support from the company's own letter dated September 04, 2020, which clearly showed that the work related to party wise ledger scrutiny, internal verification of accounts, reconciliation with confirmations, etc. was completed by April 25, 2016 and from the said date, internal audit had started giving auditors access to raw accounting data. Further, the finalization of results, updation of the data entry for sales, purchases, bank payments/ receipts, petti cash vouchers and journal vouchers were carried out about 15 days after the year end. The same shows that the UPSI in relation to financial results of the quarter ended March 2016 came in

existence on 15.04.2016. The trading window for dealing in the securities of the Company was closed for the purpose of declaration of Audited Financial results of the Company for the quarter ending March 2016 on 21.05.2016 and the corporate announcement of Audited Financial Results (Consolidated and Standalone) for quarter and Financial Year ended March 2016 to NSE on 30.05.2016 at 20:47 hours and to BSE on 31.05.2016.

In the meantime, during the UPSI period the Respondent had entered into an off-market transaction with one Dumet Wire India Pvt Ltd ("Dumet") on 04.05.2016 for transfer of 25,00,000 shares of the company (a day after the commencement of statutory audit for FY 201-2016). The chronology of events show that such off-market transaction of the Respondent was clearly motivated by the knowledge and awareness of the UPSI regarding the financials of the company.

Inspite of the clear sequence of events, submissions of the company, Ld. SAT has given an incorrect finding that the AO, SEBI was not sure of the UPSI period and has wrongly dropped the charge of insider trading by the Respondent and the penalty imposed under Section 15G of the SEBI Act for the same has been set aside by the Ld. SAT.

Further, vide the Impugned Order, the Ld. SAT has reduced the penalty imposed by the AO, SEBI vide its Order dated 29.07.2022 (to the extent of Rs. 5 lakh and Rs.1 lakh as stated above), to effectively, 'nil', which is against the principles of minimum penalty as prescribed under Section 15HA of the SEBI Act and Section 23H of the SCRA, without having any discussion regarding the same.

For the above said reasons, the Impugned Order deserves to be set aside on the ground of non-appreciation of available records and non-application of mind by the Ld. SAT. It is humbly submitted that in the Impugned Order there

is no discussion regarding violations under the PFUTP Regulations inspite of holding that the Respondent had made wrong disclosure for vested reasons and taking note of the his letter dated May 04, 2016.

Ld. SAT has further failed to specifically deal with the violation of section 2(i) r/w section 13, 16 and 18 of the SCRA for failure to receive the consideration for off-market transfer of 25 lakh shares of the Company within the time specified for spot delivery contracts. Further, at paragraph 11 and 15 of the impugned order, Ld. SAT has upheld the false disclosure, however, it has not specifically dealt with the PFUTP violations and penalty imposed for the same.

The minimum penalty to be imposed on the Respondent under section 15A(b) [for non-disclosure] and section 15HA of SEBI Act [for PFUTP violations] and section 23H of SCRA [for spot delivery contract] comes to a total of Rs. 7 Lakh. Further, even if it is considered that the Ld. SAT has not dealt with the imposition of penalty under section 23H of the SCRA, the minimum penalty to be imposed under section 15A(b) and 15HA would amount to Rs. 6 Lakh. However, Ld. SAT has reduced the penalty to only Rs. 5 Lakh which is below the minimum prescribed penalty under the said provisions.

The AO vide its order dated 29.07.2022 had infact imposed only the minimum penalty upon the Respondent under the above mentioned Sections of the SEBI Act and SCRA. It is relevant to note that this Hon'ble Court in a similar matter of *Securities and Exchange Board of India vs Sandip Ray & Ors.* vide its Judgement dated 13.02.2023, passed in Civil Appeal (Diary No(s). 791/2023) had held as below:-

.....

"Learned counsel for the appellant submits that the Tribunal while upholding the violation of Section 15HB has reduced the penalty from

Rs.3,00,000/- to Rs.75,000/- which was in conflict of the mandatory requirement and there is no discretion left with the authority to reduce the penalty below the minimum prescribed, as indicated under Section 15HB of the SEBI Act, 1992.

Learned counsel for appellant further submits that even review application filed to make a correction in the order and to justify that the order reducing the penalty below Rs. 1,00,000/- is not permissible under Section 15HB of the SEBI Act, 1992.

After we have heard learned counsel for the appellant, it clearly manifests that the Tribunal has not taken into consideration the effect and mandate of Section 15HB of the SEBI Act, 1992.

Taking into consideration the facts and circumstances of this case, there appears no justification in calling upon the respondent and we modify the order impugned dated 29.07.2022 and the penalty of Rs.75,000/- as inflicted upon noticee no.5 (Mr. Sandip Ray) and noticee no.6 (Mr. Rajkumar Sharma), as referred to in para no. 13 of the order impugned, is modified and substituted to Rs.1,00,000/- in terms of Section 15HB of SEBI Act, 1992 and with this modification the present appeals stand disposed of."

[Emphasis Supplied]

It is humbly submitted that the Ld. SAT in complete disregard to the statutory scheme of the minimum penalty as contemplated under the respective provisions of the SEBI Act and the SCRA, and as noticed by this Hon'ble Court in *Sandip Ray* (supra), has *simpliciter* reduced the penalty, without having any discussion and applying its mind to the violations under the PFUTP Regulations and the SCRA, thus violating the statutory scheme of minimum penalty as contemplated under the said provisions especially when the

violations have been upheld by the Ld. SAT. The relevant portion of the said SAT order impugned before this Hon'ble Court is extracted as below:-

.....
 "13. Admittedly, for the reasons best know, the Noticee No.1 made a wrong disclosure under Regulations 31 of the SAST Regulations whereas requisite disclosure was required to be made under Regulations 7(2)(a) of the PIT Regulations for which penalty could be imposed. The penalty for failure to furnish information is under Section 15A(b) of the SEBI Act wherein the penalty from Rs. 1 lakh to a maximum of Rs.1 crore could be imposed.

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15. In view of the aforesaid, considering the false disclosure made by the noticee No. 1 under Regulation 31 of the SAST Regulations instead of disclosing under Regulation 7(2)(a) of the PIT Regulations we are of the opinion that substantial justice would done if a penalty of Rs. 5 lakh is imposed.

16. In view of the aforesaid the appeal of noticee No.1 is partly allowed. The violation for non-disclosure of Regulation 7(2)(a) of the PIT Regulations is affirmed. The penalty of Rs.17 lakh is reduced to Rs. 5 lakh."

It would not be out of place to mention that the Respondent infact perpetrated a serious violation which has been recorded by the Ld. SAT in its impugned order as a passing averment, i.e. the Respondent made a wrong disclosure with regards to the off market transfer of shares to Dumet as only an encumbrance to the company, which essentially is a fraud as defined under Regulations 2(1)(c) of the PFUTP Regulations.

The Ld. SAT while upholding the violation for non-disclosure has misconstrued the charging sections under which the penalty should be imposed

i.e. Regulation 4 of the PFUTP Regulation over and above the Regulation 7(2)(a) of the PIT Regulations. For ready reference Regulation 4 of PFUTP is extracted as below:-

SEBI (PFUTP) Regulations, 2003

4. Prohibition of manipulative, fraudulent and unfair trade practices

“(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a manipulative, fraudulent or an unfair trade practice in securities markets.

Explanation.—

For the removal of doubts, it is clarified that any act of diversion, misutilisation or siphoning off of assets or earnings of a company whose securities are listed or any concealment of such act or any device, scheme or artifice to manipulate the books of accounts or financial statement of such a company that would directly or indirectly manipulate the price of securities of that company shall be and shall always be deemed to have been considered as manipulative, fraudulent and an unfair trade practice in the securities market.”

Thus, once the violation has been upheld, as per the scheme of the SEBI Act, 1992, penalty becomes *sine qua non* of the violations as held in the

case of *Chairman, Securities and Exchange Board of India Vs. Sri Ram Mutual Funds (2006) 5 SCC 361*. Likewise, in the present case also, the Ld. SAT has essentially not dealt with the minimum penalty that can be imposed under Section 15HA of SEBI Act, 1992, even after upholding the violations of Respondent, and therefore such finding being in teeth with the express penalty provisions of the SEBI Act, 1992, wherein the minimum penalty that can be imposed is mentioned therein. Moreover, the penalties under Regulation 23H of the SCRA have also been completely ignored by the Ld. SAT while passing the impugned order, therefore the Appellant has preferred the present appeal.

2. SUBSTANTIAL QUESTIONS OF LAW:

The present Civil Appeal raises the following substantial questions of law arising out of the impugned order of the Ld. SAT:

- (A) Whether the Ld. SAT has erred in law while interpreting the period of Unpublished Price Sensitive Information?
- (B) Whether the Ld. SAT has misconstrued the provisions of Regulation 4(1) and (2) of the PIT Regulations?
- (C) Whether the Ld. SAT has erred in law in failing to follow its prior Order dated October 13, 2012 in *Manoj Gaur Vs. SEBI*?
- (D) Whether the Ld. SAT has erred in law in not considering the evidences available on record to show that the accounts were internally finalised during the period of April 15, 2016 and April 30, 2016 and the statutory audit for the financial year 2015-2016 had commenced on May 03, 2016 i.e. before the date when the insider (Respondent) had traded in the scrip?
- (E) Whether the impugned Order is unsustainable in law being contrary to the decision of this Hon'ble Court in the case of *SEBI Vs. Abhijit Rajan* reported in 2022 SCC Online SC 1241?

- (F) Whether the Ld. SAT has erred in law by reducing the penalty below the statutory threshold in contravention of the express penalty provisions under Section 15HA of the SEBI Act and Section 23H of the SCRA, in absence of a discussion on the same in the impugned order?
- (G) Whether the impugned Order of the Ld. SAT not considering the minimum penalties imposed by the AO, SEBI is in accordance with the scheme of the applicable provisions of law?
- (H) Whether the Ld. SAT has erred in law in not considering all the violations while deciding the appeal?
- (I) Whether the Ld. SAT erred in law by setting aside/reducing the penalty imposed against the Respondent under the SEBI Act and the SCRA?
- (J) Whether the Ld. SAT is empowered to exceed its powers by reducing the penalty below statutory penalty as envisaged under the SEBI Act and the SCRA?
- (K) Whether the Ld. SAT was wrong in reducing the penalty in a *simpliciter* manner and without application of mind, below the minimum penalty even after observing that the Respondent did not make correct disclosure as per the relevant regulations?
- (L) Whether the Ld. SAT failed to appreciate that the Respondent made a wrong disclosure with regards to the off market transfer of shares to Dumet, terming it as an encumbrance to the company, which essentially constitutes fraud under the definition of fraud under Regulations 2(1)(c) of the PFUTP Regulations?
- (M) Whether, the Ld. SAT erred in law by setting aside the penalty below the minimum threshold under Section 15HA of the SEBI Act, especially when the Ld. SAT has on one hand affirmed the

violations, and on the other hand ignored the charging section under which the penalty can be imposed i.e. Section 15HA of the SEBI Act, thus indicating non application of mind?

- (N) Whether the Ld. failed to appreciate the true gamut of Section 15HA of the SEBI Act despite Hon'ble Supreme Court's Order dated 13.02.2023 in a similar matter of *Securities and Exchange Board of India vs Sandip Ray & Ors.* passed in Civil Appeal (Diary No. (s) 791/ 2023)?
- (O) Whether the Ld. SAT has failed to appreciate and follow the law laid down by the Hon'ble Supreme Court in *Chairman, Securities and Exchange Board of India Vs. Sri Ram Mutual Funds* reported in (2006) 5 SCC 361, wherein it was held that once the violation is conclusively established, the imposition of penalty becomes *sine qua non* of the violations?
- (P) Whether the Ld. SAT has erred in observing that the Respondent was not in possession of the Unpublished Price Sensitive Information when the shares were transferred off-market to the noticee no. 2?
- (Q) Whether the Ld. SAT has failed to appreciate and follow the law laid down by the Hon'ble Supreme Court in the case of *Securities and Exchange Board of India Vs. Shilpa Stock Brokers P. Ltd.* (C.A No. 4640 of 2006) and *Securities and Exchange Board of India Vs. Saikala Associates Limited* reported in (2009) 7 SCC 432, wherein this Hon'ble Court has held that when something is to be done statutorily, then the Tribunal cannot travel beyond such statutory realm?
- (R) Whether the passing of the impugned order by Ld. SAT would not be construed as *per incuriam* in the eyes of law?

(S) Whether the Ld. SAT has erred in partly setting aside the Order passed by AO, SEBI?

3. **BRIEF FACTS**

- i. Securities and Exchange Board of India (“SEBI”) conducted an investigation into the trading in the scrip of Prakash Steelage Limited (hereinafter referred to as “the company / PSL”), to ascertain whether trading in the scrip of PSL by certain suspected entities was based on unpublished price sensitive information (hereinafter “UPSI”) relating to financial results of PSL for the quarter ended March 31, 2016, during the period April 15, 2016 to May 30, 2016 (hereinafter referred to as “investigation period/IP”).
- ii. PSL, a Prakash Group entity, was started in the year 1996 to manufacture stainless steel welded pipes, tubes and U-tubes under one roof in India, through its Silvassa Division. PSL was one of the leader in Indian Stainless Steel Pipe and Tube industry. The shares of the Company were listed on Bombay Stock Exchange (“BSE”) and National Stock Exchange (“NSE”) w.e.f. 25/08/2010. Pursuant to the investigation, the following were observed and alleged:
 - a. Shri Prakash C Kanugo (Noticee No. 1/Respondent), the Managing Director of PSL, an insider, who while in possession of UPSI relating to the financial results of PSL for the period ended March 31, 2016 had traded/transferred (off-market) 25,00,000 shares of PSL to Dumet Wire India Pvt. Ltd. (Noticee No. 2).
 - b. Shri Prakash C Kanugo, though transferred the abovementioned shares on March 31, 2016 through off-market, but received consideration for the said shares from Dumet Wire India Pvt. Ltd. only on March 30, 2017 (Rs. 22,00,000) and on April 11, 2017 (Rs. 16,75,000), which is after a gap of almost a year from the transfer of shares, hence, Noticee No. 1 and 2 did not receive/transfer the consideration towards the aforesaid

- off-market transfer of 25,00,000 shares of PSL within the time period specified for off-market transactions.
- c. Further, by not stating the consideration and by not providing any cogent reason/explanation in the Delivery Instruction Slip (DIS) for the transfer of 25,00,000 shares of PSL to Noticee No.2 on 04/05/2016 and disclosing the transaction wrongly to the stock exchanges, Respondent had allegedly committed an act of deceit/fraud.
 - d. Further, Respondent, also allegedly failed to make disclosures to the Company under Regulation 7(2)(a) of the SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as 'PIT Regulations') with respect to the aforesaid off-market transaction(s) in the scrip of PSL during the UPSI period.
 - e. The Company, Prakash Steelage Ltd. (Noticee No. 3), also failed to make disclosure to the stock exchanges under Regulation 7(2)(b) of the PIT Regulations in respect of the aforesaid transaction of Shri Prakash C Kanugo which was required as the transaction was made while in possession of UPSI.
- iii. The Appellant had, therefore, initiated adjudication proceedings *inter alia* against the Respondent/Noticee No. 1, under Section 15G, 15HA and 15A(b) of the SEBI Act, 1992 and Section 23H of the Securities Contracts (Regulation) Act, 1956 ("SCRA" for short), for the alleged violation of Section 12A(d) & (e) of SEBI Act, Regulations 4(1) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2015 (hereinafter referred to as "PFUTP Regulations"), Section 2(i) read with Section 13, 16 and 18 of SCRA and Regulation 4(1) and 7(2)(a) of the PIT Regulations.
- iv. The unpublished price sensitive information ("UPSI") in the instant case was the 'financial results' of the Company for the Financial Year 2015-2016. The aforesaid information has been held to be UPSI vide the Impugned Order under

the definition specified under Regulation 2(1)(n) of the PIT Regulations as it satisfied all the three criteria therein under Regulation 2(1)(n)(i) of the PIT Regulations, more particularly "financial results" of a company itself tantamount to information which is price sensitive.

- v. The term 'unpublished price sensitive information' has been defined under Regulation 2(1)(n)(i) of the PIT Regulation as follows:

"2(1) In these regulations, unless the context otherwise requires, the following words, expressions and derivations therefrom shall have the meanings assigned to them as under:

.....

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

- vi. It is pertinent to note from the above definition, the three requirements essential to qualify an information to be UPSI, viz. a) the information must be directly or indirectly related to a company or its securities, b) the information must not be generally available, and c) the information upon become generally available, is likely to materially affect the price of the securities. Thus, the Ld. AO rightly observed that 'financial results' of a company is deemed to be price sensitive information by virtue of the Regulation 2(1)(n)(i) of the PIT Regulations.
- vii. While considering the second criteria, an information remains unpublished till it is made known to the public at large. Disclosing the same to the public at large by submitting it to the stock exchanges is considered as publishing it and subsequently, the UPSI period ends. All listed companies have an obligation

to make such disclosures to the exchanges where the securities of the companies are listed in time bound manner (within two trading days). The Ld. A.O. observed that the financial results of the Company for quarter ending 31.03.2016 were announced on 30.05.2016 after market hours, thus the Ld. A.O. rightly held that the financial results were unpublished during the Investigation Period and remained UPSI.

viii. The term 'insider' is defined under Regulation 2(1)(g) of the PIT Regulations which reads as under:

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

i) a connected person; or

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

Thus, as per the abovementioned definition a "connected person" is deemed to be an insider. The PIT Regulations also define a 'connected person' under Regulation 2(1)(d) which reads as following:

"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."

Thus, from the above definition it is clear that a company's directors, officers or employees who directly or indirectly, have access to unpublished price sensitive information or are reasonably expected to allow such access are deemed to be connected persons and hence, an insider as per the PIT Regulations.

- ix. The Financial Results of FY 2016-2017 of the Company show that the Respondent was the Chairman and Managing Director since 09.05.1991. Thus, during the relevant point of time i.e. during the Investigation Period, the Respondent was holding the position of Chairman and Managing Director in the Company. As the Respondent was holding the top most position in the Company since 1991, he had significant influence by virtue of the same. The Respondent is also one of the promoters of the Company. Thus, the Ld. AO observed that the Respondent, by virtue of his role and position in the Company fell squarely within the definition of "insider" and was reasonably expected to have access to the UPSI related to the said financial results of the Company for quarter ending March, 2016. In this regard, it is relevant to refer to Regulation 4(2) of PIT Regulations, which reads as under:

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

Thus, once it is established that the Respondent was a "connected person"/ "insider", the onus of showing that the Respondent was not in possession

of UPSI was upon him, being the connected person as laid down in Regulation 4(2) of the PIT Regulations.

- x. The AO, SEBI had dealt in detail with the period of UPSI i.e. financial results of the Company and the events related to the same for the quarter ending 31.03.2016. In this regard, it is relevant to refer to the chronology of events related to aforesaid financial results.

S. No.	Events	Date
1.	Finalization of accounts internally	15.04.2016 to 30.04.2016
2.	Commencement of statutory audit for FY 2015-16	03.05.2016
3.	Submission of draft financial accounts to management	18.05.2016
4.	Discussion with management	19.05.2016
5.	Finalization of financial accounts	28.05.2016
6.	Placing before the Board	30.05.2016

- xi. The above chronology and the Company vide its letter dated 04.09.2020 *inter alia* submitted that the work related to party wise ledger scrutiny, internal verification of accounts, reconciliation with confirmations, etc. was completed by 25.04.2016 and from the said date, internal audit had started giving auditors access to raw accounting data. Accordingly, the Ld. A.O., SEBI has noted that for finalization of results, updating the data entry

for sales, purchases, bank payments/ receipts, petty cash vouchers and journal vouchers were carried out about 15 days after the year end. It was also observed that the UPSI in relation to financial results of the quarter ended March 2016 had come into existence on 15.04.2016. The trading window for dealing in the securities of the Company was closed for the purpose of declaration of Audited Financial results of the Company for the quarter ending March 2016 on 21.05.2016.

- xii. The Company had made the corporate announcement of its Audited Financial Results (Consolidated and Standalone) for quarter and Financial Year ended March 2016 to NSE on 30.05.2016 at 20:47 hours and to BSE on 31.05.2016 at 11:26:10 hours, thus it was found that the UPSI period was from 15.04.2016 to 30.05.2016 20:47 hours.
- xiii. The Respondent had entered into an off-market transaction of 25,00,000 shares of PSL with Dumet Wire India Pvt Ltd (Noticee No.2) on 04.05.2016. As detailed above the UPSI period had commenced from 15.04.2016 to 30.05.2016, thus the said off-market transaction between the Respondent and Noticee No.2 took place during the period of UPSI.
- xiv. In this regard, it is relevant to refer to the Note appended to Regulation 4 of the PIT Regulations which reads as under:

"NOTE: When a person who has traded in securities has been in possession of unpublished price sensitive information, his trades would be presumed to have been motivated by the knowledge and awareness of such information in his possession. The reasons for which he trades or the purposes to which he applies the proceeds of the transactions are not intended to be relevant for determining whether a person has violated the regulation. He traded when in possession of unpublished price sensitive information is what would need to be demonstrated at the outset to bring a charge. Once this is

established, it would be open to the insider to prove his innocence by demonstrating the circumstances mentioned in the proviso, failing which he would have violated the prohibition”

- xv. The financial results of the Company for the financial year ended 31.03.2016, fell squarely within the definition of UPSI and the Respondent had clearly traded in securities of the Company during the UPSI Period, accordingly, it has been noted by the AO, SEBI that there arises a strong presumption that the Impugned Trade (being the off market transfer of shares) was motivated by the knowledge and awareness of such information in his possession.
- xvi. Further, the aforesaid Regulation provides that the reasons for which the person in possession of UPSI (in this case the Respondent) traded or the purposes to which he applies the proceeds of the transactions are not intended to be relevant for determining whether a person has violated the relevant provision of law, and unless the insider (Respondent) demonstrates the exempting circumstances mentioned in the proviso to Regulation 4(1) of the PIT Regulations, failing which he would have violated the relevant legal provision.
- xvii. The Respondent vide its letter dated 04.05.2016 while addressing the Noticee No.2, had stated that he has transferred 25,00,000 shares of the Company to the Demat Account of the Noticee No.2 to purportedly meet their financial obligations to the Noticee No.2. The said letter also stated that the Noticee No.2 was free to sell the aforesaid shares or to make use of them without referring to the Respondent being the absolute owner. It is submitted that in general when a transfer of shares is done to provide security, the same can only be encumbered when there has been a default on part of the borrower and not otherwise. However, it was observed from

the aforesaid letter of the Respondent that the Noticee No.2 was given the right to sell the shares without any condition of there being a default on part of Respondent who claims to be the borrower. Thus, it is clearly evident that the aforesaid off-market transfer of shares was tried to be disguised as a creation of encumbrance. The Delivery Instruction Slip (DIS), through which the said off market transfer of 25,00,000 shares of the Company had taken place between the Respondent and the Noticee No.2, there was no mention of the amount of consideration to be received by the Respondent, further the DIS also did not mention any specific reason for the transfer of shares. Further, the Respondent had submitted the DIS along with a letter mentioning the reason for transfer of shares as 'security' to the Noticee No. 2 which is evidently incorrect. It has also been established in the instant case that none of the exceptions provided under the proviso to Regulation 4(1) of the PIT Regulations are applicable nor pleaded by the Respondent. Thus, the Ld. A.O. rightly observed that the Respondent had transferred 25,00,000 shares in off-market to the Noticee No.2 while in possession of UPSI. Accordingly, the Respondent has rightly been held to have violated the provisions of Section 12A(d) and (e) of the SEBI Act and Regulation 4(1) of the PIT Regulations.

- (ix) The Adjudicating Officer (hereinafter referred to as the "AO") under Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as "SEBI Adjudication Rules") read with Section 15-I of the SEBI Act and under Rule 3 of Securities Contracts (Regulation) (Procedure for holding Inquiry and Imposing Penalties) Rules, 2005 (hereinafter referred to as "SCR Adjudication Rules") was appointed to inquire into and adjudge under Section 15A(b), 15G, 15HA, 15HB of the SEBI Act, 1992 and Section 23H of the SCRA for the aforesaid violations alleged to have been committed by the Respondent.

- (x) A common Show Cause Notice dated April 05, 2022 ("SCN") was issued to all the Noticees (including the Respondent) in terms of Section 15-I of the SEBI Act, 1992 and Section 23E of the SCRA read with Rule 4 of SEBI Adjudication Rules and Rule 4 of SCR Adjudication Rules to show cause as to why an enquiry should not be initiated and penalty be not imposed under Section 15HA, 15HB, 15A(b) and 15G of the SEBI Act 1992 and/or under section 23H of the SCRA and/or under Section 19G of the Depositories Act, 1996, as applicable, for the alleged violations specified in the SCNs. The copies of the documents relied upon in the SCN were provided to Noticees along with the SCN as annexures.
- (xi) The said SCN and annexures issued to all the Noticees (including the Respondent) were duly delivered through Speed Post (SPAD). The Respondent had filed his reply on 21.06.2022 and 19.07.2022. An opportunity of personal hearing was granted to him on 15.07.2022. All the Noticees (including the Respondent) attended the said personal hearing through their Authorised Representatives.
- (xii) Subsequently, the AO in its order dated 29.07.2022 *inter-alia* framed following issues against the Respondent:-

Issue I(a): Whether Noticee No.1, by entering into the off-market transaction while in possession of UPSI and by non-disclosure, violated the provisions of Section 12A (d) and (e) of SEBI Act, 1992, read with Regulation 4(1) and Regulation 7(2)(a) of the PIT Regulations, 2015?

"Issue I (b) : Whether Noticee No. 1, while entering into the off-market transaction and making wrong disclosure to the company, violated Regulation 4(1) of the PFUTP Regulations, 2003?

Issue I (c): Whether Noticee No. 1 and 2, by not receiving/transferring consideration towards the off-market transfer of

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25,00,000 shares, violated Section 2(i) read with Section 13, 16 and 18 of the SCRA?

The AO vide its order decided the said issues against the Respondent, however the Ld. SAT only decided the first issue in favour of the Respondent and did not decided the other two issues and yet reduced the penalty to 'nil' in reference to the said issues.

A true copy of the Order dated 29.07.2022 passed by the Adjudicating Officer, SEBI is annexed herewith as ANNEXURE A-1 (Pages 57 to 105).

(xiii) The Respondent filed Appeal No. 709 of 2022 before the Ld. SAT challenging the said order dated 29.07.2022 passed by the AO, SEBI. A true copy of the Appeal No. 709 of 2022 dated 12.09.2022 filed by the Respondent in the SAT, Mumbai is annexed herewith as ANNEXURE A-2 (Pages 106 to 139).

(xiv) The Appellant filed its common Affidavit in Reply dated 01.12.2022 to the said appeal, in support of the order dated 29.07.2022. A true copy of the Affidavit in Reply dated 01.12.2022 in Appeal No. 709 of 2022 filed by the Appellant in the SAT, Mumbai is annexed herewith as ANNEXURE A-3 (Pages 140 to 173).

(xv) It would not be out of place to mention here that this Hon'ble Court in a similar matter on the issue of minimum penalty in *Securities and Exchange Board of India vs Sandip Ray & Ors.* vide its Judgement dated 13.02.2023, passed in Civil Appeal (Diary No(s). 791/2023) had held as below:-

.....

"Learned counsel for the appellant submits that the Tribunal while upholding the violation of Section 15HB has reduced the penalty from Rs.3,00,000/- to Rs.75,000/- which was in conflict of the mandatory requirement and there is no discretion left with the authority to reduce the penalty below the minimum prescribed, as indicated under Section 15HB of the SEBI Act, 1992.

Learned counsel for appellant further submits that even review application filed to make a correction in the order and to justify that the order reducing the penalty below Rs. 1,00,000/- is not permissible under Section 15HB of the SEBI Act, 1992.

After we have heard learned counsel for the appellant, it clearly manifests that the Tribunal has not taken into consideration the effect and mandate of Section 15HB of the SEBI Act, 1992.

Taking into consideration the facts and circumstances of this case, there appears no justification in calling upon the respondent and we modify the order impugned dated 29.07.2022 and the penalty of Rs.75,000/- as inflicted upon noticee no.5 (Mr. Sandip Ray) and noticee no.6 (Mr. Rajkumar Sharma), as referred to in para no. 13 of the order impugned, is modified and substituted to Rs.1,00,000/- in terms of Section 15HB of SEBI Act, 1992 and with this modification the present appeals stand disposed of."

[Emphasis Supplied]

A true copy of the Order dated 13.02.2023 passed by Hon'ble Court in Civil Appeal (Diary No. 791 of 2023) is annexed herewith as ANNEXURE A-4 (Pages 174 to 177).

(xvi) The Appellant most respectfully submits that the impugned Order is wholly erroneous and unsustainable and proceeds wholly contrary to the law laid down by this Hon'ble Court in *Securities and Exchange Board*

of India Vs. Shilpa Stock Brokers Pvt. Ltd. (C.A. No. 4640 of 2006) and Securities and Exchange Board of India Vs. Saikala Associates Limited reported in (2009) 7 SCC 432, wherein, it has inter alia been held that:

"3. The only question is whether Tribunal has power to modify the penalty imposed by SEBI?....

.....

10. In the instant case, the position of the broker / sub-broker in case of violation is statutorily provided under Section 12 of the Act, which has to be read along with rule 3 of the Rules. No power is conferred on the Tribunal to travel beyond the areas covered under Section 12 and Rule 3. When something is to be done statutorily in a particular way, it can only be done that way. There is no scope for taking shelter under a discretionary power.

11. Above being the position, the appeals are bound to succeed, which we direct. The orders of the Tribunal are set aside and that of SEBI stands restored."

[Emphasis Supplied]

(xvii) The Ld. SAT passed the final order dated 06.11.2023 in Appeal No. 709 of 2022, whereby the Ld. SAT while setting aside the violation of Section 12A(d) and (e) of the SEBI Act and Regulation 4(1) of the PIT Regulations and without discussing the violations committed under the PFUTP Regulations and SCRA, and thereby *sub-silentio* on the aspect of violations under PFUTP Regulations and SCRA Regulations, reduced the penalty below the minimum threshold limit as provided under the respective Acts.

(xviii) Hence the Appellant has preferred the instant Appeal under Section 15Z of the SEBI Act.

GROUND:-

Being aggrieved by the impugned judgment and common final Order dated 06.11.2023 passed by the Ld. Securities Appellate Tribunal, Mumbai in Appeal No. 709 of 2023 on the following grounds, the Appellant/ SEBI is filing the present Civil Appeal, *inter alia*, on the following grounds, which are taken in the alternative and without prejudice to one another:

- (A) **BECAUSE** the Ld. SAT has erred in not considering its own decision in *Manoj Gaur Vs. SEBI* (decided on October 03, 2012), wherein it was held that the trail balances fall within the definition of any information relating to the financial results of the company which is known only to a few persons in the company and which are not in public domain.
- (B) **BECAUSE** the Ld. SAT has misconstrued the provisions of Regulations 4(1) and (2) of the PIT Regulations.
- (C) **BECAUSE** the Ld. SAT has erred in not considering the definition of 'connected persons' in terms of PIT Regulations?
- (D) **BECAUSE** the Ld. SAT has erred in law in the interpretation of the period of Unpublished Price Sensitive Information.
- (E) **BECAUSE** the Ld. SAT has failed to take note of the compliance certificate by the CEO and CFO in the Annual Report regarding their role and responsibility in internal controls for financial reporting regarding the Company.
- (F) **BECAUSE** the Ld. SAT has erred in law in not considering the evidences available on record to show that the accounts were internally finalised during the period of April 15, 2016 and April 30, 2016 and the statutory audit for the financial year 2015-2016 had commenced on May 03, 2016 i.e. before the date when the insider (Respondent) had traded in the scrip.

- (G) **BECAUSE** the impugned Order is unsustainable in law being contrary to the decision of this Hon'ble Court in the case of *SEBI Vs. Abhijit Rajan* reported in 2022 SCC Online SC 1241..
- (H) **BECAUSE** the Ld. SAT has failed to take note of Section 128 of the Companies Act
- (I) **BECAUSE** the Ld. SAT could not have ignored the important factors vide which the financials of the company were crystallised and knowledge of these to the Respondent.
- (J) **BECAUSE** the Ld. SAT could not have ignored the violations while reducing the penalty below the statutory threshold in contravention of the express penalty provisions under SEBI Act and SCRA.
- (K) **BECAUSE** the impugned Order of the SAT setting aside of the violations of the PIT Regulations and modifying the penalty imposed by the AO, SEBI is not in accordance with the scheme of the applicable provisions of law.
- (L) **BECAUSE** the Ld. SAT has in essence reduced the penalty imposed under SEBI Act, 1992 beyond the minimum penalty, without having a discussion on the charging provisions.
- (M) **BECAUSE** the Ld. SAT was wrong in reducing the penalty in a *simpliciter* manner and without application of mind, below the minimum penalty even after observing that the Respondent did not make correct disclosure as per the relevant Rules and Regulations.
- (N) **BECAUSE** the Ld. SAT failed to appreciate that the Respondent made a wrong disclosure with regard to the off-market transfer of shares to Noticee No. 2, terming it as an encumbrance to the company, which essentially is a fraud as defined under Regulations 2(1)(c) of the PFUTP Regulations.

- (O) **BECAUSE**, the Ld. SAT erred in law by reducing the penalty below the minimum threshold under Section 15HA of the SEBI Act, especially when the Ld. SAT has on one hand affirmed the violations, and on the other hand ignored the charging section under which the penalty can be imposed i.e. Regulation 4 of the PFUTP Regulations and Section 15HA of the SEBI Act, thus indicating non application of mind.
- (P) **BECAUSE** the Ld. SAT failed to appreciate the true gamut of Section 15HA of the SEBI Act despite Hon'ble Supreme Court Order dated 13.02.2023 in a similar matter of *Securities and Exchange Board of India vs Sandip Ray & Ors.* passed in Civil Appeal (Diary No. (s) 791/2023 whereby on the issue of reduction of penalty from Rs. 3 Lakh to Rs. 75,000 imposed under Section 15HB which prescribes minimum penalty of Rs. One lakh, this Hon'ble Court observed that the Tribunal (SAT) has not taken into consideration the effect and mandate of Section 15HB of the SEBI Act, and thus modified the penalty from Rs. 75000 directed by SAT to the minimum penalty of Rs. 1 lakh mandated under Section 15HB of the SEBI Act.
- (Q) **BECAUSE** the Ld. SAT has failed to appreciate and follow the law laid down by the Hon'ble Supreme Court in *Chairman, Securities and Exchange Board of India Vs. Sri Ram Mutual Funds* reported in (2006) 5 SCC 361, wherein it was held that once the violation is conclusively established, the imposition of penalty becomes *sine qua non* of the violations.
- (R) **BECAUSE** the Ld. SAT has failed to appreciate and follow the law laid down by the Hon'ble Supreme Court in the case of *Securities and Exchange Board of India Vs. Shilpa Stock Brokers Pvt. Ltd.*

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(C.A No. 4640 of 2006) and *Securities and Exchange Board of India Vs. Saikala Associates Limited* reported in (2009) 7 SCC 432, wherein this Hon'ble Court has held that when something is to be done statutorily, then the Tribunal cannot travel beyond such statutory realm.

(S) BECAUSE the Ld. SAT has passed the impugned Order which is *per incuriam* in law.

(T) BECAUSE the impugned Order is *ex facie* not in consonance with the established principles of law and needs to be quashed.

4. The Appellant has not filed any other/similar Appeal/Petition before this Hon'ble Court or before any other Court against the Impugned Order dated 06.11.2023 passed by the Ld. SAT in Appeal No. 709 of 2022.
5. The impugned order passed by the Ld. SAT is dated 06.11.2023 and therefore the present appeal is preferred within the period as prescribed under Section 15Z of the SEBI Act.
6. The Appellant submits that it has paid the requisite fees in respect of the captioned Appeal.

PRAYER

It is, therefore, most respectfully prayed that this Hon'ble Court may graciously be pleased to:-

- a) Admit and allow the present Civil Appeal and set aside the Impugned Judgment and final order dated 06.11.2023 passed by Securities Appellate Tribunal, Mumbai in Appeal No. 709 of 2022;

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- b) Pass such other order or orders as this Hon'ble Court may deem fit and proper in facts and circumstances of the case.

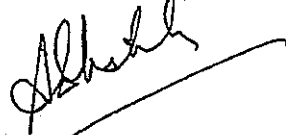
**FOR THIS ACT OF KINDNESS, THE APPELLANT, AS IN DUTY BOUND
SHALL EVER PRAY.**

Drawn By: Abhishek Singh

DRAWN ON: 09-01-2024

FILED ON: 12-01-2024

FILED BY



KASHAR & CO
ADVOCATE FOR THE APPELLANT

IN THE SUPREME COURT OF INDIA

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CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO. 1551 OF 2024

IN THE MATTER OF:-

SECURITIES AND EXCHANGE BOARD OF INDIA

...APPELLANT

VERSUS

PRAKASH C. KANUGO

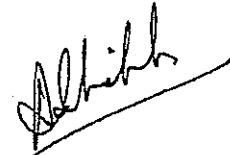
.....RESPONDENT

CERTIFICATE

Certified that the Civil Appeal is confined only to the pleadings before the Court/Tribunal whose order is challenged and the other documents relied upon in those proceedings. No additional facts, documents or grounds have been taken therein or relied upon in the Civil Appeal. It is further certified that the copies of the documents/annexures attached to the Civil Appeal are necessary to answer the questions of law raised in the petition or to make out grounds urged in the Civil Appeal for consideration of this Hon'ble Court. This certificate is given on the basis of the instructions given by the petitioner/ person authorized by the petitioner whose affidavit is filed in support of the Civil Appeal.

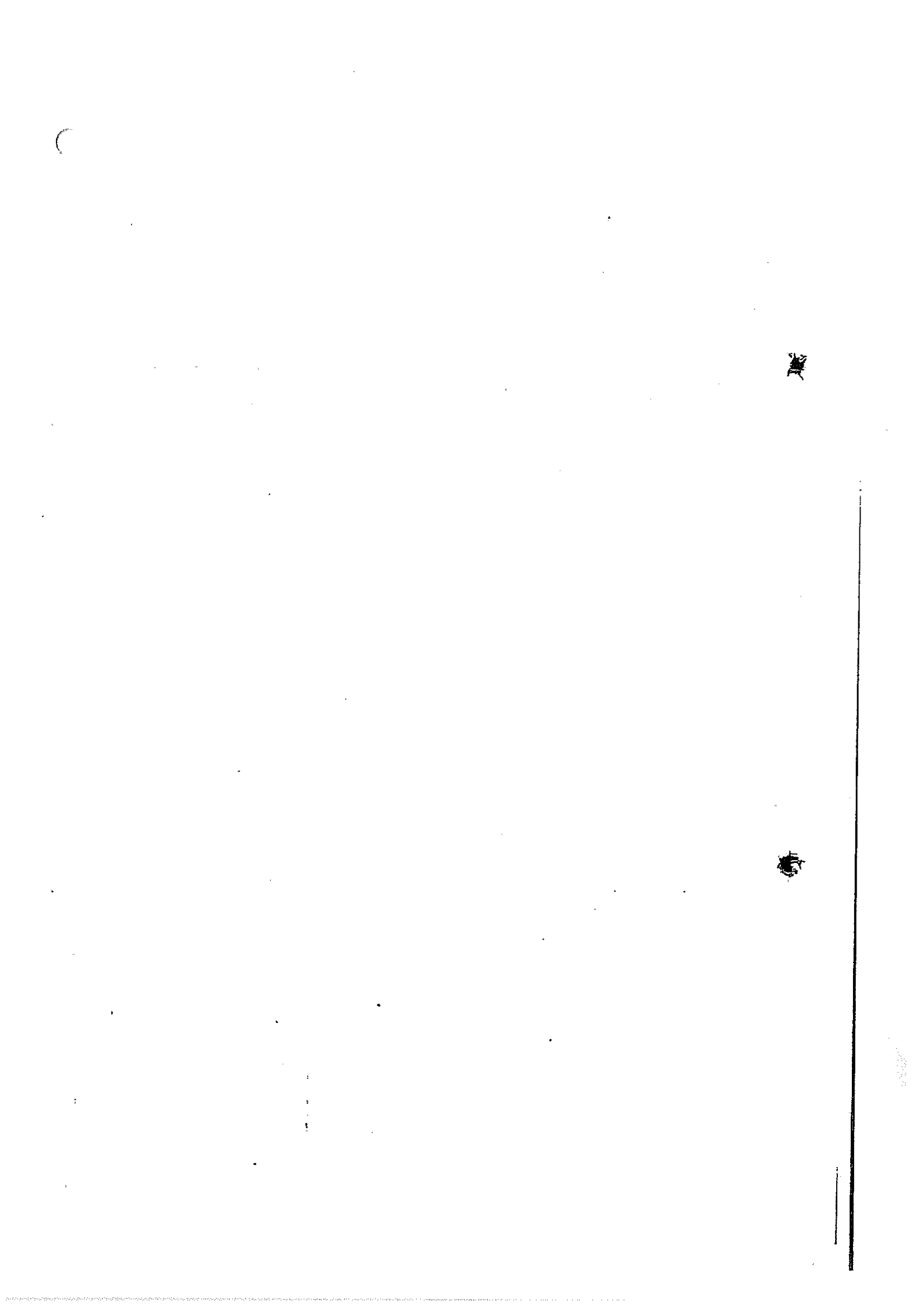
DRAWN ON: 09-01-2024

FILED ON: 12-01-2024



K. ASHAR & CO.

ADVOCATE FOR THE APPELLANT



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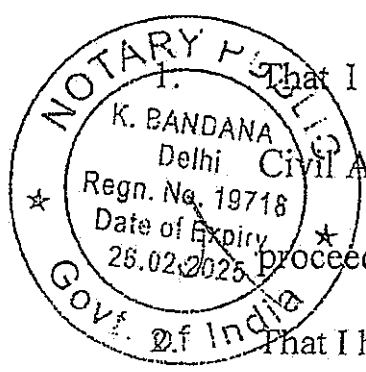
IN THE SUPREME COURT OF INDIA
CIVIL APPELLATE JURISDICTION
CIVIL APPEAL NO. 1551 OF 2024

IN THE MATTER OF:-

SECURITIES AND EXCHANGE BOARD OF INDIA
...APPELLANT
VERSUS
PRAKASH C. KANUGO & ANR.
.....RESPONDENTS

AFFIDAVIT

I, Chanda Saket, aged about adult, working as a Assistant General Manager (AGM), at Securities and Exchange Board of India, and presently posted at its Northern Regional Office, NBCC Complex, 8th Floor, Plate B, Tower-1, East Kidwai Nagar, New Delhi – 110023 do hereby solemnly affirm and state as under:-



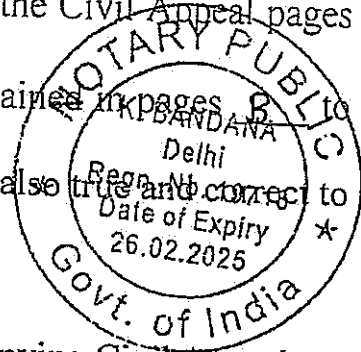
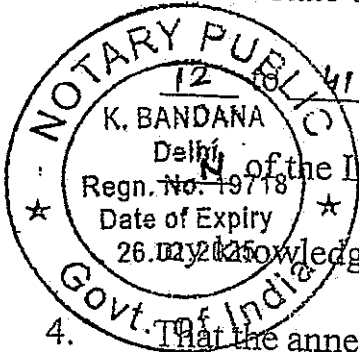
That I am with SEBI i.e. the Appellant in the abovementioned Civil Appeal and as such I am fully conversant with the facts and proceedings of the case.

That I have read and understood the contents of the accompanying Civil Appeal and IAs and I say that the facts stated therein are true

and correct to my knowledge.

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3. That I state that the contents contained in the Civil Appeal pages 12 to 41 paras 1 to 6 and those contained in pages 5 to 10 of the List of Dates and Synopsis are also true and correct to my knowledge and record of the case.



4. That the annexures annexed to the accompanying Civil Appeal are true copies of their respective originals.

IDENTIFIED

Chand

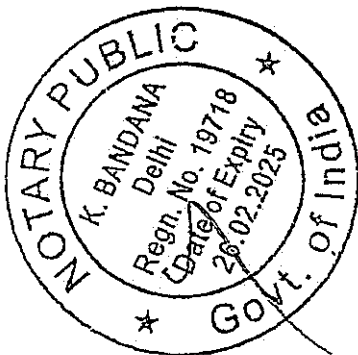
DEPONENT

VERIFICATION:-

Verified that the contents of the above mentioned affidavit are true and correct to the best of my knowledge and belief. Nothing false has been stated therein and no material fact has been concealed therefrom.

11 JAN 2024

Verified at Delhi on this _____ of JANUARY, 2024.



11 JAN 2024

Chand

DEPONENT

ATTESTED
NOTARY PUBLIC DELHI
Govt. of India
Mob.: 9654768498

APPENDIX

“Section 12A (d) & (e) of SEBI Act, 1992

- (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;”

SEBI (PFUTP) Regulations, 2003**4. Prohibition of manipulative, fraudulent and unfair trade practices**

- “(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a manipulative, fraudulent or an unfair trade practice in securities markets.

Explanation.— For the removal of doubts, it is clarified that any act of diversion, misutilisation or siphoning off of assets or earnings of a company whose securities are listed or any concealment of such act or any device, scheme or artifice to manipulate the books of accounts or financial statement of such a company that would directly or indirectly manipulate the price of securities of that company shall be and shall always be deemed to have been considered as manipulative, fraudulent and an unfair trade practice in the securities market.

“SEBI (PIT) Regulations, 2015

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:

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

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

- (i) the transaction is an off-market inter-se transfer between insiders who were in possession of the same unpublished price sensitive information without being in breach of regulation 3 and both parties had made a conscious and informed trade decision.¹⁹ [Provided that such unpublished price sensitive information was not obtained under subregulation (3) of regulation 3 of these regulations. Provided further that such off-market trades shall be reported by the insiders to the company within two working days. Every company shall notify the particulars of such trades to the stock exchange on which the securities are listed within two trading days from receipt of the disclosure or from becoming aware of such information.;

- (ii) the transaction was carried out through the block deal window mechanism between persons who were in possession of the unpublished price sensitive information without being in breach of regulation 3 and both parties had made a conscious and informed trade decision; Provided that such unpublished price sensitive information was not obtained by either person under sub-regulation (3) of regulation 3 of these regulations.
- (iii) the transaction in question was carried out pursuant to a statutory or regulatory obligation to carry out a bona fide transaction.
- (iv) the transaction in question was undertaken pursuant to the exercise of stock options in respect of which the exercise price was pre-determined in compliance with applicable regulations.]
- (v) in the case of non-individual insiders: –(a) the individuals who were in possession of such unpublished price sensitive information were different from the individuals taking trading decisions and such decision-making individuals were not in possession of such unpublished price sensitive information when they took the decision to trade; and (b) appropriate and adequate arrangements were in place to ensure that these regulations are not violated and no unpublished price sensitive information was communicated by the individuals possessing the information to the individuals taking trading decisions

and there is no evidence of such arrangements having been breached;

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

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

Regulation 7(2)(a) and 7 (2) (b) of SEBI (PIT) Regulations, 2015

Disclosures by certain persons

"(2) Continual Disclosures.

- (a) Every promoter, member of the promoter group, designated person and director of every company shall disclose to the

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company the number of such securities acquired or disposed of within two trading days of such transaction if the value of the securities traded, whether in one transaction or a series of transactions over any calendar quarter, aggregates to a traded value in excess of ten lakh rupees or such other value as may be specified;

(b) Every company shall notify the particulars of such trading to the stock exchange on which the securities are listed within two trading days of receipt of the disclosure or from becoming aware of such information. Explanation. —It is clarified for the avoidance of doubts that the disclosure of the incremental transactions after any disclosure under this sub-regulation, shall be made when the transactions effected after the prior disclosure cross the threshold specified in clause (a) of sub-regulation (2).”

Regulation 2(c) read with 9(3) of SEBI (PIT) Regulation, 2015

2(c) “compliance officer” means any senior officer, designated so and reporting to the board of directors or head of the organization in case board is not there, who is financially literate and is capable of appreciating requirements for legal and regulatory compliance under these regulations and who shall be responsible for compliance of policies, procedures, maintenance of records, monitoring adherence to the rules for the preservation of unpublished price sensitive

information, monitoring of trades and the implementation of the codes specified in these regulations under the overall supervision of the board of directors of the listed company or the head of an organization, as the case may be. [Explanation -For the purpose of this regulation, "financially literate" shall mean a person who has the ability to read and understand basic financial statements i.e. balance sheet, profit and loss account, and statement of cash flows.]

Code of Conduct.

"9 (3) Every listed company, intermediary and other persons formulating a code of conduct shall identify and designate a compliance officer to administer the code of conduct and other requirements under these regulations.

Section 2(i) read with Section 13, Section 16 and Section 18 of the SCRA, 1956

Definitions.

"2. In this Act, unless the context otherwise requires, —

(i) "spot delivery contract" means a contract which provides for, -

(a) actual delivery of securities and the payment of a price therefor either on the same day as the date of the contract or on the next day, the actual period taken for the despatch of the securities or the remittance of money therefor through the post being excluded from the computation of

the period aforesaid if the parties to the contract do not reside in the same town or locality;

(b)transfer of the securities by the depository from the account of a beneficial owner to the account of another beneficial owner when such securities are dealt with by a depository;"

Contracts in notified areas illegal in certain circumstances.

"13. If the Central Government is satisfied, having regard to the nature or the volume of transactions in securities in any State or States or area that it is necessary so to do, it may, by notification in the Official Gazette, declared this section to apply to such State or States or area, and thereupon every contract in such State or States or area which is entered into after the date of the notification otherwise than between members of a recognised stock exchange or recognised stock exchanges in such State or States or area or through or with such member shall be illegal : Provided that any contract entered into between members of two or more recognised stock exchanges in such State or States or area, shall—

- (i) be subject to such terms and conditions as may be stipulated by the respective stock exchanges with prior approval of Securities and Exchange Board of India;

- (ii) require prior permission from the respective stock exchanges if so stipulated by the stock exchanges with prior approval of Securities and Exchange Board of India.”

Power to prohibit contracts in certain cases.

“16. (1) If the Central Government is of opinion that it is necessary to prevent undesirable speculation in specified securities in any State or area, it may, by notification in the Official Gazette, declare that no person in the State or area specified in the notification shall, save with the permission of the Central Government, enter into any contract for the sale or purchase of any security specified in the notification except to the extent and in the manner, if any, specified therein.

(2) All contracts in contravention of the provisions of sub-section (1) entered into after the date of notification issued thereunder shall be illegal.”

Exclusion of spot delivery contracts from sections 13, 14, 15 and 17.

“18. (1) Nothing contained in sections 13, 14, 15 and 17 shall apply to spot delivery contracts.

(2) Notwithstanding anything contained in sub-section (1), if the Central Government is of opinion that in the interest of the trade or in the public interest it is expedient to regulate and control the business of dealing in spot delivery contracts also in any State or area (whether section 13 has been declared to apply

to that State or area or not), it may, by notification in the Official Gazette, declare that the provisions of section 17 shall also apply to such State or area in respect of spot delivery contracts generally or in respect of spot delivery contracts for the sale or purchase of such securities as may be specified in the notification, and may also specify the manner in which, and the extent to which, the provisions of that section shall so apply.”

Clauses 1, 2(b), 3, 4 and 11 of Code of Conduct prescribed for DPs in Schedule III of Reg.20 AA of SEBI (Depositories and participants) Regulations, 1996.

THIRD SCHEDULE -Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996

Regulation 20AA- CODE OF CONDUCT FOR PARTICIPANTS

- “1. A participant shall make all efforts to protect the interests of investors.
2. A participant shall always endeavour to—
 - (a) ...
 - (b) ensure that all professional dealings are effected in a prompt, effective and efficient manner;
3. A participant shall maintain high standards of integrity in all its dealings with its clients and other intermediaries, in the conduct of its business.

4. A participant shall be prompt and diligent in opening of a beneficial owner account, dispatch of the dematerialisation request form, rematerialisation request form and execution of debit instruction slip and in all the other activities undertaken by him on behalf of the beneficial owners
11. A participant shall maintain the required level of knowledge and competency and abide by the provisions of the Act, Rules, Regulations and circulars and directions issued by the Board. The participant shall also comply with the award of the Ombudsman passed under the Securities and Exchange Board of India (Ombudsman) Regulations, 2003."

SEBI ACT

Penalty for fraudulent and unfair trade practices.

15HA. If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty 1 [which shall not be less than five lakh rupees but which may extend to twenty - five crore rupees or three times the amount of profits made out of such practices, 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.

Penalty for failure to furnish information, return, etc.

15A. If any person, who is required under this Act or any rules or regulations made thereunder,— (b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations 66[or who furnishes or files false, incorrect or incomplete information, return, report, books or other documents], he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees;

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) *****
- (iii) *****

SCRA

Penalty for contravention where no separate penalty has been provided.

23H. Whoever fails to comply with any provision of this Act, the rules or articles or bye-laws or the regulations of the recognised stock exchange or directions issued by the Securities and Exchange Board of India 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.

Depositories Act, 1996

Penalty for contravention where no separate penalty has been provided.

19G. Whoever fails to comply with any provision of this Act, the rules or the regulations or bye-laws 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.



TRUE COPY

ANNEXURE-A-1

BEFORE THE ADJUDICATING OFFICER

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SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO.: Order/GR/HK/2022-23/18165-18169]

ORDER UNDER SECTION 15-I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995 AND SECTION 23-I OF SECURITIES CONTRACT (REGULATION) ACT, 1956 (HEREINAFTER REFERRED TO "SCRA") AND RULE 5 OF SECURITIES CONTRACT (REGULATIONS) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 2005 (HEREINAFTER REFERRED TO "SCR ADJUDICATION RULES")

In respect of:

Noticee No.	Noticee Name	PAN
1.	Shri Prakash C Kanugo	AFKPK2696F
2.	Dumet Wire India Pvt. Ltd	AAACD4629D
3.	Prakash Steelage Ltd.	AAACP6673K
4.	Ms. Palak Kohli Kochhar	DACPK5709R
5.	Ajcon Global Services Ltd.	AABCA1950B

In the matter of suspected insider trading activities of certain entities
in the scrip of Prakash Steelage Ltd.

(The aforesaid entities are hereinafter individually referred to by their respective names/

Noticee numbers and collectively as "Noticees", unless the context specifies otherwise)

Adjudication Order in the matter of suspected insider trading activities of certain entities in the scrip of Prakash Steelage Ltd.

BACKGROUND IN BRIEF

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1. Securities and Exchange Board of India ("SEBI") conducted investigation into the trading in the scrip of Prakash Steelage Limited (hereinafter referred to as "the company / PSL"), to ascertain whether trading in the scrip of PSL by certain suspected entities was based on unpublished price sensitive information ("UPSI") relating to financial results of PSL for the quarter ended March 31, 2016, during the period April 15, 2016 to May 30, 2016 (hereinafter referred to as "Investigation period/IP").
2. PSL, a Prakash Group entity, was started in the year 1996 to manufacture stainless steel welded pipes, tubes and U-tubes under one roof in India, through its Silvassa Division. PSL is one of the leader in Indian Stainless Steel Pipe and Tube industry. The shares of the Company were listed on Bombay Stock Exchange ("BSE") and National Stock Exchange ("NSE") w.e.f 25/08/2010. Pursuant to the investigation, the following are observed and alleged:
 - a) Shri Prakash C Kanugo (Noticee No. 1), the Managing Director of PSL, an insider, who while in possession of UPSI relating to the financial results of PSL for the period ended March 31, 2016 had traded/transferred (off-market) 25,00,000 shares of PSL to Dumet Wire India Pvt. Ltd. (Noticee No. 2)
 - b) Shri Prakash C Kanugo, though transferred the abovementioned shares on March 31, 2016 through off-market, but received consideration for the said shares from Dumet Wire India Pvt. Ltd. only on March 30, 2017 (Rs. 22,00,000) and on April 11, 2017 (Rs. 16,75,000), which is after a gap of almost a year from the transfer of shares, hence, Noticee No. 1 and 2 did not receive/transfer the consideration towards the aforesaid off-market transfer of 25,00,000 shares of PSL within the time period specified for off-market transactions.

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- c) Further, by not stating the consideration and by not providing any cogent reason/explanation in the Delivery Instruction Slip (DIS) for the transfer of 25,00,000 shares of PSL to Noticee No.2 on 04/05/2016 and disclosing the transaction wrongly to the stock exchanges, Noticee No. 1 had allegedly committed an act of deceit/fraud.
- d) Further, Shri Prakash C Kanugo, also allegedly failed to make disclosures to the Company under Regulation 7(2)(a) of the SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as 'PIT Regulations') with respect to the aforesaid off-market transaction(s) in the scrip of PSL during the UPSI period.
- e) The Company, Prakash Steelage Ltd. (Noticee No. 3), also failed to make disclosure to the stock exchanges under Regulation 7(2)(b) of the PIT Regulations in respect of the aforesaid transaction of Shri Prakash C Kanugo which was required as the transaction was made while in possession of UPSI.
- f) Palak Kohli Kochhar, (Noticee No. 4), the Company Secretary and Compliance Officer of the Company at the relevant point of time and who was responsible for administering disclosure requirements under the PIT Regulations, had also allegedly failed to discharge her responsibility as a Compliance Officer properly which is a statutory duty/obligation cast upon the Compliance Officer under the said regulations.
- g) The Depository Participant (DP) – Ajcon Global Services Ltd. (Noticee No. 5), had allegedly failed to exercise due diligence in monitoring the off market transaction between Shri Prakash C Kanugo and Dumet Wire India Pvt. Ltd. for 25,00,000 shares of PSL on 04/05/2016, as the shares were transferred without quoting consideration in DIS and also the reason for the transfer was not mentioned in the DIS except a tick mark on "Others" option. Hence, there was allegedly a failure to monitor the transactions of the client and to ascertain

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as to whether such transaction executed was genuine transaction and was not of suspicious in nature.

3. SEBI had, therefore, initiated adjudication proceedings *inter alia* against Noticee No. 1, Shri Prakash C Kanugo, under Section 15G, 15HA and 15A(b) of the SEBI Act, 1992 and Section 23H of the SCRA, for the alleged violation of Section 12A(d) & (e) of SEBI Act, Regulations 4(1) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2015 (hereinafter referred to as "PFUTP Regulations"), Section 2(i) read with Section 13, 16 and 18 of SCRA and Regulation 4(1) and 7(2)(a) of PIT Regulations. For Noticee No. 2, Dumet Wire India Pvt. Ltd., adjudication proceedings were initiated under Section 23H of SCRA for the alleged violation of Section 2(i) read with Section 13, 16 and 18 of SCRA. For Noticee No. 3, PSL, adjudication proceedings were initiated under Section 15A(b) of SEBI Act for the alleged violation of regulation 7(2)(b) of PIT Regulations. For Noticee No. 4, Ms. Palak Kohli Kochhar, adjudication proceedings were initiated under section 15HB of SEBI Act for alleged violation of Regulation 2(c) read with 9(3) of the PIT Regulations, 2015. Adjudication proceedings were also initiated against, Noticee No.5, Ajcon Global Services Ltd., under Section 15HB of SEBI Act, 1992 read with Section 19G of the Depositories Act, 1996 for the alleged violation of SEBI Master circular CIR/MRD/DP/6/2015 dated May 07, 2015 and Clauses 1, 2(b), 3, 4 and 11 of Code of Conduct prescribed for DPs in Schedule III of Regulation 20 AA SEBI (Depositories and participants) Regulations, 1996 (DP Regulations, 1996).

SECRET

Date: 11/08/2022

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APPOINTMENT OF THE ADJUDICATING OFFICER

4. The undersigned has been appointed as the Adjudicating Officer (hereinafter referred to as the "AO") vide order dated February 08, 2021, conveyed vide communique dated February 11, 2021. The undersigned has been appointed as the AO under Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as "SEBI Adjudication Rules") read with Section 15-I of the SEBI Act and under Rule 3 of Securities Contracts (Regulation) (Procedure for holding Inquiry and Imposing Penalties) Rules, 2005 (hereinafter referred to as "SCR Adjudication Rules") to inquire into and adjudge under Section 15A(b), 15G, 15HA, 15HB of the SEBI Act, 1992, Section 23H of the SCRA and Section 19G of Depositories Act, 1996 for the aforesaid violations alleged to have been committed by the Noticees.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

5. A common Show Cause Notice dated April 05, 2022 (SCN) was issued to the Noticees in terms of Section 15-I of the SEBI Act, 1992 and Section 23 E of the SCRA read with Rule 4 of SEBI Adjudication Rules and Rule 4 of SCR Adjudication Rules to show cause as to why an enquiry should not be initiated and penalty be not imposed under Section 15HA, 15HB, 15A(b) and 15G of the SEBI Act 1992 and/or under section 23H of the SCRA and/or under Section 19G of the Depositories Act, 1996, as applicable, for the alleged violations specified in the

SCNs. The copies of the documents relied upon in the SCN were provided to Noticees along with the SCN as annexures.

6. The said SCN and annexures issued to the Noticees were duly delivered through Speed Post (SPAD). The details of date of the reply of the Noticees are as under:

Name of the Noticee	Reply dated
Shri Prakash C Kanugo (Noticee No. 1)	June 21 & July 19, 2022
Dumet Wire India Pvt. Ltd. (Noticee No. 2)	June 02 & July 20, 2022
Prakash Steelage Ltd. (Noticee No. 3)	May 10 & July 19, 2022
Ms. Palak Kohli Kochhar (Noticee No. 4)	May 05 & July 18, 2022
Ajcon Global Services Ltd. (Noticee No. 5)	May 13 & July 20, 2022

7. An opportunity of personal hearing was granted to the Noticees on July 15, 2022. The Hearing Notices for the said hearing were duly served to the above mentioned Noticees, vide e-mail dated April 21, 2022. All the Noticees attended the said personal hearing through their Authorised Representatives.

8. The summary of the replies submitted by Noticees are as under:

Noticee No. 1 (Mr. Prakash C. Kanugo) in his replies has inter alia submitted the following:

- The SCN is issued after a gap of almost 6 years from the date of alleged trades in PSL. Hence, there is an inordinate delay.
- The Noticee was not involved in the process of finalization of accounts or preparation of financial results, hence was not in possession of UPSI.

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c. Noticee did not trade in PSL shares as alleged. Rather the transfer of 25,00,000 shares in off market to Dumet Wire was in the nature of security towards future financial obligation and not otherwise.

d. Since pledging of shares is not required to be disclosed under PIT Regulations the disclosure was made under SAST.

Noticee No. 2 (Dumet Wire India Pvt. Ltd.) in his replies has inter alia submitted the following:

a. Due to certain disputes and differences between us and Noticee No. 1, the financial transaction could not materialise on immediate basis.

b. After some negotiation and reconciliation between us and Noticee No.1 an amount of Rs. 22 lakhs and 16.75 lakhs were transferred for the said off market transfer of shares on 30.03.2017 and 11.04.2017 respectively.

Noticee No. 3 and 4 (Prakash Steelage Ltd. and Ms. Palak Kohli Kochhar) in their replies has inter alia submitted the following:

a. The company made disclosure to exchanges as per the information received from Mr. Prakash C Kanugo. What we received we forwarded to the exchange. We made all the appropriate disclosures in timely manner.

Noticee No. 5 (Ajcon Global Services Ltd.)in their replies has inter alia submitted the following:

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- a. The function of DP is that of facilitator in the securities market and not to investigate the transactions.
 - b. All the due diligence required was carried out and the transaction was verified from the BOs and prima facie no suspicion arose regarding the legitimacy of the transaction.
 - c. Due diligence should be construed from the perspective of reasonable and prudent person in the ordinary course of business.
9. In view of the above, I note that principles of natural justice have been duly complied with, as SCNs and Hearing Notices were duly served upon the Noticees and sufficient opportunity was also granted to the Noticees to reply to the SCN and appear for hearing.

CONSIDERATION OF ISSUES

10. Considering the above facts, in the present proceedings, the examination has been done with respect to the allegations against the Noticees taking into consideration of their replies to the SCN and the documents / material available on record. The issues that arise for consideration in the present case are:

- I(a). Whether Noticee No.1, by entering into the off-market transaction while in possession of UPSI and by non-disclosure, violated the provisions of Section 12A (d) and (e) of SEBI Act, 1992, read with Regulation 4(1) and Regulation 7(2)(a) of the PIT Regulations, 2015?

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l(b). Whether Noticee No. 1, while entering into the off-market transaction and making wrong disclosure to the company, violated Regulation 4(1) of the PFUTP Regulations, 2003?

l(c). Whether Noticee No. 1 and 2, by not receiving/ transferring consideration towards the off-market transfer of 25,00,000 shares, violated Section 2(i) read with Section 13, 16 and 18 of the SCRA, 1956?

l(d). Whether Noticee No. 3, failed to make disclosure to the stock exchanges under Regulation 7(2)(b) of the PIT Regulations, 2015 with regard to the transaction of Noticee No.1 in the scrip of PSL during the UPSI period?

l(e). Whether Noticee No. 4, being the Company Secretary and Compliance Officer of the Company at the relevant point of time, violated Regulation 2(c) read with 9(3) of the PIT Regulations, 2015?

l(f). Whether Noticee No. 5, being the Depository Participant (DP), had failed to comply with the provisions of para 1.9(vii), (viii) of SEBI Master circular CIR/MRD/DP/6/2015 dated May 07, 2015 and failed to exercise due diligence in monitoring the off market transaction between Noticee No.1 and Noticee No.2 and violated the provisions of Clauses 1, 2(b), 3, 4 and 11 of Code of Conduct prescribed for DPs in Schedule III of Regulation 20 AA of the DP Regulations, 1996?

II. Does the violation, if established, attract monetary penalty under Section 15A(b), 15HA, 15G, 15HB of the SEBI Act, 1992, Section 19G of Depositories Act, 1996 and Section 23H of SCRA, as applicable?

III. If yes, then what should be the quantum of penalty?

OBSERVATIONS AND FINDINGS

11. Before I proceed further with the matter, it is pertinent to mention the relevant provisions of the SEBI Act, 1992, SCRA, PIT Regulations, PFUTP Regulations, Depositories Act, 1996 and DP Regulations, 1996 alleged to have been violated by the Noticees. The same are reproduced below:

"Section 12A (d) & (e) of SEBI Act, 1992

(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;"

SEBI (PFUTP) Regulations, 2003

4. Prohibition of manipulative, fraudulent and unfair trade practices

"(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a manipulative, fraudulent or an unfair trade practice in securities markets.

Explanation.—For the removal of doubts, it is clarified that any act of diversion, misutilisation or siphoning off of assets or earnings of a company whose securities are listed or any concealment of such act or any device, scheme or artifice to manipulate the books of accounts or financial statement of such

a company that would, directly or indirectly, manipulate the price of securities of that company shall be and shall always be deemed to have been considered as manipulative, fraudulent and an unfair trade practice in the securities market."

"SEBI (PIT) Regulations, 2015

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;

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

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

- (i) the transaction is an off-market inter-se transfer between insiders who were in possession of the same unpublished price sensitive information without being in breach of regulation 3 and both parties had made a conscious and informed trade decision.¹⁹ Provided that such unpublished price sensitive information was not obtained under sub-regulation (3) of regulation 3 of these regulations. Provided further that such off-market trades shall be reported by the insiders to the company within two working days. Every company shall notify the particulars of such trades to the stock exchange on which the securities are listed within two trading days from receipt of the disclosure or from becoming aware of such information.;
- (ii) the transaction was carried out through the block deal window mechanism between persons who were in

possession of the unpublished price sensitive information without being in breach of regulation 3 and both parties had made a conscious and informed trade decision;

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

- (iii) the transaction in question was carried out pursuant to a statutory or regulatory obligation to carry out a bona fide transaction.
- (iv) the transaction in question was undertaken pursuant to the exercise of stock options in respect of which the exercise price was pre-determined in compliance with applicable regulations.]
- (v) in the case of non-individual insiders:—(a) the individuals who were in possession of such unpublished price sensitive information were different from the individuals taking trading decisions and such decision-making individuals were not in possession of such unpublished price sensitive information when they took the decision to trade; and (b) appropriate and adequate arrangements were in place to ensure that these regulations are not violated and no unpublished price sensitive information was communicated by the individuals possessing the information to the individuals taking trading decisions and there is no evidence of such arrangements having been breached;
- (vi) the trades were pursuant to a trading plan set up in accordance with regulation

NOTE: When a person who has traded in securities has been in possession of unpublished price sensitive information, his trades would be presumed to have been motivated by the knowledge and

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

Regulation 7(2)(a) and 7 (2) (b) of SEBI (PIT) Regulations, 2015

Disclosures by certain persons

"(2) Continual Disclosures.

(a) Every promoter, member of the promoter group, designated person and director of every company shall disclose to the company the number of such securities acquired or disposed of within two trading days of such transaction if the value of the securities traded, whether in one transaction or a series of transactions over any calendar quarter, aggregates to a traded value in excess of ten lakh rupees or such other value as may be specified;

(b) Every company shall notify the particulars of such trading to the stock exchange on which the securities are listed within two trading days of receipt of the disclosure or from becoming aware of such information. Explanation. —It is clarified for the avoidance of doubts that the disclosure of the incremental transactions after any disclosure under this sub-regulation, shall be made when the transactions effected after the prior disclosure cross the threshold specified in clause (a) of sub-regulation (2)."

Regulation 2(c) read with 9(3) of SEBI (PIT) Regulations, 2015

2 (c) "compliance officer" means any senior officer, designated so and reporting to the board of directors or head of the organization in case board is not there, who is financially literate and is capable of appreciating requirements for legal and regulatory compliance under these regulations and who shall be responsible for compliance of policies, procedures, maintenance of records, monitoring adherence to the rules for the preservation of unpublished price sensitive information, monitoring of trades and the implementation of the codes specified in these regulations under the overall supervision of the board of directors of the listed company or the head of an organization, as the case may be. [Explanation -For the purpose of this regulation, "financially literate" shall mean a person who has the ability to read and understand basic financial statements i.e. balance sheet, profit and loss account, and statement of cash flows.]

Code of Conduct.

"9 (3) Every listed company, intermediary and other persons formulating a code of conduct shall identify and designate a compliance officer to administer the code of conduct and other requirements under these regulations."

Section 2(i) read with Section 13, Section 16 and Section 18 of the SCRA, 1956

Definitions.

"2. In this Act, unless the context otherwise requires, —

(i) "spot delivery contract" means a contract which provides for, -

(a) actual delivery of securities and the payment of a price therefor either on the same day as the date of the contract or on the next day, the actual period taken for the despatch of the securities or the remittance of money therefor through the post being excluded from the computation of the period aforesaid if the parties to the contract do not reside in the same town or locality;

(b) transfer of the securities by the depository from the account of a beneficial owner to the account of another beneficial owner when such securities are dealt with by a depository;"

Contracts in notified areas illegal in certain circumstances.

"13. If the Central Government is satisfied, having regard to the nature or the volume of transactions in securities in any State or States or area that it is necessary so to do, it may, by notification in the Official Gazette, declared this section to apply to such State or States or area, and thereupon every contract in such State or States or area which is entered into after the date of the notification otherwise than between members of a recognised stock exchange or recognised stock exchanges in such State or States or area or through or with such member shall be illegal : Provided that any contract entered into between members of two or more recognised stock exchanges in such State or States or area, shall—

- (i) be subject to such terms and conditions as may be stipulated by the respective stock exchanges with prior approval of Securities and Exchange Board of India;
- (ii) require prior permission from the respective stock exchanges if so stipulated by the stock exchanges with prior approval of Securities and Exchange Board of India."

Power to prohibit contracts in certain cases.

"16. (1) If the Central Government is of opinion that it is necessary to prevent undesirable speculation in specified securities in any State or area, it may, by notification in the Official Gazette, declare that no person in the State or area specified in the notification shall, save with the permission of the Central Government, enter into any contract for the sale or purchase of any security specified in the notification except to the extent and in the manner, if any, specified therein.

(2) All contracts in contravention of the provisions of sub-section (1) entered into after the date of notification issued thereunder shall be illegal."

Exclusion of spot delivery contracts from sections 13, 14, 15 and 17.

"18. (1) Nothing contained in sections 13, 14, 15 and 17 shall apply to spot delivery contracts.

(2) Notwithstanding anything contained in sub-section (1), if the Central Government is of opinion that in the interest of the trade or in the public interest it is expedient to regulate and control the business of dealing in spot delivery contracts also in any State or area (whether section 13 has been declared to apply to that State or area or not), it may, by notification in the Official Gazette, declare that the provisions of section 17 shall also apply to such State or area in respect of spot delivery contracts generally or in respect of spot delivery contracts for the sale or purchase of such securities as may be specified in the notification, and may also specify the manner in which, and the extent to which, the provisions of that section shall so apply."

Clauses 1, 2(b), 3, 4 and 11 of Code of Conduct prescribed for DPs in Schedule III of Reg.20 AA of SEBI (Depositories and participants) Regulations, 1996.

THIRD SCHEDULE -Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996

Regulation 20AA- CODE OF CONDUCT FOR PARTICIPANTS

"1. A participant shall make all efforts to protect the interests of investors.

2. A participant shall always endeavour to—

(a) ...

(b) ensure that all professional dealings are effected in a prompt, effective and efficient manner;

3. A participant shall maintain high standards of integrity in all its dealings with its clients and other intermediaries, in the conduct of its business.
4. A participant shall be prompt and diligent in opening of a beneficial owner account, dispatch of the dematerialisation request form, rematerialisation request form and execution of debit instruction slip and in all the other activities undertaken by him on behalf of the beneficial owners
-
11. A participant shall maintain the required level of knowledge and competency and abide by the provisions of the Act, Rules, Regulations and circulars and directions issued by the Board. The participant shall also comply with the award of the Ombudsman passed under the Securities and Exchange Board of India (Ombudsman) Regulations, 2003."

SEBI ACT

Penalty for fraudulent and unfair trade practices.

15HA. If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty ¹[which shall not be less than five lakh rupees but which may extend to twenty - five crore rupees or three times the amount of profits made out of such practices, 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.

Penalty for failure to furnish information, return, etc.

15A. If any person, who is required under this Act or any rules or regulations made thereunder,— (b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations 66[or who furnishes or files false, incorrect or incomplete information, return, report, books or other documents], he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees;

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) *****

(iii) *****

SCRA

Penalty for contravention where no separate penalty has been provided.

23H. Whoever fails to comply with any provision of this Act, the rules or articles or bye-laws or the regulations of the recognised stock exchange or directions issued by the Securities and Exchange Board of India 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.

Depositories Act, 1996

Penalty for contravention where no separate penalty has been provided.

19G. Whoever fails to comply with any provision of this Act, the rules or the regulations or bye-laws made or directions issued by the Board thereunder

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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

Preliminary Issue raised by Noticee No. 1

12. Noticee No. 1 in his replied has, among other things, raised objection w.r.t. the delay in issuing SCN by SEBI. As per his contention, the SCN is issued after a gap of 6 years from the date of the off-market transaction i.e. May 04, 2016 and the SCN is liable to be quashed on the ground of inordinate delay.
13. Addressing the above contention, I note that SEBI received report of NSE on December 13, 2016 whereby some alerts were generated by NSE after carrying out the analysis of trading activity as there was suspicion of Insider trading in the scrip of PSL. Subsequent to which investigation was carried out by SEBI. The investigation got completed in 2021 and subsequent to that SCN was issued to the Noticees.
14. I note that, investigation for insider trading involves very complex and lengthy procedures. Rarely there are direct evidences and often huge amount of transactions need to be examined. Considering the gravity of charge involved in insider trading which attracts penalty amount higher than other violations under SEBI Act, investigation requires extra diligence and effort. Process of investigation in such cases are complex and involves collecting lots of data, examining that data, appreciation of evidence and communicating the persons involved or related to the

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case. This process does take some time as the dependency is often on outside sources. Hence, a well carried out investigation specially in complex issues like insider trading does take considerable time. Further, I note that there is no limitation prescribed in SEBI act for initiating proceedings for violation of securities laws. In view of the above, the objection raised by Noticee No.1 is rejected. I shall proceed with the Issues.

Issue I(a): Whether Noticee No.1, by entering into the off-market transaction while in possession of UPSI and by non-disclosure, violated the provisions of Section 12A (d) and (e) of SEBI Act, 1992, read with Regulation 4(1) and Regulation 7(2)(a) of the PIT Regulations, 2015?

15. I note that the aforesaid provisions, among others, prohibits an insider, from dealing in securities of a company listed on any stock exchange when he is in possession of any UPSI and any person who deals in securities in contravention thereof is guilty of insider trading. Further, I note that there is a requirement stipulated under PIT Regulations which makes it mandatory for the Directors of every listed company to disclose transactions in shares of the company amounting to excess of Rupees Ten lakhs per calendar quarter.
16. I am of the view that for proving the charge of insider trading the following questions needs to be answered in affirmative:
- a. Whether the information was price sensitive information?

b. If so, whether the same was unpublished?

c. Whether the Noticee was an 'insider'?

d. Whether the Noticee had traded in the shares while in possession of or on the basis of UPSI?

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17. It was alleged that Noticee No.1 when entered into the transaction of transferring 25,00,000 shares on May 04, 2016, the financial results of PSL for the FY 2015-16 were yet to be announced and were still being prepared and remained unpublished i.e. Noticee traded while in possession of UPSI.

a. Whether the information was price sensitive?

18. Addressing the first question, the information in the instant case is the 'financial results' of PSL for the FY 2015-16. Price sensitive information, per se, is not defined in the PIT Regulations but under the definition of '*Unpublished Price Sensitive Information*' the same is explained. As per Regulation 2(1)(n) of PIT Regulations '*unpublished price sensitive information*' means any information, relating to a company or its securities, directly or indirectly, that is not generally available which upon becoming generally available, is likely to materially affect the price of the securities and shall, ordinarily including but not restricted to, information relating to the following: –

(i) *financial results;*

As observed from the definition, I note that '*financial results*' of a company are itself tantamount to information which is price sensitive.

b. If so, whether the same was unpublished?

- (19. Addressing the second question, it is understood that the information remains unpublished till it is made known to the public at large. Disclosing the same to the stock exchanges by listed companies is considered as publishing it and subsequent to that the UPSI period ends. Listed companies has an obligation to make such disclosures to the stock exchanges where the securities of the company are listed in time bound manner (within two trading days).
20. I note that the financial results of PSL for quarter ending March 31, 2016 were announced on May 30, 2016 after market hours. Thus, I hold that the financial results were unpublished during the IP in the instant case and remained UPSI.

c. Whether the Noticee was an 'insider'?

21. On the question of Noticee No. 1 being '*Insider*', the relevant provision of PIT Regulations is perused. It states:

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

i) a connected person; or

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

As per the definition of '*Insider*' a connected person shall be deemed to be an insider. A '*connected person*' as per the PIT Regulations is:

2 (d) "connected person" means, -

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(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. (emphasis supplied)

22. From the aforementioned definition, it is clear that a director, officer or an employee of the company shall be deemed to be a connected person and hence an Insider for the purpose of PIT Regulations. From the Annual Report of PSL for 2016-17, I note that following persons were in the management of PSL:

Name	Designation	DIN	Original date of appointment	Date of cessation
Prakash C. Kanugo	Chairman and Managing Director	00286366	09/05/1991	NA
Ashok M. Seth	Executive Director and Chief Financial Officer	00309706	09/11/1993	NA
Hemant P. Kanugo	Whole Time Director	00309894	30/09/2003	NA
Himanshu J. Thaker	Independent Director	02325297	25/08/2008	NA
A. Prakashchandra Hegde	Independent Director	02266510	28/05/2012	NA
Neetta K. Bokaria	Independent Director	07101155	30/03/2015	NA

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23. From the above table, I note that Noticee No.1, at the relevant point of time was holding the position of Chairman and Managing Director in PSL and has significant influence by virtue of holding the top most position in the company for more than two decades i.e. since 1991. Further, I also note that Noticee No. 1 is one of the promoter of PSL. For this, I hold the Noticee No.1 to be an 'Insider' with respect to the instant UPSI.
24. The above facts establish that, Noticee No. 1, being a Chairman cum Managing Director, is very much related and is reasonably expected to have access to the UPSI related to the said financial results of PSL for quarter ending March 2016.
25. Before moving forward, it is pertinent to mention Regulation 4(2) of PIT Regulations, which states:

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

d. Whether the Noticee had traded in the shares while in possession of or on the basis of UPSI?

26. For the above question, it is pertinent to examine the period of UPSI i.e., financial results of PSL and the events related to the development of financial results of PSL for the quarter ended March 31, 2016.

27. I note that investigation observed the following chronology of events related to financial results for quarter ended March 31, 2016:

S.No.	Events	Date
1.	Finalization of accounts internally	15-04-2016 to 30-04-2016
2.	Commencement of statutory audit for FY 2015-16	03-05-2016
3.	Submission of draft financial accounts to management	18-05-2016
4.	Discussion with management	19-05-2016
5.	Finalization of financial accounts	28-05-2016
6.	Placing before the Board	30-05-2016

28. Based on the chronology of events mentioned above, and from PSL's letter dated September 04, 2020, I note that for finalization of financial result, the updation of data entry for sales, purchases, bank payments/ receipts, petty cash vouchers and journal vouchers were carried out about 15 days after the year end. I note that, the UPSI related to financial results of PSL for the quarter and financial year ended 31st March, 2016 had come into existence on April 15, 2016. Investigation observed that as per the corporate announcement of PSL dated May 20, 2016, the trading window for dealing in the securities of the Company was closed for the purpose of declaration of Audited Financial results of the Company for the quarter and financial year ended March 31, 2016 from May 21, 2016.

29. The corporate announcement of Audited Financial Results (Standalone & Consolidated) for the quarter and FY ended March 31, 2016 was made by PSL to NSE on May 30, 2016, 20:47 hours and to BSE on May 31, 2016, 11:26:10 hours.

In view of the above, I note that the period of UPSI would be April 15, 2016 to May 30, 2016, 20:47 hrs.

30. Further I note from the IR that, Noticee No.1 had entered into off-market trade in the shares of PSL through depository (CDSL). The details of said trade are as follows:

Depository	Scrip Name	Date	Source Client Name	Target Client Name	Transferred Qty.	Market/Off-market
CDSL	Prakash Steelage Limited	04/05/2016	Prakash C Kanugo	Dumet Wire India Pvt. Ltd.	2500000	Off-Market

From above, it can be observed that the shares were transferred by Noticee No. 1 on May 04, 2016 and the period of UPSI was April 15, 2016 to May 30, 2016. On the basis of the above observations, there is strong presumption that the transfer of shares by Noticee No. 1 on May 04, 2016 was on the basis of UPSI as Noticee No. 1 was aware of the said UPSI, as established above. Reg. 4 of PIT Regulations says

"When a person who has traded in securities has been in possession of unpublished price sensitive information, his trades would be presumed to have been motivated by the knowledge and awareness of such information in his possession. The reasons for which he trades or the purposes to which he applies the proceeds of the transactions are not intended to be relevant for determining whether a person has violated the regulation. He traded when in possession of unpublished price sensitive information is what would need to be demonstrated at the outset to bring a charge. Once this is established, it would be open to the insider

to prove his innocence by demonstrating the circumstances mentioned in the proviso, failing which he would have violated the prohibition." [emphasis supplied]

31. I note that Noticee No. 1 has disputed the above claim and termed the said transfer of 25,00,000 shares to Noticee No. 2 on May 04, 2016 as a security for the funds that he wanted to borrow from Noticee No. 2. In this regard, I note that even if it is considered as financing transaction and the shares were pledged, proper mechanism to pledge of the shares (dematerialized) was not followed in the instant case. Therefore, it appears that the said transfer was tried to be disguised as a creation of encumbrance. Further, I note that the definition of the term 'trading' as per the PIT regulations states that '2(l) "trading" means and includes subscribing, buying, selling, dealing, or agreeing to subscribe, buy, sell, deal in any securities, and "trade" shall be construed accordingly.'

32. I further note that while replying to the SCN, Noticee No. 1 has also submitted a letter dated May 04, 2016 addressed to Noticee No. 2, which states as below:

"I, Prakash C. Kanugo, transferring 2500000 shares of Prakash Steelage Ltd. to your demat account to meet our financial obligations to you.

You are free to sell the same or to make any use of them without referring to us being absolute owner." (emphasis supplied)

With regards to the claim of the Noticee that the shares are given as security, I note that, in general, when shares are given as security then the same can only be sold

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in case of default by the borrower and not otherwise. However, from the aforesaid letter, I note that the lender was given rights to freely sell the shares without any condition of borrower being in default.

33. Further, investigation also observed that the Delivery Instruction Slip (DIS), through which the said transaction was done, had no mention of the consideration and any specific reason for the transfer of shares.

34. In view of the above observations, I note that the 2500000 shares of PSL were traded between Noticee No.1 and Noticee No. 2 on May 04, 2016, during which Noticee No. 1 was in possession of UPSI.

35. Since all the questions raised in Para 13 are answered in affirmative, the charge of Insider trading against Noticee No.1 stands established. The relevant provision of PIT Regulations is reproduced below:

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.

36. I also note that none of the exceptions, provided under provisos of Regulation 4 of PIT Regulations, are neither applicable in the instant case, nor pleaded by Noticee.

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In view of the above, I hold that Noticee No. 1 has violated Section 12A (d) & (e) of SEBI Act, 1992 and Regulation 4(1) of PIT Regulations.

37. I note that Noticee No. 1, who is Managing Director and Promoter of PSL, had transferred 2500000 shares of PSL on May 04, 2016 to Noticee No. 2. In this regard, as per Regulation 7 (2)(a) of PIT Regulations, every promoter, employee and director of every company is required to disclose the same to the company within two trading days from the date of transaction, if the amount of such transaction exceeds ten lakh rupees. The relevant provision is reproduced below:

7. Disclosures by certain persons

(2) Continual Disclosures.

(a). Every promoter, employee and director of every company shall disclose to the company the number of such securities acquired or disposed of within two trading days of such transaction if the value of the securities traded, whether in one transaction or a series of transactions over any calendar quarter, aggregates to a traded value in excess of ten lakh rupees or such other value as may be specified;

[emphasis supplied]

38. However, for the aforesaid transaction, I note that the disclosure was made by the Company on May 09, 2016 to the exchange under Regulation 31(1) and 31(2) of SEBI (Substantial Acquisition of Shares & Takeovers) Regulations, 2011 based on the submissions made by the Noticee stating that Prakash C Kanugo has created

an encumbrance over the said 25,00,000 shares of PSL on May 04, 2016. I further note that Noticee No. 1 has submitted that he had given these shares as security to Noticee No. 2 (Dumet Wire India Pvt. Ltd.) in order to raise some fund which he required urgently and as the same could not materialise and due to non-transfer of funds by Noticee No. 2, proper agreement between Noticee No.1 and 2 could not be entered.

39. Further I note from the Investigation Report that the DIS obtained from CDSL (Central Depository Services (India) Limited) for the aforesaid transaction revealed that there was an off-market transaction done between Noticee No.1 and 2. However, the amount of consideration was not mentioned in DIS and in the column to provide reason for the said transaction, 'Others' option was selected by Noticee No.1 without any further remarks. Further, I also note that Noticee No. 1 had submitted the DIS along with a letter mentioning the reason for transfer of shares as 'security' to Noticee No. 2 which is not correct as already established in para 28 - 31 above.

Valuation of shares transferred by Noticee No. 1

40. Noticee No. 1 and 2 have stated that the consideration for the aforesaid transfer of shares on 04/05/2016 was Rs. 38.75 lakhs. Dumet Wire India Pvt. Ltd. (Noticee No. 2) submitted that the consideration for the transfer of shares was paid to Shri Prakash C Kanugo (Noticee No. 1) from its bank account – 0430102000040178 (Axis Bank). As per the bank account statement of Noticee No. 2, fund transfer of

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Rs. 22,00,000 on March 30, 2017 and Rs. 16,75,000 on April 11, 2017 to Noticee No. 1 was observed (closing price of the shares of PSL on May 04, 2016 @Rs. 5.4 each share = Rs.5.4 x 25,00,000 shares = Rs.1,35,00,000).

41. The above facts clearly establish that the value of transaction exceeds more than 10 lakhs. Accordingly, Noticee No. 1 was required to disclose the same under Regulation 7 (2) (a) of PIT Regulations to the company within two trading days which he failed. In view of the same, I hold that Noticee No.1 have violated Regulation 7(2) (a) of PIT Regulations.

Issue 1(b): *Whether Noticee No. 1, while entering into the off-market transaction and making wrong disclosure to the company, violated Regulation 4(1) of the PFUTP Regulations, 2003?*

42. Regulation 4(1) of PFUTP Regulations, 2003 states:

4. Prohibition of manipulative, fraudulent and unfair trade practices

(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities. (emphasis supplied)

'fraud' is defined under Reg. 2(1)(c) of PFUTP Regulations which states:

(c) "fraud" includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce another

person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss, and shall also include—

(1) a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment;

(2) a suggestion as to a fact which is not true by one who does not believe it to be true;

(3) an active concealment of a fact by a person having knowledge or belief of the fact;

...

(5) a representation made in a reckless and careless manner whether it be true or false;

(6) any such act or omission as any other law specifically declares to be fraudulent,

...

(8) a false statement made without reasonable ground for believing it to be true.

43.. I note that Noticee No. 1 has submitted in his reply that he was badly in need of funds to infuse in the company and therefore the said transfer of 25,00,000 shares of PSL on May 04, 2016 was made as 'security'. He further stated that due to certain dispute between Noticee No. 1 and Noticee No.2, the financial transaction could not immediately materialize. In this regard, I note that though he claims that there was an urgency of funds and till almost one year the said transaction could

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not materialize, he could not produce any supportive evidence for the effort made toward the collection of the said amount from Noticee No. 2 except for the letter dated 06.03.2017 stated to have been written to Noticee No. 2 which also almost after lapse of 10 months. In nutshell, the above facts brings out the following:

- a) Considering the urgent requirement of funds by Noticee No.1 it appears unconvincing that the shares were transferred without any agreement between Noticees No. 1 and 2 as no amount of consideration was mentioned in the DIS.
- b) Despite such an urgency a reminder letter was sent only on March 2017 i.e. after lapse of 10 months from transfer of securities (25,00,000 shares of PSL worth Rs. 1.35 Cr on the date of transfer i.e. May 04, 2016).
- c) Also, despite stating the transfer as an encumbrance, Noticee No. 1 vide letter dated May 04, 2016 (content reproduced in Para 29) gave absolute rights to Noticee No. 2 (to sell or deal in any manner) without receiving the funds that are allegedly required on urgent basis.
- d) Noticee No. 1 also failed to elaborate the urgency.

44. In view of the above mentioned observations, I find no merit in the submission of Noticee No. 1.

45. I note that, while creating an encumbrance over shares, the same were not transferred to the lender rather kept with the borrower in frozen state till the loan amount was not repaid or as decided between the parties. It is general corporate

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practice to raise funds by pledging shares. More particularly, the promoters of companies often take this route at times of financial trouble when their company is in urgent requirement of funds. However, the ownership of such pledged shares are never transferred to the lender rather the borrower retains ownership and continues to earn dividend and capital gains on those shares.

46. Whereas in present matter, Noticee No.1 by creation of DIS, transferred the shares in the off market and disclosed the same as an encumbrance to the company, that tantamount to fraud. This act is clearly covered under the definition of 'fraud' reproduced above. Hence, I hold that Noticee No. 1 has violated Regulation 4(1) of the PFUTP Regulations, 2003.



Issue 1 (c): Whether Noticee No. 1 and 2, by not receiving/ transferring consideration towards the off-market transfer of 25,00,000 shares, violated Section 2(i) read with Section 13, 16 and 18 of the SCRA?

47. I note that Section 2(i)(a) of SCRA reads as under:

2. In this Act, unless the context otherwise requires, —

(i) "spot delivery contract" means a contract which provides for, -

(a) actual delivery of securities and the payment of a price therefor either on the same day as the date of the contract or on the next day, the actual period taken for the despatch of the securities or the remittance of money therefor through the post being excluded from the computation of the period aforesaid if the parties to the contract do not reside in the same town or locality; (emphasis supplied)



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48. In this regard, I note that spot delivery contract in securities market is said to be completed only if delivery/transfer of securities and subsequent payment has been made thereof within the prescribed time i.e. on the same day or the next day. In the present case, I note that Noticee No.1 had made off-market transactions of 2,50,000 shares of PSL with Noticee No. 2 (Dumet Wire India Pvt. Ltd.) and no funds were paid by Noticee No.2 to Noticee No.1 from whom the shares were received on the same day or next day. In this regard, Noticee No. 1 and 2 also confirmed and admitted that the funds were transferred only on 30.03.2017 (Rs. 22,00,000) and on 11.04.2017 (Rs. 16,75,000) against the said transfer of shares by Noticee No. 1 on May 04, 2016.

49. In this regard, I note that that there is a gap of almost 11 months between transfer of shares and payment of funds. Further, the submission of Noticee No. 1 and 2 that due to some conflict between them, immediate transfer of funds was not done, fails to justify the aforesaid delay in transfer of fund, as the time gap is considerable and the amount of shares and funds are also huge. As per SCRA, all sorts of off-market transaction of securities are illegal (Section 13 and Section 16) unless they are in the form of spot delivery contract as exempted under Section 18, which requires the transfer of securities and funds on same or next day.

50. The above facts clearly established that Noticee No. 1 and 2 have violated Section 2(i) read with Section 13, 16 and 18 of the SCRA.

Issue I (d): Whether Noticee No. 3 failed to make disclosure to the stock exchanges under Regulation 7(2)(b) of the PIT Regulations, 2015 with regard to the transaction of Noticee No.1 in the scrip of PSL during the UPSI period?

51. As per Regulation 7(2) of the PIT Regulations:

(2) Continual Disclosures.

(a).Every promoter, and employee of every company shall disclose to the company the number of such securities acquired or disposed of within two trading days of such transaction if the value of the securities traded, whether in one transaction or a series of transactions over any calendar quarter, aggregates to a traded value in excess of ten lakh rupees or such other value as may be specified;

(b). Every company shall notify the particulars of such trading to the stock exchange on which the securities are listed within two trading days of receipt of the disclosure or from becoming aware of such information. (emphasis supplied)

52. In the instant case, the company made disclosures to exchanges under SAST regulations stating that Noticee No. 1 had created encumbrance over his 25,00,000 shares. The company has submitted that they relied on the Benpos Report which

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the company received from their RTA (Registrar and Transfer Agent). Investigation observed that the Benpos Report reported a decrease in shareholding of Shri Prakash C Kanugo by 25,00,000 shares. I note that creation of encumbrance never leads to decrease in shareholding of the borrower unless a default in repayment of the loan amount is observed. Since there was a reduction of shareholding of Noticee No. 1, the same needed to be disclosed under PIT Regulations, which Noticee No. 3 failed to disclose.

53. It is therefore the above facts clearly establishes that the Noticee No. 3 have violated Regulation 7(2) (b) of the PIT Regulations.

Issue I (e) : Whether Noticee No.4, being the Company Secretary and Compliance Officer of the Company at the relevant point of time was responsible for administering disclosure requirements violated Regulation 2(c) read with 9(3) of the PIT Regulations, 2015?

54. It is an established fact that the Company failed to disclose under PIT Regulations w.r.t. the transaction of Noticee No. 1 transferring 25,00,000 shares and deduction of share capital to that extant. In this regard, there is a statutory duty imposed upon the Compliance Officer under Regulation 9(3) of PIT Regulations which requires them to ensure that the company complies with all the relevant rules and regulations applicable under the said regulation.

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55. As per annual reports of the Company for FY 2015-16 and 2016-17, Ms. Palak Kohli Kocchar was the then Company Secretary and Compliance Officer of Prakash Steelage Ltd. The PIT Regulation defines *compliance officer* as:

(c) "compliance officer" means any senior officer, designated so and reporting to the board of directors or head of the organization in case board is not there, who is financially literate and is capable of appreciating requirements for legal and regulatory compliance under these regulations and who shall be responsible for compliance of policies, procedures, maintenance of records, monitoring adherence to the rules for the preservation of unpublished price sensitive information, monitoring of trades and the implementation of the codes specified in these regulations under the overall supervision of the board of directors of the listed company or the head of an organization, as the case may be.

56. In view of the above, I note that there is a high degree of responsibility on compliance officers to ensure that all the rules and regulations applicable over a company are complied with. Further, the compliance officer is required to be financially literate, which implies that they are responsible to understand and make the management aware about the issues that requires financial acumen and hence, they are the one who guides the management of the company in case of any issue involving finances of the company and related compliance under the rules and regulations of PIT Regulations.

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57. Accordingly, in the present matter, there was a statutory duty imposed upon Noticee No. 4 under Regulation 9(3) of PIT Regulations which requires her to ensure that the company complies with all the relevant rules and regulations applicable under the said regulation.
58. In this regard, Noticee No. 4 has submitted that, she relied on the information provided by Noticee No. 1 that the 25,00,000 shares of PSL were given as security on May 04, 2016 and not transferred to make them eligible for disclosure under PIT Regulations. As per her submission, the appropriate disclosure under SAST for the creation of encumbrance was made by the company to the exchanges and hence there is no lapse on the part of company or herself.
59. In this regard I note that, being a compliance officer, she had the statutory duty to go into the nitty-gritty of the said transaction undertaken by Noticee No. 1 and to guide the company and management of the company accordingly. However, I note that she had not exercised due skill and care in performing her duties with regards to the aforesaid transaction of Noticee No. 1.
60. The above mentioned facts establish that Noticee No. 4 has violated Regulation 2(c) read with Regulation 9(3) of the PIT Regulations, 2015.

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Issue I (f): Whether Noticee No.5, being the Depository Participant (DP), had failed to comply with the provisions of para 1.9(vii), (viii) of SEBI Master circular CIR/MRD/DP/6/2015 dated May 07, 2015 and failed to exercise due diligence in monitoring the off market transaction between Noticee No.1 and Noticee No.2, and thereby violated the provisions of Clauses 1, 2(b), 3, 4 and 11 of Code of Conduct prescribed for DPs in Schedule III of Regulation 20 AA of the DP Regulations, 1996?

61. In the instant case, I note that Noticee No. 5 had effected a transfer of 25,00,000 shares of Noticee No. 1 to Noticee No. 2 based on the DIS slip along with the letter attached to it. In this regard, IR observed that the said transfer had been effected without the compliance of provision of Master Circular No. CIR/MRD/DP/6/2015 dated May 07, 2015. In other words, the amount for which the shares were being transferred was not mentioned in the DIS.

62. In terms of para 1.9 (vii) of aforesaid SEBI Master Circular CIR/MRD/DP/6/2015 dated May 07, 2015:

"The DPs shall cross check with the BOs under exceptional circumstances before acting upon the DIS". (emphasis supplied)

And para 1.9 (viii) inter-alia, states that:

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"The authorized official of the DP verifying such transactions with the BO, shall record the details of the process, date, time, etc., of the verification on the instruction slip under his signature". (emphasis supplied)

63. Further, the reason for the transfer was indicated in the DIS as 'Others' by Noticee No. 1 and no further comments were provided. From the aforesaid attached letter along with the DIS, it was further noticed that the consideration of the transfer was mentioned as NIL and the purpose of the transfer was indicated as to provide security for some fund raising plans. The said facts clearly show that there were discrepancies in the DIS which requires verification with the BO before allowed to transfer the share in line with the aforesaid circular. However, I note that Noticee No. 5 failed to exercise the above mentioned due diligence before allowing the said transfer of shares from Noticee No. 1 to Noticee No. 2.
64. With regards to the above, the Noticee No. 5 has contended that they carried out the verification and other requirements under the circular. However, with regards to the said claim, I note that they did not produce any documentary evidence in support of the same. In view of the above, it is established that Noticee No. 5 has violated Clauses 1, 2(b), 3, 4 and 11 of Code of Conduct prescribed for DPs in Schedule III of Regulation 20 AA of the DP Regulations, 1996.

Issue II: Does the violation, if established, attract monetary penalty under Section 15A(b), 15HA, 15G, 15HB of the SEBI Act, 1992, Section 19G of Depositories Act, 1996 and Section 23H of SCRA, as applicable?

65. The Hon'ble Supreme Court of India in the matter of *SEBI vs. Shri Ram Mutual Fund* {[2006]5 SCC 361} held that:

"once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties committing such violation becomes totally irrelevant. Once the contravention is established, then the penalty is to follow."

66. The violations by Noticees, observed above, make them liable for imposition of penalty under Section 15A(b), 15G, 15HA, 15HB of the SEBI Act, 1992, Section 23H of SCRA and 19G of Depositories Act, 1996 which reads as below –

SEBI Act, 1992

"Penalty for failure to furnish information, return, etc.

15A. If any person, who is required under this Act or any rules or regulations made thereunder,—

(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations or who furnishes or files false, incorrect or incomplete information, return, report, books or other documents, he

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shall be liable to penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees."

"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 fraudulent and unfair trade practices.

15HA. If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such practices, 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.*

SCRA

Penalty for contravention where no separate penalty has been provided.

23H. *Whoever fails to comply with any provision of this Act, the rules or articles or bye-laws or the regulations of the recognised stock exchange or directions issued by the Securities and Exchange Board of India 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.*

Depositories Act, 1996

Penalty for contravention where no separate penalty has been provided.

19G. *Whoever fails to comply with any provision of this Act, the rules or the regulations or bye-laws 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 III: *If yes, then what should be the quantum of penalty?*

67. In this regard, the provisions of Section 15J of the SEBI Act, 1992, Rule 5 of the SEBI Adjudication Rules require that while adjudging the quantum of penalty, the adjudicating officer shall have due regard to the following factors namely; -

Adjudication Order in the matter of suspected insider trading activities of certain entities in the scrip of Prakash Steelage Ltd.

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(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.

68. The material made available on record has not quantified the amount of disproportionate gain or unfair advantage made by the Noticees and the loss suffered by the investors as a result of the Noticees' act. It is an established fact that the Noticee No.1, being Managing Director and Chairman of PSL in the instant case had traded in the shares of PSL while being in possession of UPSI in violation of the SEBI (PIT) Regulations, 2015. It is necessary to take stern action to curb such practice, failing which the object and purpose with which SEBI Act and the PIT Regulations, 2015, are enacted, would be defeated. Further, it is important to note that timely disclosure of information, as prescribed under the statute, is an important regulatory tool intended to serve a public purpose. Trading in securities with knowledge which is yet not present in the public domain is an unethical act and such practices if left unchecked, shall jeopardize the integrity of the securities market.

69. Compliance Officers of listed companies have been given responsibility under the regulations to ensure the market players comply with the rules and regulations. If they fail in their duty to ensure the compliance, then the regulations itself will become useless as the primary purpose of formulating the same is to ensure

compliance and to run the market in fair and competitive manner rather penalizing the violators, which is only a remedial recourse. Noticee No. 4 being compliance officer of PSL failed in her duties and consequently, Noticee No. 3 failed to make appropriate disclosures.

70. Noticee No. 5, as a securities market intermediary, has a higher degree of responsibility and was primarily responsible for the illegitimate transaction that took place between Noticee No. 1 and 2. Lack of due diligence on their part was apparent and inexcusable. If ignored could cause greater peril to the smooth functioning of the securities market and to the proper adherence to the rules and regulations governing the market.

ORDER

71. After taking into consideration the facts and circumstances of the case, gravity of violations and the material on record, and also the factors stipulated in Section 15J of the SEBI Act, 1992, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act, 1992 read with Rule 5 of the SEBI Adjudication Rules, hereby impose the following penalty on the Noticees:

Noticee	Violation and Penal Provisions	Penalty
Shri Prakash C Kanugo (Noticee No. 1) PAN: AFKPK2696F	Penalty imposed under Section 15A(b), 15G and 15HA of the SEBI Act, 1992 and Section 23H of SCRA for violation of the provisions of Section 12A (d) and (e) of SEBI Act, 1992, Reg 4(1) of PFUTP Regulations, Regulation	Rs. 17,00,000/- (Rupees Seventeen Lakhs)

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	4(1) and 7(2) (a) of PIT Regulations and Section 2(i) r/w Section 13, 16 and 18 of SCRA.	
Dumet Wire India Pvt. Ltd. (Noticee No. 2) PAN: AAACD4629D	Penalty imposed under Section 23H SCRA for violation of Section 2(i) r/w Section 13, 16 and 18 of SCRA.	Rs. 1,00,000/- (Rupees One Lakh)
Prakash Steelage Ltd. (Noticee No. 3) PAN: AAACP6673K	Penalty imposed under Section 15A (b) of the SEBI Act, 1992 for violation of the provisions of Regulation 7(2)(b) of PIT Regulations.	Rs. 1,00,000/- (Rupees One Lakh)
Ms. Palak Kohli Kochhar (Noticee No. 4) PAN: DACPK5709R	Penalty imposed under Section 15HB of the SEBI Act, 1992 for violation of the provisions of Regulation 2(c) r/w 9(3) of PIT Regulations.	Rs. 1,00,000/- (Rupees One Lakh)
Ajcon Global Services Ltd. (Noticee No. 5) PAN: AABCA1950B	Penalty imposed under Section 15HB of the SEBI Act, 1992 r/w Section 19G of the Depositories Act, 1996 for violation of Clauses 1, 2(b), 3, 4 and 11 of Code of Conduct Schedule III of Reg. 20AA of DP Regulations, 1996 and SEBI Master circular CIR/MRD/DP/6/2015 dated May 07, 2015.	Rs. 1,00,000/- (Rupees One Lakh)

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

ENFORCEMENT →Orders →Orders of AO →PAY NOW

The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to the Enforcement Department – Division of Regulatory Action – 1 of SEBI. The Noticee shall provide the following details while forwarding DD/ payment information:

- a) Name and PAN of the entity (Noticee):
- b) Name of the case / matter:
- c) Purpose of Payment: Payment of penalty under AO proceedings
- d) Bank Name and Account Number:
- e) Transaction Number:

73. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

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74. In terms of the Rule 6 of the SEBI Adjudication Rules and Rule 6 of SCR Adjudication Rules, copy of this order is sent to the Noticees and also to Securities and Exchange Board of India.

Place: Mumbai

G. Ramar

Date: July 29, 2022

Adjudicating Officer


TRUE COPY

ANNEXURE-A-2

BEFORE THE SECURITIES APPELLATE TRIBUNAL AT MUMBAI

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APPEAL NO. 709 OF 2022

In the matter of Securities and Exchange
Board of India Act, 1992 (15 of 1992)
(hereinafter, "SEBI Act")

And

In the matter of Securities Contract
(Regulations) Act 1956 (hereinafter, "SCRA")

And

In the matter of SEBI (Prohibition of
Fraudulent and Unfair Trade Practices)
Regulations, 2003 (hereinafter, "PFUTP
Regulations")

And

In the matter of the SEBI (Prohibition of
Insider Trading) Regulations, 2015
(hereinafter, "PIT Regulations")

And

In the matter of Appeal against Order dated
29.07.2022 bearing reference no. Order/
GR/HK/2022-23/18165-18169 passed by Ld.
Adjudicating Officer of Respondent whereby a
monetary penalty of Rs. 17,00,000/- and
Rs. 1,00,000/- is imposed on Appellant No. 1
and 2 respectively in the matter of M/s
Prakash Steelage Limited (hereinafter, "PSL/
Company").



In the matter of:

Prakash C. Kanugo
302, 3rd Floor, Tardeo Tower,
Pandit Madan Mohan Malviya Road,
Near A. C. Market,
Mumbai - 400 034

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... Appellant No. 1

Prakash Steelage Limited
101, 1st Floor, Shatrunjay Apartment,
26, Sindhi Lane,
Nanubhai Desai Road,
Mumbai - 400 004

... Appellant No. 2

Versus

Securities and Exchange Board of India
Having its registered office at
SEBI Bhavan, Plot No. C4-A, G-Block,
Bandra Kuria Complex, Bandra (East)
Mumbai - 400 051

... Respondent

MEMORANDUM OF APPEAL

DETAILS OF APPEAL:

1. PARTICULARS OF APPELLANT NO. 1:

- (i) Name of the Appellant : Prakash C Kanugo
- (ii) Address of the Appellant : 302, 3rd Floor, Tardeo Tower,
Pandit Madan Mohan
Malviya Road, Near A. C. Market,
Mumbai - 400 034
- (iii) Telephone, Fax No. : 9820210320
and Email Address : pck@prakashsteelage.com
- (iv) Address of Service : Prakash Shah and Associates
G/5, Siddhi Apartment,
Cama Lane, Ghatkopar (W),
Mumbai - 400 086
- (v) Telephone, Fax No. : 9820210908
and email Address : advprakashshah@gmail.com



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1A. PARTICULARS OF APPELLANT NO. 2:

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- (i) Name of the Appellant : Prakash Steelage Limited
- (ii) Address of the Appellant : 101, 1st Floor,
Shatrunjay Apartment,
26, Sindhi Lane,
Nanubhai Desai Road,
Mumbai - 400 004
- (iii) Telephone, Fax No. and Email Address : 022 - 661343500
: surendra_ca@prakashsteelage.com
- (iv) Address of Service : Prakash Shah and Associates
G/5, Siddhi Apartment,
Cama Lane, Ghatkopar (W),
Mumbai - 400 086
- (v) Telephone, Fax No. and email Address : 9820210908
: advprakashshah@gmail.com

2. PARTICULARS OF RESPONDENT:

- (i) Name of the Respondent : Securities and Exchange Board of India
- (ii) Office Address of Respondent : SEBI Bhavan,
Plot No C4-A, G - Block,
Bandra-Kurla Complex,
Bandra (East),
Mumbai - 400 051
- (iii) Address for service : Same as Above
- (iv) Telephone, Fax No. and email Address : Tel No. 022 - 2644 9000
: Fax No. 022 - 2644 9019
to 9022

3. JURISDICTION OF THE APPELLATE TRIBUNAL:

Appellants declare that the matter of Appeal falls within the jurisdiction of the Hon'ble Securities Appellate Tribunal ("Tribunal").



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4. LIMITATION:

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Appellants state that the Order dated 29.07.2022 bearing reference no. Order/GR/HK/2022-23/18165-18169 passed by Ld. Adjudicating Officer, SEBI along with covering letter dated 03.08.2022 bearing reference no. EAD-4/ADJ/GR/HK/OW/P/33379/3/2022 ("Impugned Order") was received by Appellant No. 2 on 05.08.2022. Therefore, Appellants submits that the Appeal is filed within the limitation period of 45 days as prescribed under Section 15T of the Securities and Exchange Board of India Act, 1992 ("SEBI Act").

5. FACTS OF THE CASE AND THE DETAILS OF THE ORDER AGAINST WHICH APPEAL IS FILED:

5.1 *Vide* Impugned Order dated 29.07.2022("Impugned Order"); Respondent has without taking proper cognizance of Appellants submissions imposed a monetary penalty of Rs. 17,00,000/- (17 Lakh) on Appellant No. 1 and Rs.1,00,000/- (1 Lakh) on Appellant No. 2. A copy of Order dated 29.07.2022 bearing reference no. Order/GR/HK/2022-23/18165-18169 along with covering letter dated 03.08.2022 is hereto annexed and marked as Exhibit - "A" (Ref. Para No. 71 on Internal Page No. 46 and 47 of Impugned Order). The name of the Appellant No. 1 and 2 are at Noticee No. 1 and 3 respectively of the Impugned Order as well as Common Show Cause Notice dated 05.04.2022.

5.2 The monetary penalty is imposed on Appellants's for the alleged violations as mentioned herein below:

Appellant No.	Alleged violation	Reference
1	Provisions of Section 12A (d) and (e) of SEBI Act, 1992, Regulation 4(1) of PFUTP Regulations,	Para No. 71 on Page No. 46 and 47 of Impugned Order

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	Regulation 4(1) and 7(2) (a) of PIT Regulations and Section 2(i) r/w Section 13, 16 and 18 of SCRA.	
2	Regulation 7(2)(b) of PIT Regulations.	

5.3 The proceedings in the caption matter were initiated pursuant to the investigation carried out by Respondent to ascertain whether trading in the scrip of Appellant No. 2 viz. Prakash Steelage Limited (**Company/PSL**) by certain suspected entities was based on Unpublished Price Sensitive Information ("**UPS**I") relating to the financial results of PSL for the quarter ended 31.03.2016 during the period 15.04.2016 to 30.05.2016 ("**Investigation Period/IP/UPS**I Period").

5.4 The summary of Appellants replies/submissions are mentioned under Para No. 8 on Internal Page No. 6 and 7 of Impugned Order under Noticee No. 1 and Noticee No. 3 & 4. On perusal of the same it is humbly submitted that Respondent has passed Impugned Order without taking proper cognizance of Appellants submissions.

5.5 The relevant extract of the allegations alleged against Appellants are reproduced herein below:

I. Allegations against Appellant No. 1

(i) Ref. Para No. 34 and 36 on Internal Page No. 28 and 29 of Impugned Order

Quote:

"34. In view of the above observations, I note that the 2500000 shares of PSL were traded between Noticee No.1 and Noticee No. 2 on May 04, 2016, during which Noticee No. 1 was in possession of UPSI.



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36. I also note that none of the exceptions, provided under provisos of Regulation 4 of PIT Regulations, are neither applicable in the instant case, nor pleaded by Noticee. In view of the above, I hold that Noticee No. 1 has violated Section 12A (d) & (e) of SEBI Act, 1992 and Regulation 4(1) of PIT Regulations."

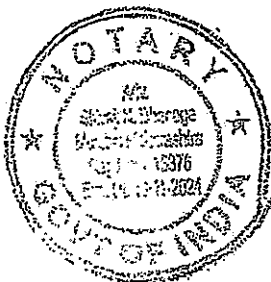
Unquote:

(ii) Ref. Para No. 40 and 41, on Internal Page No. 30 and 31 of Impugned Order.

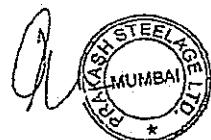
Quote:

"40. Noticee No. 1 and 2 have stated that the consideration for the aforesaid transfer of shares on 04/05/2016 was Rs. 38.75 lakhs. Dumet Wire India Pvt. Ltd. (Noticee No. 2) submitted that the consideration for the transfer of shares was paid to Shri Prakash C Kanugo (Noticee No. 1) from its bank account - 0430102000040178 (Axis Bank). As per the bank account statement of Noticee No. 2, fund transfer of Rs. 22,00,000 on March 30, 2017 and Rs. 16,75,000 on April 11, 2017 to Noticee No. 1 was observed (closing price of the shares of PSL on May 04, 2016 @ Rs. 5.4 each share = Rs.5.4 x 25,00,000 shares = Rs.1,35,00,000).

41. The above facts clearly establish that the value of transaction exceeds more than 10 lakhs. Accordingly, Noticee No. 1 was required to disclose the same under Regulation 7 (2) (a) of PIT Regulations to the company within two



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trading days, which he failed. In view of the same, I hold that Noticee No.1 have violated Regulation 7(2) (a) of PIT Regulations."

Unquote:

- (iii) Ref. Para No. 46 on Internal Page No. 34 of Impugned Order

Quote:

"46. Whereas in present matter, Noticee No.1 by creation of DIS, transferred the shares in the off market and disclosed the same as an encumbrance to the company, that tantamount to fraud. This act is clearly covered under the definition of 'fraud' reproduced above. Hence, I hold that Noticee No. 1 has violated Regulation 4(1) of the PFUTP Regulations, 2003."

Unquote:

- (iv) Ref. Para No. 49 and 50 on Internal Page No. 35 and 36 of Impugned Order

Quote:

"49. In this regard, I note that that there is a gap of almost 11 months between transfer of shares and payment of funds. Further, the submission of Noticee No. 1 and 2 that due to some conflict between them, immediate transfer of funds was not done, fails to justify the aforesaid delay in transfer of fund, as the time gap is considerable and the amount of shares and funds are also huge. As per SCRA, all sorts of off market transaction of securities are illegal (Section 13







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and Section 16) unless they are in the form of spot delivery contract as exempted under Section 18, which requires the transfer of securities and funds on same or next day.

50. The above facts clearly established that Noticee No. 1 and 2 have violated Section 2(i) read with Section 13, 16 and 18 of the SCRA."

Unquote:

II. Allegations against Appellant No. 2

(i) Ref. Para No. 52 and 53 on Internal Page No. 36 and 37 of Impugned Order

Quote:

"52. In the instant case, the company made disclosures to exchanges under SAST regulations stating that Noticee No. 1 had created encumbrance over his 25,00,000 shares. The company has submitted that they relied on the Benpos Report which the company received from their RTA (Registrar and Transfer Agent). Investigation observed that the Benpos Report reported a decrease in shareholding of Shri Prakash C Kanugo by 25,00,000 shares. I note that creation of encumbrance never leads to decrease in shareholding of the borrower unless a default in repayment of the loan amount is observed. Since there was a reduction of shareholding of Noticee No. 1, the same needed to be disclosed under PIT Regulations, which Noticee No. 3 failed to disclose.



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53. It is therefore the above facts clearly establishes that the Noticee No. 3 have violated Regulation 7(2) (b) of the PIT Regulations."

Unquote:

5.6 **Brief Profile:**

(i) **Appellant No. 1**

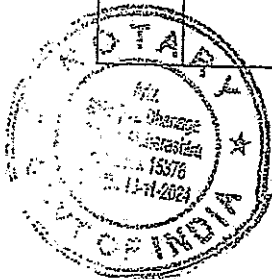
Appellant No. 1 is the head of "Prakash Group of Companies". He is the Chairman and Managing Director of Prakash Steelage Ltd (Appellant No. 2) which is a manufacturing unit and is shinning jewel in the crown of "Prakash Group of Companies". Appellant No. 2 is an ISO 9001:2000 certified company.

(ii) **Appellant No. 2**

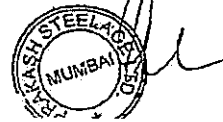
Appellant No. 2 was incorporated in the year 1991 to manufacture stainless steel welded pipes, tubes and U - tubes under one roof in India, through its Silvassa division and is one of the leader in the Indian Stainless Steel Pipe and Tube industry. Appellant No. 2 is listed on the Bombay Stock Exchange and National Stock Exchange w.e.f. 25.08.2010. A copy of company master Data of Appellant No. 2 as downloaded from the MCA Website is hereto annexed and marked as **Exhibit - "B"**

5.7 **Genesis and background of present proceedings**

Sr. No.	Date	Description
1.	15.04.2016 to 30.05.2016	Alleged UPSI Period
2.	04.05.2016	Appellant No. 1 transferred 25 Lakh shares of Appellant No. 2 to one Dumet Wire India Pvt. Ltd. ("Dumet") (Noticee No. 2 of the Impugned Order)



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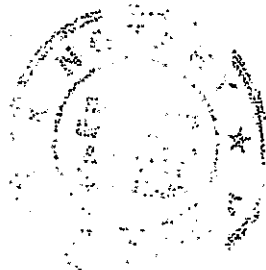


3.	30.03.2017 and 11.04.2017	Appellant No. 1 received consideration of Rs. 22,00,000/- on 30.03.2017 and Rs. 16,75,000/- on 11.04.2017 from Dumet
4.	05.04.2022	A Common Show Cause Notice dated 05.04.2022 (hereinafter, "SCN") was issued by the Ld. Chief General Manager and Adjudicating Officer of Respondent wherein it is alleged that Appellant No. 1 being the Managing Director of Appellant No. 2 has violated Section 12A (d) and (e) of SEBI Act, 1992, Regulation 4(1) of PFUTP Regulations, Regulation 4(1) and 7(2) (a) of PIT Regulations and Section 2(i) r/w Section 13, 16 and 18 of SCRA. (Ref. Para No. 29 (a) to (c) on Internal Page No. 13 and 14 of SCN). Further Appellant No. 2 has alleged violation Regulation 7(2)(b) of PIT Regulations, 2015. (Ref. Para No. 29 (d) on Internal Page No. 14 of SCN). A copy of SEBI's Common Show Cause Notice dated 05.04.2022 is hereto enclosed and marked as <u>Exhibit - "C"</u>
5.	10.05.2022	Appellant No. 2 by letter dated 10.05.2022 filed its Written Submissions wherein it inter alia clarified that disclosure was received by Appellant No. 2 u/r Regulation 31(1) and 31(2) of SAST Regulation from Appellant No. 1 which was duly disclosed to the Stock Exchange. A copy of Appellant No. 2's Written Submissions dated 10.05.2022 is hereto annexed and marked as <u>Exhibit - "D"</u>
6.	21.06.2022	Appellant No. 1 by letter dated 21.06.2022 filed his detailed written submissions and



		based on the peculiar facts of his case, requested that the SCN qua him be disposed of without drawing any adverse inference. A copy of Appellant No. 1's Written Submissions dated 21.06.2022 is hereto annexed and marked as <u>Exhibit - "E"</u>
7.	15.07.2022	Appellants were granted an opportunity of Personal Hearing on 15.07.2022 which was duly availed by them. In the personal hearing, Appellants clarified and delineated their role in detail <i>w.r.t.</i> inferences as alleged in the SCN.
8.	19.07.2022	Pursuant to personal hearing, Appellants filed their Post Hearing Written Submissions by letters dated 19.07.2022 wherein they made certain additional submissions as made at the time of personal hearing held on 15.07.2022 and prayed that the SCN be disposed of against them. A copy of Appellants's Post Hearing Written Submissions dated 19.07.2022 are hereto annexed and marked as <u>Exhibit - "F"</u> and <u>Exhibit - "G"</u> respectively
9.	29.07.2022	Respondent by Impugned Order imposed a monetary penalty of Rs. 17,00,000/- (17 Lakh) on Appellant No. 1 and Rs.1,00,000/- (One Lakh) on Appellant No. 2.

Appellants humbly submit that the contents of aforesaid submissions/pleadings are not repeated herein for the sake of brevity. Appellants crave leave to refer to and rely upon same during the course of hearing before Hon'ble Tribunal.



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5.8 Submission w.r.t allegation qua Appellants:

I. Appellant No. 1

On perusal of the Impugned Order, it is understood that the basis of allegation qua Appellant No. 1 is that he has failed to make disclosure to the company i.e. PSL (Appellant No. 2) u/r 7(2) (a) of the PIT Regulations with regard to transfer of 25 lakh shares of PSL to Noticee No. 2 i.e. Dumet on 04.05.2016 which is during the alleged UPSI period of 15.04.2016 to 30.05.2016 (Ref. Para No. 1 on Internal Page No. 2 and Para No. 37 on Internal Page No. 29 r/w Para 41 on Page No. 31 of Impugned Order)

(i) Submissions w.r.t. allegation of dealing in shares of Appellant No. 2 (PSL) (25,00,000 shares) being an insider while in possession of UPSI:

- (a) Appellant No. 1 is the Promoter and Managing Director of Appellant No. 2 and covered under the definition of "insider", as defined u/r 2 (g) of SEBI (PIT) Regulations.
- (b) As a Chairman & Managing Director of Appellant No. 2, the work of Appellant No. 1 was related only w.r.t. Management of the Company and overall operations of the Company. Appellant No. 1 was nowhere involved in finalization of accounts or preparation of financial results, hence he did not have any information w.r.t. financial results of the Company when it was being prepared or finalized.
- (c) The process of preparation and finalization of accounts and financial results was handled by the Accounts team of Appellant No. 2 along with Statutory and Internal Auditor of the Company.



Further, Mr. Ashok M Seth, Executive Director and Chief Financial Officer of the Appellant No. 2 would oversee the finalization of accounts and preparation of financial results.

(ii) Erroneous consideration of Period of UPSI i.e. from 15.04.2016 to 30.05.2016:


Under Ref. Para No. 1 on Internal Page No. 2 of the Impugned Order, it is mentioned that the period of UPSI is from 15.04.2016 to 30.05.2016.

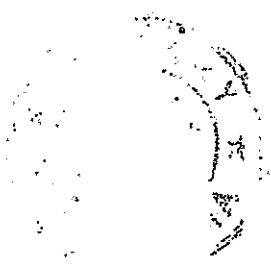
- (a) In this regard, relevant extract of Regulation 4 of Schedule B of the SEBI (PIT) Regulations, 2015 is reproduced as under:

Quote:

"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."

Unquote:

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Ref. Annexure 3 on Internal Page No. 34 to 37 of Appellant No. 1's Post hearing Written Submissions dated 19.07.2022

- (b) In the matter and facts of the present case it is submitted that on 20.05.2016; Appellant no. 2 had informed BSE that the meeting of Board of Directors of the company is scheduled to be held on 28.05.2016 to inter alia consider, approve and take on record the Audited Financial Statements of the Company for the quarter and financial year ended 31.03.2016. Further, Appellant No. 2 has also intimated the BSE that the trading window will be closed from 21.05.2016 till 48 hours after the announcement of the financial results of the Company. (Ref. Annexure 4 on Internal Page No. 38 of Appellant No. 1's Post hearing Written Submissions dated 19.07.2022)
- (c) In view of the aforesaid, the UPSI period, was from 20.05.2016 to 30.05.2016 and not from 15.04.2016 to 30.05.2016 as alleged in the Impugned Order or otherwise.

(iii) Submission on Appellant No. 1's knowledge of UPSI on the date of transaction i.e. 04.05.2016:

Appellant No. 1 had no knowledge of UPSI in relation to Financial Results of Appellant No. 2 as alleged/ observed under Para No. 24 (Page No. 24) r/w Para No. 34 (Page No. 28) of the Impugned Order when the transactions of 25 lakh shares to Dumet was executed i.e. on 04.05.2016. Further, it is submitted that:

- (a) On 20.05.2016, that Appellant No. 1 received an Email from the compliance officer of Appellant



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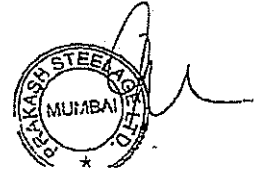
No. 2 about the notice of board meeting to be held on 28.05.2016. Further, Appellant No. 1 also received an Email from the compliance officer of Appellant No. 2 w.r.t closure of trading window w.e.f 21.05.2016 till 48 hours after the announcement of the financial results. Pertinently prior to the said Email, no correspondence w.r.t financial results were shared with Appellant No. 1.

(b) Pertinently, during the course of Investigation, Respondent had vide email to Appellant No. 2 dated 10.08.2020 sought details as to whether Appellant No.1 and Mr. Ashok M Seth were kept apprised/informed of the events/developments/matters relating to financial results of period ending 31.03.2016 or preparation thereof on a day to day/ongoing basis. Further, a reminder was also sent by Respondent on 11.08.2020. (Ref. Annexure - 1 on Internal Page No. 18 and 19 of Appellant No. 1's Written Submissions dated 21.06.2022)

(c) In response to the above emails, Appellant No. 2 had by email dated 11.08.2020 submitted that Mr. Ashok M Seth was being apprised/informed of the events/developments/matters relating to financial results of period ending 31.03.2016 or preparation thereof on a day to day/ongoing basis. However, it was also submitted and confirmed by Appellant No. 2 that Appellant No. 1 was not apprised / informed of the events / developments / matters relating to financial results of period ending 31.03.2016 or preparation thereof on a day to day / ongoing



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basis. (Ref. Annexure - 2 on Internal Page No. 20 and 21 of Appellant No. 1's Written Submissions dated 21.06.2022)

- (d) Further, Respondent had vide letter dated 31.08.2020 addressed to Appellant No. 2 had sought information w.r.t. breakup of all activities undertaken during preparation of financial results along with relevant dates for the activities undertaken and all persons involved in the activities. The said information was sought in a particular format w.e.f. 01.04.2016 to 30.05.2016. Also certain additional information was also sought from Appellant No. 2. (Ref. Annexure - 3 on Internal Page No. 22 and 23 of Appellant No. 1's Written Submissions dated 21.06.2022)
- (e) Appellant No. 2 by email dated 04.09.2020 had submitted all the information which was required by Respondent vide its letter dated 31.08.2020. In the said email, Appellant No. 2 had mentioned the events w.r.t. preparation and finalization of financial accounts. Further, details of persons involved in preparation and finalization of financial accounts were also provided. It is pertinent to note that Appellant No. 1's name does not appear in the list of persons involved in preparation and finalization of financial accounts. Hence, it cannot be alleged that Appellant No. 1 was in possession of information pertaining to financial accounts or results. (Ref. Annexure - 4 on Internal Page No. 24 to 27 of Appellant No. 1's Written Submissions dated 21.06.2022)



(f) In this regard, Appellant No. 1 craves to place reliance on the following orders:


- Order dated 25.04.2022 passed by the Hon'ble Tribunal in the matter of Mr. Pranshu Bhutra Vs SEBI and other connected matters (Appeal No. 689 of 2021). (Ref. Annexure 6 on Internal Page No. 41 to 49 of Appellant No. 1's Post hearing Written Submissions dated 19.07.2022)
- Order dated 19.04.2022 passed by the Hon'ble Supreme Court in the matter of Bahram Garg Vs SEBI and other matters (Civil Appeal No. 7054 of 2021) and other matter. (Ref. Annexure 7 on Internal Page No. 50 to 57 of Appellant No. 1's Post hearing Written Submissions dated 19.07.2022)


(g) In view of the aforesaid, the allegation that Appellant No.1 was in possession of UPSI as alleged under Para No. 24 on Internal Page No. 24 of Impugned Order is not tenable and sustainable as he did not have access to or was part of preparation and finalization of accounts.


(iv) Submissions w.r.t. transfer of 25,00,000 shares in off market to Dumet

It is alleged in the Impugned Order that Appellant No.1 transferred shares to Dumet when he was in possession and on the basis of UPSI. (Ref. Para No. 30 on Internal Page No. 26 r/w Para No. 68 on Internal Page No. 45 of Impugned Order)

(a) Appellant No. 1 had transferred 25,00,000 shares of the Company (Appellant No. 2) in off market to Dumet on 04.05.2016 as a security



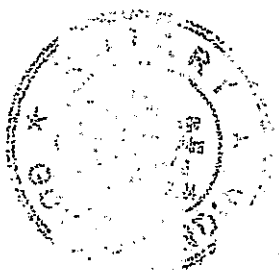




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for future financial purpose. (Ref. Annexure - 5 on Internal Page No. 28 and 29 of Appellant No. 1's Written Submissions dated 21.06.2022).

- (b) The said transfer was for the purpose of encumbrance so that Dumet can provide Appellant No.1 funds. The said shares were transferred by Appellant No.1 only for the purpose of providing security w.r.t funds to be raised from Dumet. Thus the transfer was solely for the reason of security for future financial transaction.
- (c) Appellant No.1 had by letter dated 01.07.2016 raised a debit note towards Dumet for Rs. 38,75,000/- w.r.t. 25,00,000 shares of PSL transferred in off market. (Ref. Annexure - 6 on Internal Page No. 30 of Appellant No. 1's Written Submissions dated 21.06.2022).
- (d) The said funds were to be raised from Dumet as Appellant No. 1 was badly in need for funds to infuse in the Company i.e. Appellant No. 2.
- (e) However, due to certain disputes between Appellant No. 1 and Dumet, the financial transactions which were to be undertaken on immediate basis for which off market shares were transferred to Dumet as a security, could not materialise.
- (f) As a lot of time had passed and Dumet was not completing their financial obligation w.r.t. off market shares transferred to them as security, Appellant No. 1 had by letter dated 06.03.2017, sent a reminder letter to Dumet Wire requesting



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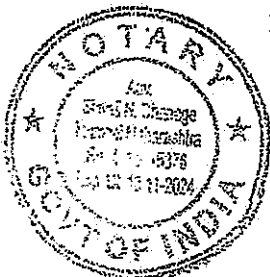
them to fulfil their financial obligation. Further, he had also conveyed to them that he would be forced to take legal action for recovery of shares/money from Dumet if at all the financial obligation is not fulfilled by Dumet. (Ref. Annexure - 7 on Internal Page No. 31 of Appellant No. 1's Written Submissions dated 21.06.2022).



(g) After some negotiations and reconciliation between Appellant No. 1 and Dumet, they (Dumet) met with their financial obligation towards Appellant No. 1, for which as a security 25,00,000 shares of Appellant No. 2 were transferred in off market. An amount of Rs. 38,75,000/- (Rs. 22,00,000/- on 30.03.2017 and Rs. 16,75,000/- on 11.04.2017) as part of their financial obligation was transferred to Appellant No. 1.

(h) It is pertinent to note that the off market transfer of shares and financial transaction by and between Appellant No. 1 and Dumet Wire was nowhere related to the market value of shares of PSL i.e. Appellant No. 2 as inferred/calculated under Para No. 40 on Internal Page No. 30 & 31 and Para No. 43 (b) on Internal Page No. 33 of Impugned Order).

(v) Submissions w.r.t. non-disclosure to the Company (Appellant No. 2) u/r 7(2)(a) of PIT Regulations w.r.t. transfer of 25,00,000 shares of Appellant No. 2 to Dumet:

It is alleged in the Impugned Order that Appellant No. 1 has not disclosed the transfer of 25,00,000 shares

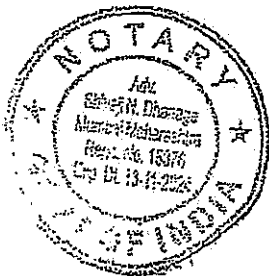



A circular notary seal for Maharashtra, Mumbai. The outer ring contains the text 'MAHARASHTRA' at the top and 'MUMBAI' at the bottom. Inside the ring, there is a star on each side and the text '10/11/2024'.

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of Appellant No. 2 to Dumet as per Regulation 7(2)(a) of PIT Regulations (Ref. Para No. 37 to 39 on Internal Page No. 29 and 30 of Impugned Order)

- (a) Appellant No. 1 informed Appellant No. 2 that the alleged off market transfer of 25,00,000 shares from Mr. Appellant No. 1 to Dumet is w.r.t. creation of pledge and the off market transfer of 25,00,000 shares of PSL (Appellant No. 2) was w.r.t. security required by the lender i.e. Dumet.
- (b) Details of the pledge of 25,00,000 shares were disclosed by Appellant No. 1 to the Company (Appellant No. 2) as well to the Stock Exchanges. The disclosure given by Appellant No. 1 was under Regulation 31(1) and 31(2) of SEBI (SAST) Regulations, 2011 in a timely manner. The said disclosure was received by Appellant No. 2 in accordance to Regulation 31(1) and 31(2) of SEBI SAST Regulations dealing with disclosures of encumbered shares and the same was appropriately disclosed to the Stock Exchanges. (Ref. Annexure - 8 on Internal Page No. 32 to 37 of Appellant No. 1's Written Submissions dated 21.06.2022).
- (c) Disclosure u/r 7(2)(a) of PIT Regulations is required only for acquisition or disposal of shares of certain value. However, no disclosure w.r.t. pledge of shares is required to be made u/r 7(2)(a) of PIT Regulations.
- (d) Disclosure w.r.t. pledge of shares is required under Regulation 31(1) and 31(2) of SAST Regulations, which Appellant No.1 has duly



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filed with the Company (Appellant No. 2) and the same was also filed with Stock Exchanges.

- (e) In view of the aforesaid, no disclosure was required u/r 7(2) (a) of the PIT Regulations since it deals with acquisition or disposal of shares of certain value and it is Appellant No. 1's case that the shares were transferred for encumbrance and not for sale/disposal.
- (f) In this regard, reliance is placed on the judgment dated 11.07.2022 passed by the Hon'ble Supreme Court in the matter of SEBI vs. Sunil Krishna Khaitan & Ors. (Civil Appeal No. 8249 of 2013). (Ref. Annexure 1 on Internal Page No. 11 to 19 of Appellant No. 1's Post hearing Written Submissions dated 19.07.2022)
- (g) Further, on perusal of Section 2(i) of Securities Contract (Regulation) Act, 1956 that defines spot delivery contract it is humbly submitted that Appellant No. 1's transfer of 25 Lakh shares to Dumet does not fall in the purview of spot delivery transaction.

II. Appellant No. 2

It is alleged in the Impugned Order that Appellant No. 2 has made disclosure to the exchange under to Regulation 31(1) and 31(2) of SEBI (SAST) Regulations dealing with disclosures of encumbered shares. However, the said transaction was a normal transfer and required to be disclosed under 7(2)(a) of PIT Regulations. It is inferred qua Appellant No. 2 that the Benpos Report reported a decrease in shareholding of Appellant No. 1 by 25 Lakh shares and creation of encumbrance does not lead to decrease in shareholding of the borrower unless there is a default in



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MUMBAI

repayment observed. Since, there was a reduction of shareholding of Appellant No.1 and the same needed to be disclosed under PIT Regulations which has not been done, Appellant No. 2 has allegedly violated Regulation 7(2)(b) of the PIT Regulations. (Ref. Para No. 52 and 53 on Internal Page No. 36 and 37 of the Impugned Order). In this regard, it is submitted as under:

- (i) Appellant No.2 was informed that the alleged off market transfer of 25,00,000 shares from Appellant No. 1 (Mr. Prakash Kanugo, Managing Director of PSL) to Dumet is w.r.t. creation of pledge and the off market transfer of 25,00,000 shares of PSL was w.r.t. security required by the lender.
- (ii) It is humbly submitted that the transfer of shares from Appellant No. 2 to Dumet Wire was for the purpose of encumbrance and not for sale/disposal. Accordingly, the pledge of 25,00,000 shares as mentioned hereinabove was disclosed by Appellant No. 1 to the Appellant No. 2 as well to the Stock Exchange under Regulation 31(1) and 31(2) of SEBI (SAST) Regulations. The said disclosure as received by Appellant No. 2 was appropriately disclosed to the Stock Exchanges. (Ref. Annexure - 1 on Internal Page No. 7 to 12 of Appellant No. 2's written submissions dated 10.05.2022)
- (iii) It is only on receipt of SCN, that Appellant No. 2 came to know that Respondent has not treated the alleged off market transfer of 25,00,000 shares from Appellant No. 1 to Dumet as pledged shares but has treated as a normal off market transfer of shares and disclosure u/r 7(2)(a) of PIT Regulation has not been filed by Appellant No. 1. It is pertinent to note that Appellant No. 2 was not provided with any



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information w.r.t the said pledged shares. Appellant No. 2 was provided only with the disclosure of pledged shares.

- (iv) Inferences has been drawn on the basis that Appellant No. 2 knew about the off market transfer of shares through the Benpos report submitted by the RTA to the Appellant No. 2. In this regard, it is submitted that Appellant No. 2 was informed/made aware that the said off market transfer of shares was w.r.t. pledge of shares. Accordingly, no disclosure under Regulation 7(2)(a) of PIT Regulation was required. Pertinently disclosure under Regulation 7(2)(b) of PIT Regulation arises/is triggered only when disclosure under Regulation 7(2)(a) of PIT Regulation is required and made by the persons as mentioned thereto. Since, in the present case disclosure under Regulation 7(2)(a) of PIT Regulation is not required hence disclosure under Regulation 7(2)(b) of PIT Regulation is not triggered.

5.9 In summary, Appellants submit that none of the allegations as mentioned in Impugned Order are applicable as far as they are concerned. Appellants's case is distinct, dissimilar and separate from other entities mentioned in Impugned Order.

5.10 Thus, the purported findings in the said Impugned Order are based on a totally erroneous and untenable assumptions and interpretation of the law and Impugned Order is passed without considering and giving reference of Appellants's replies and ignoring facts of the case. For the reasons as inter alia herein below stated, it is submitted that the Impugned Order is unjust, unfair, untenable and liable to be and ought to be set aside qua Appellants.



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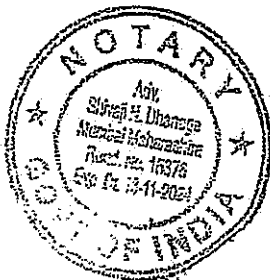
6 GROUNDS OF APPEAL:

Being aggrieved by the Impugned Order dated 29.07.2022 passed by the Respondent; Appellants beg to prefer the present Appeal inter alia on the following grounds, each without prejudice to the other:

6.1 The adverse inferences drawn against Appellants in the Impugned Order are based on erroneous and untenable assumptions and interpretation of the facts and law and in disregard to the Appellants's reply and hence in violation of the basic principles of equity, fair play and natural justice. For the reasons as inter alia stated herein, it is submitted that the Impugned Order passed against Appellants is unjust, unfair, untenable and liable to be and ought to be set aside.

6.2 The Impugned Order is passed on the basis of mere presumptions and assumptions and not on proper consideration of proper facts of the case. In fact, under Para No. 30 on Internal Page No. 26 of the Impugned Order, it is inter alia mentioned that *".....On the basis of the above observations, there is strong presumption that the transfer of shares Noticee No. 1 on May 04, 2016 was on the basis of UPSI....."*.

6.3 Respondent has failed to appreciate the fact that on 20.05.2016; Appellant no. 2 had informed BSE that the meeting of Board of Directors of the company is scheduled to be held on 28.05.2016 to inter alia consider, approve and take on record the Audited Financial Statements of the Company for the quarter and financial year ended 31.03.2016 and that the trading window will be closed from 21.05.2016 till 48 hours after the announcement of the financial results of the Company. In view of the aforesaid, the UPSI period, was from 20.05.2016 to 30.05.2016 and not from 15.04.2016 to 30.05.2016.





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- 6.4 Respondent has failed to take into consideration the communication of Appellant No. 2's communication of the Investigation wherein Appellant No. 2 had by email dated 11.08.2020 submitted that Mr. Ashok M Seth was being apprised/informed of the events / developments / matters relating to financial results of period ending 31.03.2016 or preparation thereof on a day to day/ongoing basis. However, it was also submitted and confirmed by Appellant No. 2 that Appellant No. 1 was not apprised/informed of the events/developments / matters relating to financial results of period ending 31.03.2016 or preparation thereof on a day to day/ongoing basis. Hence, Appellant No. 1 was not in possession of UPSI in any manner whatsoever.
- 6.5 Respondent has failed to appreciate the fact that Appellant No. 1 had transferred 25,00,000 shares of the company (Appellant No. 2) in off market to Dumet on 04.05.2016 as a security for future financial purpose. The said transfer was for the purpose of encumbrance so that Dumet can provide Appellant No.1 funds. Thus, the transfer was solely for the reason of security for future financial transaction.
- 6.6 Respondent has failed to take cognizance of the fact that pledge of 25,00,000 shares were disclosed by Appellant No. 1 to the Company (Appellant No. 2) as well to the Stock Exchanges under Regulation 31(1) and 31(2) of SEBI (SAST) Regulations, 2015 in a timely manner.
- 6.7 Respondent has ignored detailed submissions made by Appellant No. 1 as under:
- (i) Erroneous consideration of Period of UPSI i.e. from 15.04.2016 to 30.05.2016
 - (ii) Appellant No. 1's knowledge of UPSI on the date of transaction i.e. 04.05.2016.



(iii) Trading in shares during the alleged UPSI Period

In view the aforesaid, Appellants respectfully submit that Impugned Order is passed in casual manner against Appellants since crucial facts to the present case have not even been considered while passing Impugned Order.

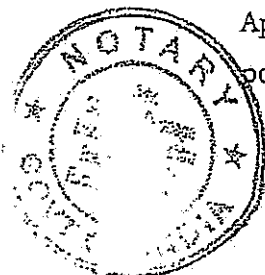
6.8 Respondent has failed to appreciate the fact that as a lot of time had passed and Dumet was not completing their financial obligation, Appellant No. 1 had by letter dated 06.03.2017, sent a reminder letter to Dumet Wire requesting them to fulfil their financial obligation. Further, he had also conveyed to them that he would be forced to take legal action for recovery of shares/money from Dumet if at all the financial obligation is not fulfilled by Dumet.

6.9 Respondent has failed to take cognizance of the fact that the off market transfer of shares and financial transaction by and between Appellant No. 1 and Dumet Wire was nowhere related to the market value of shares of PSL i.e. Appellant No. 2

6.10 Respondent has imposed Monetary penalty on Appellant No. 1 under the following sections:

(i) Section 15A(b) of SEBI Act w.r.t Penalty for failure to furnish information, return etc.. In this regard, it is humbly submitted that details of the pledge of 25,00,000 shares were disclosed by Appellant No. 1 to the Company (Appellant No. 2) as well to the Stock Exchanges under Regulation 31(1) and 31(2) of SEBI (SAST) Regulations, 2015 in a timely manner. Hence, imposing penalty u/s Section 15A (b) of SEBI Act is untenable and unwarranted.

(ii) Section 15G of SEBI Act w.r.t Penalty for Insider trading. In, this regard, it is submitted that as aforesaid in the Appeal and Submissions, Appellant No.1 was not in possession of the USPI. In fact, the UPSI period was from



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20.05.2016 to 30.05.2016 and not from 15.04.2016 to 30.05.2016 as alleged in the Impugned Order or otherwise.

(iii) Section 15HA of SEBI Act w.r.t Penalty for fraudulent and unfair trade practices. In this regard, it is humbly submitted that Regulations 4(1) of PFUTP Regulations, 2003 and Section 12A(d) and (e) of the SEBI Act, 1992 deals with fraud/manipulation/ unfair trade practices while dealing in securities and in relation to securities market. In Appellant No. 1's case there is no purchase/sale and/or dealing of securities. His role is strictly limited to off market transfer of shares for the purpose of encumbrance so that Dumet can provide him funds. Hence, the allegations of PFUTP Regulations are not applicable to Appellant No. 1's case. In this regard, reliance is placed on order dated 28.05.2021 passed by the Ld. Whole Time Member, SEBI in the matter of Tatia Global Vennture Limited. (Ref. Annexure 2 on Internal Page No. 20 to 33 of Appellant No. 1's Post hearing Written Submissions dated 19.07.2022)

(iv) Section 23H of SCRA w.r.t Penalty for contravention where no separate penalty has been imposed. In this regard, it is submitted that Appellant No.1 has always complied with the due process of law while executing transactions. Hence, the aforesaid penalty is untenable and unsustainable.

6.11 On perusal of the price volume chart for the period from 27.05.2016 to 02.06.2016, it is humbly submitted that there is no major variation in the price of the scrip from 27.05.2016 to 02.06.2016 and there is a negligible difference of around 0.15 paisa in the daily price fluctuation of the scrip. Hence there was no material impact on the market price after announcement of financial results for the year ended March 2016 which is considered to be UPSI in the SCN. (Ref.



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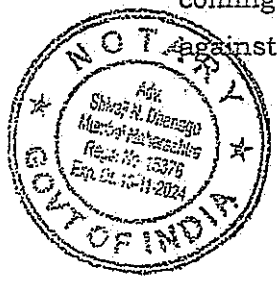
Annexure 5 and 5A on Internal Page No. 39 and 40 of Appellant No. 1's Post hearing Written Submissions dated 19.07.2022)

6.12 While taking into consideration the submissions of Appellant No. 2, Respondent has not appreciated the fact that Appellant No.2 was informed that the alleged off market transfer of 25,00,000 shares from Appellant No. 1 (Mr. Prakash Kanugo, Managing Director of PSL) to Dumet is w.r.t. creation of pledge and the off market transfer of 25,00,000 shares of PSL was w.r.t. security required by the lender. Accordingly, the pledge of 25,00,000 shares as mentioned hereinabove was disclosed by Appellant No. 1 to the Appellant No. 2 as well to the Stock Exchange under Regulation 31(1) and 31(2) of SEBI (SAST) Regulations. The said disclosure received by Appellant No. 2 was appropriately disclosed by them to the Stock Exchanges. Appellant No. 2 has duly complied with the provisions as applicable to them.

6.13 Respondent has failed to take into consideration the fact that Appellants's have not been beneficiary of any unlawful gains and/or no loss has been caused to investors as a result of alleged lapses, if any. Under Para No. 68 on Internal Page No. 45 of Impugned Order, it is inter alia mentioned that "The material made available on record has not quantified the amount of disproportionate gain or unfair advantage made by the Noticees and the loss suffered by the investors as a result of the Noticees' act..."

6.14 Respondent ought to take into consideration the principle of Proportionality while passing the Impugned Order. The Impugned Order is quite harsh and out of proportion based on the alleged violation.

6.15 Respondent has failed to give/disclose plausible reasons while coming to the conclusion in confirming the charges leveled against Appellants in the SCN. Absence of reasons in support of



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the Impugned Order is clearly suggestive of the Order being passed arbitrarily.

6.16 The purported conclusions/findings pertaining to alleged violation in the Impugned Order qua Appellants are based on incomplete appreciation of facts and circumstances of the case and are based on mere surmises and conjectures and are not supported by any evidence.

6.17 Impugned Order is *ex-facie* contrary to and belied by the facts of the case and settled principles of law. Impugned Order is contrary to justice, equity, good conscience and balance of convenience.

6.18 Appellants crave leave to add to, alter, amend or delete the grounds, if necessary in the interest of justice.

6.19 Appellants further crave leave to rely on case law, precedents and such other material, evidence and documents as may be necessary in the interest of justice.

7. **RELIEFS SOUGHT:**

Based on the above submissions, Appellants humbly pray for the following relief:

- (i) That the Impugned Order dated 29.07.2022 (being Exhibit "A" to the Appeal) passed by the Ld. Adjudicating Officer of Respondent be quashed and set aside qua Appellants;
- (ii) Pending hearing and final disposal of the present Appeal, the operation of the Impugned Order dated 29.07.2022 (being Exhibit "A" to the Appeal) be stayed;
- (iii) For such other relief's as may be warranted on the basis of the facts and circumstances to this Appeal in furthering justice as this Hon'ble Tribunal deems fit.



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8. INTERIM RELIEF:

The Appellants pray:

- (i) That pending the hearing and final disposal of the Appeal, this Hon'ble Tribunal be pleased to stay the operation and implementation of the said Order dated 29.07.2022 qua Appellants (being Exhibit "A" to the Appeal)
- (ii) That pending hearing and final disposal of the Appeal, this Hon'ble Tribunal be pleased to restrain the Respondent from acting upon or in pursuance or furtherance of the said Impugned Order dated 29.07.2022 (being Exhibit "A" to the Appeal)

8A. GROUND FOR INTERIM RELIEF

- (i) Appellants submit that they have a very strong prima facie case as set out in detail herein above. It is submitted that the Impugned Order is ex facie untenable, flawed and liable to be set aside for the reasons as aforesaid.
- (ii) The balance of convenience requires that the interim relief as prayed for be granted by this Hon'ble Tribunal.
- (iii) It is in the interests of justice, equity, good conscience and the balance of convenience that the interim relief as prayed for be granted by this Hon'ble Tribunal.

9. MATTER NOT PENDING WITH ANY OTHER COURT ETC:

The Appellants declares that no other proceedings have been filed by the Appellants in respect of the subject matter of present Appeal and therefore the subject matter of this Appeal is not pending before any Court of Law, Tribunal or other Authority.



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10. PARTICULARS IN RESPECT OF FEE PAID: PARTICULARS IN RESPECT OF THE FEES PAID IN TERMS OF RULE 9 OF THE RULES:

The Appellants have paid fees towards this Appeal as per Rule 9 of the Securities Appellate Tribunal (Procedure) Rules, 2000, the details whereof are as under:

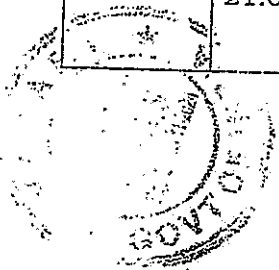
- (i) Amount of Fees : Rs 10,400/-
- (ii) Name of the Bank : Bank of Baroda
- (iii) Demand Draft No. : 117402
- (iv) Demand Draft date : 08.09.2022

11. DETAILS OF INDEX:

An index containing the details of the documents to be relied upon is enclosed.

12. LIST OF ENCLOSURES:

Exhibits	Particulars
A	Copy of Order dated 29.07.2022 bearing reference no. Order/GR/HK/2022-23/18165-18169 passed by Ld. Adjudicating Officer, SEBI along with covering letter dated 03.08.2022 bearing reference no. EAD-4/ADJ/GR/HK/OW/P/33379/3/2022 ("Impugned Order")
B	Copy of Company Master Data of Appellant No. 2 as downloaded from the MCA Website
C	Copy of SEBI's Common Show Cause Notice dated 05.04.2022
D	Copy of Appellant No. 2's Written Submissions dated 10.05.2022
E	Copy of Appellant No. 1's Written Submissions dated 21.06.2022




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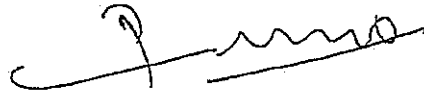
F	Copy of Appellant No. 1's Post Hearing Written Submissions dated 19.07.2022
G	Copy of Appellant No. 2's Post Hearing Written Submissions dated 19.07.2022

Place: Mumbai
Date : 12.09.2022



(Prakash C Kanugo)
Appellant No. 1

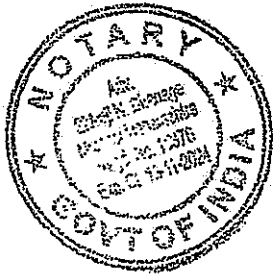
Place: Mumbai
Date : 12.09.2022



Prakash Steelage Limited



(Prakash C Kanugo)
Chairman and Managing Director
of Appellant No. 2

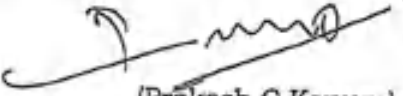


VERIFICATION

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I, Prakash C Kanugo, Appellant No. 1 do hereby declare and verify that the contents of paragraphs number 1 to 12 are true to best of my personal knowledge and belief and that I have not suppressed material fact.

Place: Mumbai
Date : 12.09.2022.


(Prakash C Kanugo)
Appellant No. 1


VERIFICATION

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I, Prakash C Kanugo, Chairman and Managing Director of Appellant No. 2 do hereby declare and verify that the contents of paragraphs number 1 to 12 are true to best of our personal knowledge and belief and that we have not suppressed material fact.

Place: Mumbai
Date : 12.09.2022
12 SEP 2022

Prakash Steelage Limited

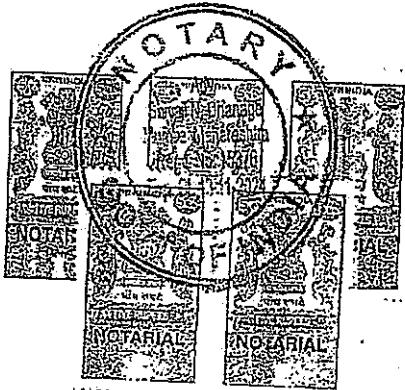
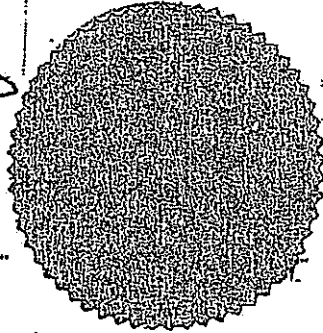

(Prakash C Kanugo)
Chairman and Managing Director
of Appellant No. 2



BEFORE ME



Adv. Shivaji. N. Dhanage
Notary Govt. Of India
Regd. No. 15376 MUMBAI (MS)
404-405, 4th Floor, Daver House,
197/198, Near Central Camera Bldg.,
D.N. Road, Fort, Mumbai - 400001.



12 SEP 2022

NOTED & REGISTERED

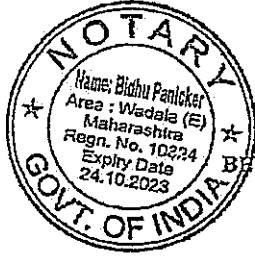
Page No. 23, Sr. No. 203

Dated: 12-SEP-2022





TRUE COPY



ANNEXURE - A-3

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BEFORE THE SECURITIES APPELLATE TRIBUNAL

AT MUMBAI

APPEAL NO. 709 OF 2022

Prakash Kanugo & Anr

...APPELLANTS

Versus

Securities and Exchange Board of India

...RESPONDENT

AFFIDAVIT IN REPLY ON BEHALF OF THE RESPONDENT

I, K. Divya Theja, working as Assistant General Manager with the Securities and Exchange Board of India ("SEBI"), the Respondent in the captioned Appeal, having its Head Office at SEBI Bhavan, Plot No. C4-A, 'G-Block', Bandra Kurla Complex, Bandra East Mumbai 400 051, do hereby solemnly affirm and state as under:

1. I have perused and made myself conversant with the papers and proceedings, and the records pertaining to the captioned Appeal filed by the Appellants herein ("the Appeal") and I am otherwise aware and conversant with the facts and circumstances of the present case based on the office records of the Respondent, and therefore, I am able to dispose the same. I am authorised to file this Affidavit in Reply on behalf of the Respondent.
2. I am filing this Affidavit in Reply to the present Appeal on grounds and reasons that warrant dismissal of the Appeal. I am also filing this Affidavit in Reply opposing the grant of any reliefs to the Appellants as sought for or otherwise. Any contention in this Affidavit in Reply which may be contrary to any other contention set out herein is being made without prejudice and in alternative to one another. I crave leave to file a further Affidavit if the circumstances so warrant.
3. I say that the Impugned Order dated 29.07.2022 ("Impugned Order") has been passed by the Ld. Adjudicating Officer ("Ld. A.O.") of the Respondent under Section 15-I of the Securities and Exchange Board of India Act, 1992 ("SEBI Act") read with



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Rule 5 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties) Rules 1995 ("SEBI Adjudication Rules"), and Section 23-I of the Securities Contract (Regulation) Act, 1956 ("SCRA") and Rule 5 of SCRA (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 ("SCR Adjudication Rules").

4. Vide the Impugned Order, the Ld. A.O. has *inter alia* imposed monetary penalty of Rs.17,00,000/- (Rupees Seventeen Lakh Only) on Prakash C Kanugo (Noticee No.1/ Appellant No.1) w/s 15A(b), 15G, and 15HA of the SEBI Act, 1992 and under Section 23H of SCRA for violation of the provisions of Section 12A(d) and (e) of SEBI Act, Regulation 4(1) of the SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as "PFUTP Regulations"), Regulation 4(1) and 7(2) (a) of SEBI (Prohibition of Insider Trading) Regulations, 2015 ("PIT Regulations") and Section 2(i) read with Sections 13, 16 and 18 of the SCRA.
5. Vide the said impugned order, the Ld. A.O. has also imposed monetary penalty of Rs.1,00,000/- (Rupees One Lakh Only) on Prakash Steelage Ltd (Noticee No.3/ Appellant No.2) under Section 15A(b) of the SEBI Act for violation of the provisions of Regulation 7(2)(b) of the PIT Regulations. The aforesaid penalties have been imposed after taking into consideration the factors stipulated under Section 15J of the SEBI Act, and the quantum of penalty is commensurate with the violations committed by the Appellants in the present case.
6. The proceedings leading to passing of the Impugned Order were as a result of an investigation conducted by the Respondent in the trading activities in the scrip of Prakash Steelage Ltd (herein after referred to as "(Appellant no.2/ Noticee No.3/ the Company/ PSL)") to ascertain whether trading in the scrip of PSL by certain suspected entities was based on unpublished price sensitive information (UPSI) relating to financial results of PSL for the quarter ended 31.03.2016 during the period

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of 15.04.2016 to 30.05.2016 (herein after referred to as "Investigation Period/IP").

The Appellant No.1 is the founder-promoter and Chairman and Managing Director of the Company at the relevant point of time and has significant influence by virtue of holding the top most position in the Company for more than two decades i.e. since 1991. The Appellant No.2, (Prakash Steelage Ltd) is a company incorporated under the Companies Act, 1956 in the year 1991 and manufactures stainless steel welded pipes, tubes and U-tubes under one roof in India. The Company is listed on the Bombay Stock Exchange and National Stock Exchange w.e.f. 25.08.2010. From the Investigation, it was found that Appellant No.1 who was an insider, while in possession of UPSI relating to the financial results of the Company for the period ended 31.03.2016 had traded/transferred 25,00,000 shares of the Company in off market transaction to Dumet Wire India Pvt Ltd (Noticee No.2 in the Impugned Order). The investigation also found that the Appellant No.1 did not receive the consideration for the said transfer within the time period specified for off-market transactions. Even though the aforementioned off market transfer shares of the Company took place on 31.03.2016, the Appellant No. 1 received consideration for the said shares in tranches from Dumet Wire India Pvt. Ltd. (Noticee No. 2) only on 30.03.2017 (Rs. 22,00,000) and on 11.04.2017 (Rs. 16,75,000), after a gap of almost a year from the transfer of shares and hence, Appellant no.1 did not receive the consideration for the said off-market transfer, within the stipulated time period for off-market transactions, thereby, being in violation of Section 2 (i) read with Sections 13, 16 and 18 of the SCRA. The Appellant No. 1 also did not state the consideration and provide cogent reason/ explanation in the Delivery Instruction Slip (DIS) for the aforementioned off market transfer of shares on 04.05.2016. The Appellant No.1 also did not make proper/ correct disclosure to the Company and to the stock exchanges in respect of the aforementioned off-market transfer of shares. The Appellant No.2, i.e. the Company failed to make disclosure to the Stock Exchanges in respect of the aforesaid off-market transaction, as required under Regulation 7(2)(b) of the PIT Regulations.



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7. Pursuant to the investigation, AO was appointed and a common Show Cause Notice dated 05.04.2022 ("SCN") along with all the relevant documents was issued by the Ld. AO to the Appellants and other co-noticees (being Noticee No. 2 (Dumet Wire India Pvt. Ltd.), Noticee No. 4 (Palak Kohli Kochhar) and Noticee No. 5 (Ajcon Global Services Ltd.). The SCN and annexures were duly delivered through Speed Post (SPAD) to both the Appellants. The Appellant No.1 submitted his reply on 21.06.2022 and 19.07.2022, the Appellant No.2 submitted its reply on 10.05.2022 and 19.07.2022. The Appellants, thereafter, through their representative attended personal hearing on 15.07.2022 before the Ld. A.O. and made submissions. I say that the Ld. A.O. after considering all the material before him and after dealing with all the contentions and submissions made by the Appellants during the personal hearing and the written submissions, had passed the Impugned Order, leading to the filing of the present Appeal.
8. At the outset, I deny all the contentions, allegations, averments and/or submissions made or raised in the Appeal and nothing stated in the Appeal thereof shall be deemed to be admitted for want of specific traverse or non-traverse. I further repeat, reiterate, and confirm the contents of the SCN and the Impugned Order and the same are not being set out in detail in this Affidavit-in-Reply for the sake of brevity and I crave leave to refer to and rely on the same as and when required during the course of hearing. Save for what is expressly admitted hereinafter in the Impugned Order and the SCN and save for what is matter of record, each and every statement made in the Appeal shall be deemed to have been specifically and emphatically denied herein.
9. I say that the Appeal is essentially a reiteration of what has already been stated by the Appellants in their replies in respect to SCN and the written submissions filed by the Appellants before the Ld. AO which have been dealt with in detail by the Ld. AO. I say that the Ld. AO has considered all the documentary evidence and other contentions put on record before arriving at the decision passed in the Impugned Order.



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I. UPSI (Unpublished Price Sensitive Information)

10. The unpublished price sensitive information ("UPSI") in the instant case was the 'financial results' of the Company for the Financial Year 2015-2016. The aforesaid information has been held to be UPSI vide the Impugned Order under the definition specified under Regulation 2(1)(n) of the PIT Regulations as it satisfied all the three criteria therein under Regulation 2(1)(n)(i) of the PIT Regulations, more particularly "financial results" of a company itself tantamount to information which is price sensitive.

11. The term 'unpublished price sensitive information' has been defined under Regulation 2(1)(n)(i) of the PIT Regulation as follows:

"2(1) In these regulations, unless the context otherwise requires, the following words, expressions and derivations therefrom shall have the meanings assigned to them as under:

.....

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

(i) financial results;"

It is pertinent to note from the above definition, the three requirements essential to qualify an information to be UPSI, viz. a) the information must be directly or indirectly related to a company or its securities, b) the information must not be generally available, and c) the information upon become generally available, is likely to materially affect the price of the securities. Thus, the Ld. AO rightly observed that 'financial results' of a company is deemed to be price sensitive information by virtue of the Regulation 2(1)(n)(i) of the PIT Regulations.

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12. While considering the second criteria, an information remains unpublished till it is made known to the public at large. Disclosing the same to the public at large by submitting it to the stock exchanges is considered as publishing it and subsequently, the UPSI period ends. All listed companies have an obligation to make such disclosures to the exchanges where the securities of the companies are listed in time bound manner (within two trading days). The Ld. A.O. observed that the financial results of the Company for quarter ending 31.03,2016 were announced on 30.05.2016 after market hours, thus the Ld. A.O. rightly held that the financial results were unpublished during the Investigation Period and remained UPSI.

II. Appellant No. 1 as "Insider"/ "Connected Person":

13. The term 'insider' is defined under Regulation 2(1)(g) of the PIT Regulations which reads as under:

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

i) a connected person; or

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

Thus, as per the abovementioned definition a "connected person" is deemed to be an insider. The PIT Regulations also define a 'connected person' under Regulation 2(1)(d) which reads as following:

"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."

Thus, from the above definition it is clear that a company's directors, officers or employees who directly or indirectly, have access to unpublished price sensitive information or are reasonably expected to allow such access are deemed to be connected persons and hence, an insider as per the PIT Regulations.

14. It is evident from the Financial Results of FY 2016-2017 of the Company, the Appellant No.1 was the Chairman and Managing Director since 09.05.1991. Thus, during the relevant point of time during the Investigation Period the Appellant No.1 was holding the position of Chairman and Managing Director in the Company. As the Appellant No.1 was holding the top most position in the Company since 1991, he had significant influence by virtue of the same. The Appellant No. 1 is also one of the promoters of the Company. Thus, the Ld. AO observed that the Appellant No.1, by virtue of his role and position in the Company fell squarely within the definition of "insider" and was reasonably expected to have access to the UPSI related to the said financial results of the Company for quarter ending March, 2016. The Ld. A.O. also placed reliance on Regulation 4(2) of PIT Regulations which reads as under:

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

15. Thus, once it is established that the Appellant No. 1 was a "connected person"/ "insider", the onus of showing that the Appellant No. 1 was not in possession of UPSI falls on him, being the connected person as laid down in Regulation 4(2) of the PIT Regulations.

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III. UPSI Period:

16. While determining whether the Appellant No.I had traded in shares of the Company while in possession of or on the basis of UPSI, the Ld. A.O. examined the period of UPSI i.e. financial results of the Company and the events related to the development of financial results of the Company for the quarter ending 31.03.2016. The investigation conducted by the Respondent observed the following chronology of events related to aforesaid financial results.

S. No.	Events	Date
1.	Finalization of accounts internally	15.04.2016 to 30.04.2016
2.	Commencement of statutory audit for FY 2015-16	03.05.2016
3.	Submission of draft financial accounts to management	18.05.2016
4.	Discussion with management	19.05.2016
5.	Finalization of financial accounts	28.05.2016
6.	Placing before the Board	30.05.2016

Based on the above chronology and the Company's letter dated 04.09.2020 vide which the Company *inter alia* submitted that the work related to party wise ledger scrutiny, internal verification of accounts, reconciliation with confirmations, etc was completed by 25.04.2016 and from the said date, internal audit had started giving auditors access to raw accounting data. From this, the Ld. A.O. noted that for finalization of results, updating the data entry for sales, purchases, bank payments/ receipts, petti cash vouchers and journal vouchers were carried out about 15 days after the year end. It was also observed that the UPSI in relation to financial results of the quarter ended March 2016 had come into existence on 15.04.2016. The Respondent's investigation observed that as per the corporate announcement dated 20.05.2016 made by the Company, the trading window for dealing in the securities of the

Company was closed for the purpose of declaration of Audited Financial results of the Company for the quarter ending March 2016 on 21.05.2016.



17. It was found that, the Company made corporate announcement of its Audited Financial Results (Consolidated and Standalone) for quarter and Financial Year ended March 2016 to NSE on 30.05.2016 at 20:47 hours and to BSE on 31.05.2016 at 11:26:10 hours, thus it was found that the UPSI period was from 15.04.2016 to 30.05.2016 20:47 hours.

IV. Trading Behaviour of the Appellant during the UPSI Period

18. The investigation revealed that the Appellant No.1 through its depository CDSL had entered into an off-market transaction with Dumet Wire India Pvt Ltd (Noticee No.2 Appellant No.1 on 04.05.2016 had transferred 25,00,000 shares of PSL to Noticee No.2, through an off-market transaction. Vide emails dated 30.07.2019 and 01.08.2019, CDSL provided the Demat Account Statement of the Appellant No.1 and the Delivery Instruction Slip (DIS) of the aforesaid off-market transaction. A copy of the said Demat Account Statement and the DIS Slip is hereto annexed and marked as Exhibit "A". As observed from the DIS Slip, no consideration amount was mentioned on the DIS and the reason for transfer was ticked as "others". As established above the UPSI period commenced from 15.04.2016 to 30.05.2016, thus the aforesaid off-market transaction between the Appellant No.1 and Noticee No.2 took place during the period of UPSI.

19. In this regard, the Note appended to Regulation 4 of the PIT Regulations states:

"NOTE: When a person who has traded in securities has been in possession of unpublished price sensitive information, his trades would be presumed to have been motivated by the knowledge and awareness of such information in his possession. The reasons for which he trades or the purposes to which he applies the proceeds of the transactions are not intended to be relevant for determining whether a person has violated the regulation. He traded when in

possession of unpublished price sensitive information is what would need to be demonstrated at the outset to bring a charge. Once this is established, it would be open to the insider to prove his innocence by demonstrating the circumstances mentioned in the proviso, failing which he would have violated the prohibition"

In the instant case, the financial results of the Company for the financial year ended 31.03.2016 undoubtedly fell squarely within the definition of UPSI and the Appellant No. 1 traded in securities of the Company during the UPSI Period also stands established, hence, there arises a strong presumption that the Impugned Trade (being the off market transfer of shares) was motivated by the knowledge and awareness of such information in his possession. Further, the aforesaid Regulation provides that the reasons for which the person in possession of UPSI (in this case the Appellant No. 1) traded or the purposes to which he applies the proceeds of the transactions are not intended to be relevant for determining whether a person has violated the relevant provision of law, and unless the insider (Appellant No. 1) demonstrates the exempting circumstances mentioned in the proviso to Regulation 4(1) of the PIT Regulations, failing which he would have violated the relevant legal provision.

20. The Appellant No.1 in his reply to the SCN submitted that the aforesaid off market transfer of 25,00,000 shares to the Noticee No. 2 on 04.05.2016 was a security for the funds that the Appellant No. 1 wanted to borrow from the Noticee No. 2, however, it was observed that there was no pledge created through the Depository Mechanism. The Ld. A.O. rightly observed that, even if the off-market transaction was to be considered as a financial transaction and the shares were indeed allegedly pledged, proper mechanism to pledge the shares (dematerialized) was not followed. Hence, the said transaction was carried out giving it a different colour of creation of encumbrance. Further the term "trading" as defined in Section 2(1) of the PIT Regulations is wide in nature and means and includes subscribing, buying, selling,

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dealing or agreeing to subscribe, buy, sell, deal in any securities. It remains an admitted position that the Appellant No. 1 had carried out the off-market transaction whereby he transferred shares to the Noticee No.2 during the UPSI period.

21. It was also observed that while replying to the SCN, the Appellant No.1 had submitted a letter dated 04.05.2016 which was addressed to the Noticee No.2. As per the contents of the said letter, the Appellant No.1 had transferred 25,00,000 shares of the Company to the Demat Account of the Noticee No.2 to purportedly meet their financial obligations to the Noticee No.2. It is pertinent to note that the said letter also stated that the Noticee No.2 was free to sell the aforesaid shares or to make use of them without referring to the Appellant No. 1 being the absolute owner. In this regard, the Ld. A.O. correctly observed that, in general when a transfer of shares is done to provide security, the same can only be encumbered when there has been a default on part of the borrower and not otherwise. However, it was observed from the aforesaid letter of the Appellant No.1 that the Noticee No.2 was given the right to sell the shares without any condition of there being a default on part of Appellant No.1 who claims to be the borrower. Thus, it is clearly evident that the aforesaid off-market transfer of shares was tried to be disguised as a creation of encumbrance. As observed from above the Delivery Instruction Slip (DIS), through which the said off market transfer of 25,00,000 shares of the Company had taken place between the Appellant No.1 and the Noticee No.2, there was no mention of the amount of consideration to be received by the Appellant No.1, further the DIS also did not mention any specific reason for the transfer of shares. Further, the Appellant No. 1 had submitted the DIS along with a letter mentioning the reason for transfer of shares as 'security' to the Noticee No. 2 which is evidently incorrect. It has also been established in the instant case that none of the exceptions provided under the proviso to Regulation 4(1) of the PIT Regulations are applicable nor pleaded by the Appellant No. 1. Thus, the Ld. A.O. rightly observed that the Appellant No.1 had transferred 25,00,000 shares off-market to the Noticee No.2 while he was in possession of UPSI. Accordingly, the Appellant

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No. 1 has been held to have violated the provisions of Section 12A(d) and (e) of the SEBI Act and Regulation 4(1) of the PIT Regulations.

V. Disclosure of the Off-Market Transfer by the Appellant No. 1 to the Company (Appellant No.2), -

22. As stated above, the Appellant No. 1, the Managing Director and Promoter of the Company, had transferred 25,00,000 shares of the Company on 4.05.2016 to the Noticee No. 2 and in this regard, as per Regulation 7(2)(a) of the PIT Regulations, he was required to disclose the said transaction to the Company within two trading days from the date of the transaction, as the amount of the said transaction exceeded ten lakh rupees in value. Regulation 7(2)(a) of the PIT Regulations is reproduced herein below:

"7. Disclosures by certain persons

(2) Continual Disclosures

(a) Every promoter, member of the promoter group, designated person and director of every company shall disclose to the company the number of such securities acquired or disposed of within two trading days of such transaction if the value of the securities traded, whether in one transaction or a series of transactions over any calendar quarter, aggregates to a traded value in excess of ten lakh rupees or such other value as may be specified."

23. In the instant case, it remains an admitted position that disclosure for the aforesaid transaction dated 04.05.2016 was made by the Appellant No.2 (the Company) only on 09.05.2016 to the exchanges under Regulation 31(1) and 31(2) of the SEBI (Substantial Acquisition of Shares & Takeovers) Regulation, 2011 ("SAST Regulations") based on the submissions made by the Appellant No. 2 that the Appellant No. 1 has created an encumbrance over the said 25,00,000 shares of the Company on 04.05.2016 which in itself was an incorrect disclosure

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24. For arriving at the correct value of the shares transferred by the Appellant No. 1, it has been noted that the Appellant No.1 and the Noticee No.2 had submitted that the consideration for the aforesaid transfer of shares on 04.05.2016 was Rs.38.75 Lakhs (Rupees Thirty-Eight Lakhs Seventy Five Thousand Only). The Noticee No.2 in its submissions before the Ld. A.O. also stated that the consideration for the transfer of shares was paid to the Appellant No.1 from their bank account – 0430102000040178 (Axis Bank account). It was observed from the bank account statement of the Noticee No.2 that a sum of Rs.22,00,000/- (Rupees Twenty-Two Lakhs Only) was transferred to the Appellant No.1 on 30.03.2017 and a sum of Rs.16,75,000/- (Sixteen Lakh Seventy Five Thousand Only) on 11.04.2017. It was observed that the closing price of the shares of PSL on 04.05.2016 was Rs. 5.4 each shares and thus the correct value of the shares transferred comes to Rs. 1,35,00,000 (Rs. 5.4 x 25,00,000 shares). Thus, it is clearly established that in the present case the value of the transaction was more than ten lakh rupees and under the provisions of Regulation 7(2)(a) of the PIT Regulation, the Appellant No.1 was required to disclose the said transaction to the Company within two trading days, which the Appellant No.1 has failed to do, thus, violating the provisions of Regulation 7(2)(a) of the PIT Regulations.

VI. Violation of Regulation 4(1) of the PFUTP Regulations:

25. In the instant case, the Appellant No. 1 by creation of DIS, transferred the shares in off market and disclosed the same as an encumbrance to the Company, that tantamount to fraud as defined under the definition of 'fraud' under the PFUTP Regulations.

26. Regulation 2(c) of the PFUTP Regulations defines the term "fraud" as under:

(c) "fraud" includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce another person or his agent to

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deal in securities, whether or not there is any wrongful gain or avoidance of any loss, and shall also include—

- (1) a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment.*
- (2) a suggestion as to a fact which is not true by one who does not believe it to be true;*
- (3) an active concealment of a fact by a person having knowledge or belief of the fact;*
- (4) a promise made without any intention of performing it;*
- (5) a representation made in a reckless and careless manner whether it be true or false;*
- (6) any such act or omission as any other law specifically declares to be fraudulent,*
- (7) deceptive behaviour by a person depriving another of informed consent or full participation,*
- (8) a false statement made without reasonable ground for believing it to be true.*
- (9) the act of an issuer of securities giving out misinformation that affects the market price of the security, resulting in investors being effectively misled even though they did not rely on the statement itself or anything derived from it other than the market price.*

27. Further Regulation 4(1) of the PFUTP Regulations provides as under:

"4. Prohibition of manipulative, fraudulent and unfair trade practices

- (1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practices in securities."*

28. The only purported defence taken by the Appellant No. 1 in this regard before the Ld.

A.O. was that he was badly in need of funds to infuse in the Appellant No.2 company and thus the 25,00,000 shares of the Appellant No.2 were transferred as "Security" to the Noticee No.2. Further in its submission the Noticee No.2 submitted that due to certain disputes between the Appellant No.1 and the Noticee No.2, the aforesaid financial transaction could not be materialized immediately. The Ld. AO noted that

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though the Appellant No.1 claimed that there was urgency to arrange funds, the consideration for the transaction could not be materialized. Further the Ld. A.O. noted that the Appellant No.1 could not produce any evidence or supporting document to show the efforts made by the Appellant No.1 towards the collection of the consideration amount from the Noticee No.2. The only form of communication in respect of consideration for the off market transfer was a letter dated 06.03.2017 which was addressed by the Appellant No. 1 to the Noticee No.2 almost after a lapse of 10 months from the date of the transfer. Thus, considering the above submissions made by Appellant No.1, Ld. AO has correctly held that even after there being urgency of funds by the Appellant No. 1 the shares were transferred without any agreement between the Appellant No.1 and the Noticee No.2 as no amount of Consideration was mentioned in the DIS. Further, even after there being a dispute between the Appellant No.1 and the Noticee No.2, and the so called urgency for funds, a reminder letter was only sent to the Noticee No.2 in March 2017 i.e. after lapse of 10 months from the date of transfer. It was further observed that despite stating that the said transfer created an encumbrance, the Appellant No.1 vide his letter dated 04.05.2016 gave absolute rights to the Noticee No.2 without receiving any consideration / funds that he allegedly required on an urgent basis and the Appellant No.1 had also failed to elaborate the urgency for funds.

29. The Ld. AO noted that even after creating the purported encumbrance over the shares, the same were not transferred to the lender but were kept with the Appellant No.1 in a frozen state till the loan amount was repaid. It is pertinent to note that though it is general corporate practice to raise funds by pledging shares and promoters of companies often take this option at time of financial trouble when their company is in urgent requirement of funds, however the ownership of such pledged shares are never transferred to the lender rather the ownership remains with the borrower who continues to earn dividend and capital gains on those shares.

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30. Hence, the impugned off market transfer of shares by the Appellant No. 1 to the Noticee No. 2 by creation of DIS and disclosure of the same as an encumbrance to the Company is covered under the definition of 'Fraud' under Reg.2(1)(c) of the PFUTP Regulations. Thus, it has been rightly held in the Impugned Order that the Appellant No.1 had violated Regulation 4(1) of the PFUTP Regulations. It is pertinent to refer to the definition of 'fraud' as given under Regulation 2 (1) (c) and as interpreted by the Hon'ble Supreme Court of India in *SEBI vs. Kanaiyalal Baldevbhai Patel & Ors. (2017) 15 SCC 753* wherein, a wide connotation has been attributed to the said definition. In para 28 of the said Judgement, it is stated that the definition of 'fraud' has two parts under Regulation (2)(1)(c), first part may be termed as catch all provision while the second part includes specific instances which are also included as part and parcel of term 'fraud'. The specific instances that are included under the term 'fraud' are, a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment or an active concealment of a fact by a person having knowledge or belief of the fact etc. In view of the same, the act of carrying out the impugned off market transfer of shares by the Appellant no. 1 gets squarely covered under the definition of 'fraud'.

VII. Violation of Section 2(i) read with Sections 13, 16 and 18 of the SCRA:

31. In this regard, Section 2(i)(a) of SCRA reads as under:

"2. In this Act, unless the context otherwise requires, -

(i) "spot delivery contract" means a contract which provides for, -

(a) actual delivery of securities and the payment of a price therefore either on the same day as the date of the contract or on the next day, the actual period taken for the despatch of the securities or the remittance of money therefor through the post being excluded from the computation of the period aforesaid if the parties to the contract do not reside in the same town or locality"

32. In terms of the aforesaid Section 2 of the SCRA, it is pertinent to note that spot delivery contract in securities market is completed only if the transfer/delivery of shares and subsequent payment of the consideration has been made within the prescribed time i.e., on the same day or the next day. In the instant case admittedly no consideration was made/ passed on for the off market transfer of shares between the Noticee No.2 and the Appellant No.1 within the said prescribed time. It is an admitted fact that the funds were transferred only on March 30, 2017 and April 11, 2017 against the said off market transfer of shares. The Ld. A.O. observed that there was almost a gap of 11 months between off-market transfer of shares in May 2016 and payment of funds in March & April 2017. The Ld. A.O. further noted the submissions made by the Appellant No.1 and the Noticee No.2 that there were some conflicts due to which the immediate transfer of funds was not done. However, the Appellant No. 1 failed to justify the aforesaid delay in transfer as the time gap was considerably long and the amount of consideration was also huge. As per Sections 13 and 16 of the SCRA all sorts of off-market transaction of securities are illegal unless they are in the form of spot delivery contract which requires the transfer of securities and funds on the same day or next day, which remain exempted under Section 18. Thus, while considering the above facts, Ld. AO observed that the Appellant No.1 had violated Section 2(i) read with Sections 13, 16, and 18 of SCRA.

VIII. Violation of Regulation 7(2)(b) of PIT Regulations by the Appellant No. 2:

33. In this regard Regulation 7(2) of the PIT Regulations states as following:

7. Disclosures by certain persons

(2) Continual Disclosures

(a) Every promoter, member of the promoter group, designated person and director of every company shall disclose to the company the number of such securities acquired or disposed of within two trading days of such transaction if the value of the securities traded, whether in one transaction or a series of transactions

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over any calendar quarter, aggregates to a traded value in excess of ten lakh rupees or such other value as may be specified.

(b) Every company shall notify the particulars of such trading to the stock exchanges on which the securities are listed within two trading days of receipt of the disclosure or from becoming aware of such information."

34. In this regard, the Impugned Order has noted that the Appellant No.2 had made disclosures to the stock exchanges under Regulation 31(1) and 31(2) of the SAST Regulations on 09.05.2016. The disclosure stated that the Appellant No.1 had created an encumbrance over his 25,00,000 shares. It was observed that the Company had relied on the Benpos Report which had been received from their RTA (Registrar and Transfer Agent). The Respondent in its Investigation had observed that the said Benpos Report reported a decrease in shareholding of the Appellant No.1 by 25,00,000 shares. In this regard, the Impugned Order has correctly observed that creation of encumbrance never leads to decrease in shareholding of the borrower unless the borrower defaults in repayment of the Loan. Thus, when there was a reduction in the shareholding of the Appellant No.1, the same had to be disclosed under the PIT Regulations, which the Appellant No.2 failed to disclose. While considering the above facts, the Ld. AO rightly held that it was established that Appellant No.2 had violated Regulation 7(2)(b) of the PIT Regulations.

35. Alleged Defences taken by the Appellants

a. Preliminary Issue of delay raised by the Appellant No.1

- i. The Appellant No.1 in his reply to the Ld. AO, among other things, had raised objections in relation to the alleged delay caused in issuing the SCN by the Respondent. The Appellant No.1 contented that the SCN was issued by the Respondent after a gap of 6 years from the date on which the off-market transactions took place and for that reason alone the SCN was liable to be quashed. While considering the aforesaid preliminary

objection raised by the Appellants, it was observed that the Respondent received a report from NSE on 31.12.2016, where alerts were generated by NSE after analysing trading activities in the scrip of PSL as there was suspicion of insider trading in scrip of PSL. Based on that report of the NSE, the Internal Surveillance Department (ISD) of SEBI ran the pattern recognition model for insider trading to identify suspects by considering various variables such as selling before negative news, trading activities by entities across the scrip of the Company and notional loss avoided by entities in the scrip of the Company. Further it was observed that two entities namely Haridarshan Sales Pvt Ltd and Withal Commercial Pvt Ltd, had traded in the Scrip of Company after start of UPSI and avoided losses, from this it was *prima facie* indicated to the possibility of trading on the basis of unpublished price sensitive information, after which the same was referred to Respondent's Investigation Department. The Investigation Department of the Respondent observed that price movement and trading in the shares of the Company on various occasions of corporate announcements made by the Company from 05.05.2016 to 31.05.2016. The Price Volume data of the Scrip of the Company was analysed from 15.01.2016 to 30.08.2016. Further various information and chronology of events related to financial results of the Company for FY ended 31.03.2016 was sought from the Company as well as the Auditors, the same was then analysed. Various entities including the Appellants in around 2019 were asked by the Respondent to provide details of their connection with Certain entities having Connection with Haridarshan Sales Pvt. Ltd. and Withal Commercial Pvt Ltd. Further the connection of the Appellants with Haridarshan Sales Pvt Ltd and Withal Commercial Pvt Ltd was also looked at by the Respondent during Investigation. It is respectfully submitted that insider trading investigations are complex and often huge amounts of transactions need to be examined and thus requires

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extra diligence and effort, as insider trading violation attracts high penalty than other violations. It is submitted that the investigation conducted by the Respondent was a holistic investigation which involved collection of data pertaining to suspicious trading in the scrip of the Company after going through the activities of the people involved in trading in the Scrip of the Company and detailed analysis of such trading, after which the investigation was narrowed down to impugned off-market trade of Appellant No.1. It is also pertinent to note that, the violations by the Appellants were on multiple counts and involved various regulations. Further, it was observed that investigation process takes some time as there is dependency on outside sources. It is submitted that only after the Investigation was completed, the SCN was issued on 05.04.2022. The Appellant No.1 had also filed his replies dated 21.06.2022 and 19.07.2022, Appellant No.2 had also filed its replies dated 10.05.2022 and 19.07.2022. The Appellants were also granted an opportunity of personal hearing on 15.07.2022, the hearing notice was served to the Appellants vide email dated 21.04.2022. Moreover, the Appellants have not shown, that the delay in the proceedings as alleged by them has caused the Appellants any form of prejudice pleaded or otherwise. Reliance in that respect is placed on the decision of this Hon'ble Tribunal in its decision in the case of *Pooja Vinay Jain vs SEBI (Appeal No.152 of 2019 Order dated 17.03.2020)*. The Hon'ble Tribunal in the case of *Pooja Vinay Jain* also observed that SEBI had to look at various entities and transaction done by them in the scrip of the company. Thus, considering the above, the Ld. A.O. observed that, a well carried out investigation, more specifically in complex issues like insider trading does take considerable time. Further it is submitted that under the SEBI Act there is no provision that lays down any limitation period for initiating any proceedings / actions under the SEBI Act.

- b. Appellant No.1 was allegedly not involved in finalization or preparation of accounts and financial results.
- i. The Appellant No.1 submitted that he was allegedly nowhere involved in the finalization of accounts or preparation of Financial Results, and hence he did not have any information of financial results of the Company when it was being prepared. The Appellant No.1 allegedly submitted that the process of preparation of Financial Results was handled by Accounts Team of the Appellant No.2 along with the Statutory and Internal Auditor of the Appellant No.2, also Mr. Ashok M Seth, Executive Director and CFO of the Appellant No.2 would oversee the finalization of accounts and preparation of Financial Results. In this regard, it is an admitted fact that the Appellant No. 1 is the founder-promoter and Chairman and Managing Director of the Company at the relevant point of time and has significant influence by virtue of holding the topmost position in the Company for more than two decades i.e. since 1991. The Appellant No. 1 is squarely covered under the definition of "insider" under the PIT Regulations, thus from the above it is evident that the Appellant No.1 was "*reasonably expected*" to have access to the UPSI related to Financial Results of the Company for quarter and FY ending 31.03.2016. It is further submitted that the Appellant No. 1 was the Chairman and Managing Director of the Company at the relevant time. Section 2(54) of the Companies Act, 2013, provides that a managing director is entrusted with substantial powers of management of the affairs of the company. Thus, the preparation of financial results of the Company (being the UPSI in the present case) and the details thereof would squarely be within the knowledge of the Appellant No. 1 being the Managing Director of the Company.
- c. Alleged erroneous consideration of the UPSI Period.
- i. The Appellant No.1 contended that the Appellant No.2 had submitted to BSE on 20.05.2016, that meeting of Board of Directors of the Company

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was scheduled to be held on 28.05.2016, to consider, approve and take on record the Audited Financial Statements of the Appellant No.2 for the quarter and FY ended 31.03.2016. It was also informed that the Appellant No.2 informed BSE that the trading window will be closed from 21.05.2016 till 48 hours after the announcement of the results. Thus, as per the Appellant No.1, UPSI period was from 20.05.2016 to 30.05.2016 and not from 15.04.2016 to 30.05.2016. In this regard, it is submitted that as is rightly found out by the Ld. AO that, the internal finalization of Accounts started from 15.04.2016 till 30.04.2016. It was also observed from the Company's email dated 04.09.2020, finalization of results and data entries of various financial information, were carried out 15 days after the Financial Year had ended. It was rightly observed by the Ld. A.O. in the Impugned Order, that the UPSI in relation to the financial results of the Company for quarter and financial year ended 31.03.2016, came into existence on 15.04.2016. Further, the Ld. A.O. also noted that the off-market transaction was dated 04.05.2016. Therefore, based on the observations above, Ld. A.O. correctly held that transfer of the shares in off-market by the Appellant No. 1 was based on the UPSI relating to the Financial Results. Annexed hereto and marked as Exhibit "B" is a copy of the aforesaid email dated 04.09.2020 addressed by the Company to the Respondent.

d. Appellant No.1 allegedly had no knowledge of the UPSI on date of transaction.

- i. The Appellant No.1 sought to contend that he received emails from compliance officer of the Appellant No.2 about the board meeting and closing of the trading window, prior to which he had not received no communication in respect to financial results. The Appellant No.1 also submitted that, SEBI sent a letter dated 10.08.2020 seeking details of whether the Appellant No.1 and Mr. Ashok M Seth were kept

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apprised/informed of events/developments relating to financial results, in response to the aforesaid letter. The Appellant No.2 also submitted that Mr. Ashok Seth was apprised/informed relating to financial results, but the Appellant No.1 was not apprised/informed of the events/developments/matters relating to financial results. The Appellant No.1 also submitted that, his name does not come up in the break up activities undertaken during the preparation of financial results along with relevant dates and all persons involved in the activities, provided by the Appellant No.2 to Respondent. In this regard, it is submitted that, it has already been established that the Appellant No.1 was an "insider" as per Regulation 2(1)(g) and a "connected person" as per Regulation 2(1)(d) of the PIT Regulations. From the Annual Report for FY 2016-17 of the Company it was noted that the Appellant No.1 was Chairman and Managing Director since 09.05.1991, and held significant influence by holding the top most position in the Company for over two decades and thus was expected to have reasonable access to the UPSI related to the financial results of the Company for the quarter ending 31.03.2016. It is also pertinent to state that the Note appended to Regulation 4 of the PIT Regulations, as discussed in aforesaid para 19, specifically states that a person who traded in securities while in possession of UPSI would be presumed to have been motivated by the knowledge and awareness of the said UPSI in his possession. From the above observation, the Ld. A.O. has rightly concluded that the Appellant No.1 was in fact in possession of the UPSI on date of off-market transaction.

e. Transfer of shares, allegedly done in respect of future financial purposes and as a security for the funds borrowed.

i. The Appellant No.1 sought to contend that, said transfer of the shares, was done for future financial purposes and the purpose of encumbrance was to raise funds by the Appellant No.1, thus the transfer was solely for reasons

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for security for future funds. The Appellant No.1 also submitted that he had also raised debit note towards Noticee No.2 for Rs.38,75,000/-, however, due to some financial disputes, the transaction could not be materialized. It was further contended by the Appellant No. 1 that after a lot of time passed Noticee No.2 had not completed his financial obligation, after which on 06.03.2017, the Appellant No.1 sent a reminder letter to Noticee No.2 for repayment. Thus, after negotiations and reconciliations Noticee No.2 transferred Rs.22,00,000/- and Rs.16,75,000/- in March and April 2017. It was also contended by the Appellant No. 1 that the financial transaction between the Appellant No.1 and Noticee No.2 was nowhere related to market value of shares. The Appellant No.1 had submitted in his reply, that he was badly in need of funds to infuse in the company, thus had transferred 25,00,000 shares of the Company on 04.05.2016 was made as "Security". In this regard, as set out in detail above also, the Ld. A.O. rightly held that the purported claim of the Appellant No.1 of urgency of funds was unbelievable and untenable as almost 1 year had passed since the off-market transaction and yet it was not materialized, and there was also no supportive evidence, showing that an effort was made by the Appellant No.1 towards collection of the said amount from Noticee No.2 except for one letter sent on 06.03.2017. It was also observed that, there was no agreement between the parties from transfer of shares, nor there was any amount / consideration mentioned in the DIS through which the said transfer was done.

f. Alleged disclosure made to the Appellant No.2 Company.

- i. The Appellant No.1 sought to contend that pledge of 25,00,000 shares of PSL was disclosed to the Appellant No.2 as well as stock exchanges under Regulation 31(1) and 31(2) of SAST Regulations and was received by the Appellant No. 2 and the stock exchanges. Further the Appellant No.1 submitted that, no disclosure in relation to pledge shares under Regulation

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7(2)(a) of PIT Regulations needs to be made as the said Regulations deals with acquisition and disposal of shares of certain value and it is the Appellant No.1's case that the shares were transferred for encumbrance of shares. In this regard, it is reiterated that the Appellant vide his letter dated 04.05.2016 to the Noticee No.2 had stated that 25,00,000 shares were transferred on account of financial obligations towards the Noticee No.2, but with the same letter the Appellant No.1 had authorized Noticee No.2 to sell the said shares or make any use of them without referring or informing to the Appellant No.1 being the absolute owner. Hence, the Ld. A.O. rightly observed, that when shares are kept as security, the same can only be sold in case of default, in the present case there was no default but however the lender "Noticee No.2" was given absolute right to sell shares without any condition by the borrower. The said transaction was done by the Appellant No.1 on 04.05.2016 but the same was only disclosed to the Company on 09.05.2016, Regulation 7(2)(a) clearly sets out that any share transaction done by *employee, promoter or director* amounting to above Rs.10,00,000 should be disclosed to the Company with two trading days. Thus, from the above observations, it was found that the Appellant No.1 had made false disclosure to the Company as well as the stock exchanges and was in violation of Regulation 7(2)(a) of PIT Regulation.

g. Appellant No.2 alleged no violation of Regulation 7(2)(b) of the PIT Regulations:

It was the Appellant No.2's contention that the off-market transfer of shares in question was for the purpose of encumbrance and not for sale/disposal. Accordingly, the pledge of 25,00,000 shares was disclosed by the Appellant No.1 to the Appellant No.2 and stock exchanges under Regulation 31(1) and 31(2) of SAST Regulations, and that only on receipt of SCN, the Appellant No.2 came to know the Respondent had not treated the transaction as pledged shares but as normal off-market transfer of shares. The Appellant No.2 also contended that it

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was also not provided any information with respect to the said pledged shares, and the Appellant No. 2 came to know about the transaction through the Benpos report. In this regard, it is submitted that it is an admitted fact that the Company had replied on the Benpos Report which was received from their RTA (Registrar and Transfer Agent) as stated above. The said Benpos Report also showed that there was a decrease in the shareholding of the Appellant No.1 by 25,00,000 shares. The Ld. A.O. observed that, creation of encumbrance never leads to decreases in shareholding of the borrower unless, there is a default in repayment of the loan amount. It is the case of the Appellants that the shares were a form of security and thus encumbrance was created on the shares. Thus, as there was reduction of shareholding of the Appellant No.1, the same had to be disclosed under PIT Regulations which the Appellant No.2 failed to disclose.

36. PARAWISE REPLY: Without prejudice to and fully relying on what is stated hereinabove, for the sake of completeness, I now proceed to deal with the paragraphs of the Appeal. My response hereunder is to be read along with what has been stated by me hereinabove and nothing in the said paragraphs or in the Appeal is to be deemed to have been admitted for mere want of a specific traverse.
37. With reference to the contents of Paragraphs 1 of the Appeal Memo, the same pertains to particulars of the Appellants and are denied for want of specific knowledge. The contents of Paragraph 2 pertain to the particulars of the Respondent, hence do not merit and specific response.
38. With reference to Paragraphs 3 and 4 of the Appeal Memo, the same pertains to the details of jurisdiction and limitation clause and the contents of the said paragraphs are matter of record and hence, do not merit any response.
39. With reference to Paragraphs 5.1 to 5.5 of the Appeal Memo, the contents thereof pertain to the directions of monetary penalty imposed and violations established under the Impugned Order, the investigation conducted by the Respondent in the present

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case, the allegations against the Appellants vide the SCN, their replies and submissions thereto, and in this regard I crave leave to refer to and rely on the SCN and the Impugned Order for correctness of facts, and anything contrary thereto stated in the paragraphs under reference is denied. With reference to Paragraph 5.6, the contents thereof pertain to the description of the Appellants and do not warrant any specific response from the Respondent. With reference to Paragraph 5.7, the contents thereof pertain to details of investigation carried out by the Respondent, the issuance of the SCN, the proceedings before the Ld. A.O. culminating into the Impugned Order and in this regard I crave leave to refer to and rely on the Impugned Order and the SCN for correctness of facts and anything contrary thereto stated in the paragraph under reference is denied.

40. With reference to Paragraph 5.8 to 5.8(1)(i) of the Appeal Memo, it is submitted that the Appellant being the Managing Director and Chairman of the Appellant No.2, is squarely covered under the definition of 'insider' as defined under Regulation 2(g) of SEBI PIT Regulations. It is denied that the Appellant No.1 was only related to management of the company and overall operations of the Company. Further it is denied, that Appellant No.1 was nowhere involved in finalization of accounts or preparations of the financial results. As per Regulation 4(2) of PIT Regulation, which states that, the onus of establishing, that the insider was not in possession of unpublished price sensitive information, will be on such insider and in any other cases, it would be on the board (i.e. the Respondent). Thus, the Ld. A.O. has rightly held that Appellant No.1 being the Chairman and Managing Director and his association with Company for over two decades, would be very much related and he is reasonably expected to have access to the UPSI related to the said financial results of Appellant No.2 for quarter ended March 2016. Further, it is denied that only the Accounts team of Appellant No.2 and Mr. Ashok Seth were overseeing the finalization of Accounts and preparation of financial results.

41. With reference to Paragraphs 5.8(I)(ii) of the Appeal Memo, it is submitted that the investigation had observed that the internal finalization of Accounts started from 15.04.2016 to 30.04.2016. It was also noted from the Appellant No.2's letter dated 04.09.2020, that for finalization of financial results, the updation of data entry for sales, purchases, bank payments/receipts, petty cash vouchers and journal vouchers were carried out about 15 days after the year ended. Thus, the Ld. A.O. rightly noted that the UPSI related to financial results of the Appellant No.2 came into existence on 15.04.2016. It is also an admitted fact the corporate announcement dated 20.05.2016 mentioned the closure of the trading window for the purpose of the declaration of the Financial Results for quarter and FY ending 31.03.2016. Thus, the contention of the Appellant No.1 that the UPSI period started from 20.05.2016 to 30.05.2016 is completely erroneous and is denied totally.

42. With reference to Paragraph 5.8(I)(iii) to the Appeal Memo, it is stated that the internal finalization of the financial results started from 15.04.2016, thus the UPSI come into existence on 15.04.2016. It is reiterated that the Appellant No.1 being the Chairman and the Managing Director of the Appellant No.2 Company, was reasonably expected to be aware that the finalization of the of financial results had started internally and the particulars thereof. As established and observed by the Ld. A.O., the Appellant No.1 is a 'connected person' as per Regulation 2(d) of the PIT Regulations and as considered in the foregoing Paragraphs, the Appellant No.1's contention that he was not apprised / informed of the events /developments matters relating to financial results for FY and quarter ending 31.03.2016 is factually incorrect and baseless. I state that, even if the Appellant No.1's name is not present in list of events with respect to preparation and finalization of financial accounts and details of persons involved in preparation submitted by the Appellant No.2, does not mean that, the Appellant No.1 was not aware of the financial results. Thus, on the basis of the above observations, the Ld. A.O. has correctly held that there was a strong presumption that the off-market transfer of shares by the Appellant No.1 was on the

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basis of UPSI and the Appellant No.1 was aware of the UPSI. The Appellant No.1's reliance on the judgment of this Hon'ble Tribunal in *Pranshu Batra vs. SEBI (Appeal No.689 of 2021, order dated 25.04.2022)* is completely misplaced, as the Appellant No.1 had actually traded in the scrip of the Appellant No.2 as established from the DIS and is also an admitted fact. The Appellant No.1 has also sought to rely on the order of the Hon'ble Supreme Court of India in *Balram Garg vs. SEBI (Civil Appeal No.7054 of 2021)*, however, in the said case it was observed that the ties between the family members broke down on personal and professional level due to which the communication of the UPSI was not established. In the present case it can be seen that the Appellant No.1 was an integral part of the Appellant No.2 Company for over two decades and was also the Chairperson and the Managing Director of the Company, thus, it is evident that the Appellant No.1 was in an influential position in the Company and was also looking at the all-round management of the Company and thus was reasonably expected to be in possession of the UPSI. The contentions of the Appellant No.1 are thus, misconceived and baseless.

43. With reference to Paragraph 5.8(I)(iv) and 8.8(I)(v) of the Appeal Memo, it is denied that the Appellant No.1 had transferred 25,00,000 shares of Appellant No.2 in off market to the Noticee No.2 as a security for future financial purposes. I say that it is an admitted fact that the Appellant No.1 had transferred 25,00,000 shares of the Appellant No.2 Company vide a DIS slip which did not mention the reason for the transfer of shares and also did not mention the consideration for the said transfer. It is also pertinent to note that, the said consideration for the aforesaid transfer of shares was received by the Appellant No.1 after almost a period of one year. I deny that the Appellant No.1 was badly in need for funds to infuse in the Appellant No.2 company. The Ld. A.O. has rightly observed that the Appellant No.1 had not elaborated the urgency of funds required by the Appellant No.2 Company. It is also denied that there were certain disputes between the Appellant No.1 and the Noticee No.2 as being baseless. It is also pertinent to note that the reminder letter for the consideration was

also sent to Noticee No.2 after a lapse of almost 10 months, even though the Appellant No.1 was in urgent needs of funds. It is also pertinent to note that the Appellant No.1 did not make timely disclosure to the Appellant No.2 Company under Regulation 7(2)(a) of the PIT Regulations. I say that the Appellant No.1's contention that, he was not required to make disclosure in regards to transfer of shares is misconceived and baseless. Further, it is also denied that the Appellant No. 2 made disclosure under Regulation 31(1) and 31(2) of the SAST Regulations in a timely manner. All other contentions in the aforesaid paras are denied in toto as being misconceived and baseless.

44. With reference to Paragraph 5.8(II) of the Appeal Memo, it is submitted that, as per Regulation 7(2)(b) of the PIT Regulations, 2015, a company is required to notify the particulars of such trading to the stock exchanges on which the securities were listed within two trading days of the receipt of the disclosure or from becoming aware of such information. I say that the Appellant No.2 was made aware from the Benpos report submitted by the RTA, the said Benpos Report showed that there was a decrease in shareholding of the Appellant No.1. The Ld. A.O. rightly held that the creation of encumbrance as alleged by the Appellants would not result in decrease of shareholding of the borrower unless a default in repayment of the loan amount was observed. Thus, for the above reasons, the Appellant No.2 was required to disclose the said transaction under the PIT Regulations which Appellant No.2 failed to disclose. It is also denied that the Appellant No.2 came to know that the Respondent had not treated the transaction as pledge of shares. I say that the Appellant No.2's contention that the company was not provided any information with respect to pledged shares is misconceived as it is the Appellant No.1's case that he was in urgent need of funds to infuse in the Company and for the said reasons had allegedly pledged shares of the Company with Noticee No.2. Thus, the Contention of the Appellant No.2 that he was not required to make any disclosure under Regulation 7(2)(a) of PIT Regulations is completely erroneous and baseless.

45. With reference to Paragraphs 5.9 and 5.10, the contentions are strenuously denied in toto and in response thereto I say and submit that it has been sufficiently demonstrated in the foregoing paragraphs and the same is not reiterated herein. I state that the Ld. A.O. has considered all the relevant information available on record and passed the Impugned Order. Thus, the Appellants have not demonstrated any reasons for the Impugned Order to be set aside.

46. With reference to Paragraphs 6.1 and 6.2 of the Appeal Memo, I say that the Ld. A.O. has considered all the information and documents on record and passed the Impugned Order after due consideration thereof. It is denied that the Impugned Order violates the principal of natural justice, as the Appellants were severed the SCN and had the opportunity to file their written Submissions, the Appellants were also given an opportunity of personal hearing. Thus, the contention that the Impugned Order is in violation of natural justice is completely baseless. It is also denied that the Impugned Order is passed merely on the basis of mere presumptions and not on proper consideration of proper facts. It is once again reiterated that, the Ld. AO after considering all the facts and circumstances has passed the Impugned Order in the present case.

47. With reference to 6.3 of the Appeal Memo, I say that in the foregoing paragraphs it has been established in the impugned order passed by the Ld.AO and the Information submitted by the Appellant No.2 vide its letter dated 04.09.2020, that the internal finalization of the Results had started from 15.04.2016 and ended on 30.04.2016. Thus the contention of Appellant No.1 that the UPSI period was from 20.05.2016 to 30.05.2016 and not from 15.04.2016 to 30.05.2016 is absolutely false. All other contentions in the said paragraphs are denied in toto.

48. With reference to Paragraphs 6.4 to 6.6 of the Appeal Memo, I say that the same has been considered in the foregoing paragraphs. I say that the Appellant being part of the Appellant No.2 company for more the two decades in the capacity of the Chairperson

and Managing Director of the Appellant No.2 company, it cannot be said that the Appellant No.2 was not apprised or informed of the events / developments / matters relating to financial results and, thus it cannot be said that the Appellant No.1 was not in possession of UPSI in any manner. It is also denied that the Appellant No.1 had transferred the shares as security for future financial purposes, as it is an admitted fact that the Appellant No.1 did not receive the consideration for the said transfer up until after one year in March and April 2017. Further, the disclosure of the transfer of shares needed to be made by Appellant No.1 under Regulation 7(2)(a) of the PIT Regulations which the Appellant No.1 failed to do so. All other contentions in the said paragraphs are denied in toto as being misconceived and baseless.

49. With reference to Paragraphs 6.7 of the Appeal Memo, the contentions are strenuously denied in toto and in response thereto I say and submit that it has been sufficiently demonstrated in the foregoing paragraphs and the same is not reiterated herein for the sake of brevity. It is also stated herein that the Ld. A.O. has not passed the Impugned Order in casual manner and that the Ld. A.O. has considered all the facts and material on record while passing the order.

50. With reference to Paragraphs 6.8 and 6.9 of the Appeal Memo, the same has been dealt with in foregoing para no.39 and thus not required to be dealt individually. Any other contention are denied in toto.

51. With reference to Paragraph 6.10 of the Appeal Memo, the same talks about the sections under which the Ld. AO has imposed a penalty and its factual position, thus does not warrant any response from the Respondent.

52. With reference to Paragraph 6.11 to 6.13 of the Appeal Memo, the contentions are strenuously denied in toto and in response thereto I say and submit that it has been sufficiently demonstrated in the foregoing paragraphs and the same is not reiterated herein for the sake of brevity. It is submitted that under the PIT Regulations the definition of 'UPSI' is very broad. The Appellants alleged that the information (UPSI)

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does not accord to an any material impact on the market price after announcement of financial results or that the Appellants have not been beneficiary to any unlawful gains and/or no loss has been caused to investors as result of alleged lapses, is false and the contentions are denied as that defeats the purpose of PIT Regulations. Further, I state that the contention of the Appellant No.2 with regards to disclosure of the transaction of shares or alleged pledge of shares, has been dealt within foregoing paragraph no.36 and does not need to be reiterated.

53. With reference to paragraphs 6.14 to 6.19, the contents of the paragraphs under reference are denied in totality as being baseless and misconceived. It is denied that the Impugned Order has been passed arbitrarily and based on conjecture and are not supported by any evidence.

54. With reference to paragraphs 7 to 8A of the Appeal Memo, in view of what is stated hereinabove, the Appellants are clearly not entitled any reliefs as sought and the present Appeal ought to be dismissed and the Impugned Order ought to be upheld.

55. With reference to paragraphs 9-12, the same pertain to procedural matters and do not merit any response.

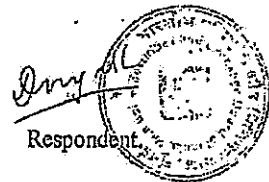
56. I say and submit that the Appellant has clearly violated the provisions of the SEBI Act, PIT Regulations, PFUTP Regulations, SCRA as set out in detail above. Therefore, the Appeal on such grounds ought to be dismissed.

Solemnly affirmed at Mumbai)

On this 1st day of December 2022)

For Vidhii Partners, Mumbai

Niket
Advocates for Respondent.



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VERIFICATION

I, K. Divya Theja, working as the Assistant General Manager with the Securities and Exchange Board of India ("SEBI"), the Respondent in the captioned Appeal, having its Head Office at SEBI Bhavan, Plot No. C4-A, 'G-Block', Bandra Kurla Complex, Bandra East Mumbai 400 051, do hereby verify and state that the contents of the above paragraphs are true and correct to my knowledge based upon the records maintained by the Respondent in its usual course and business and made available to us.

Solemnly affirmed at Mumbai)

On this 1st day of December 2022)

[Signature]
Respondent

Identified by me

For Vidhii Partners, Mumbai

Advocates for Respondent.

BEFORE ME

[Signature]

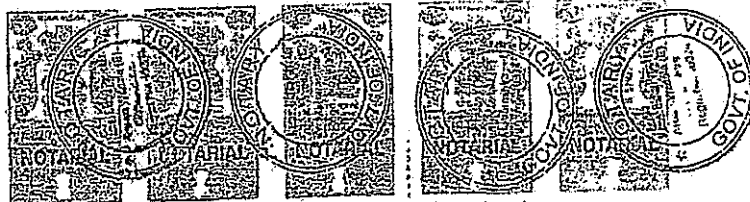
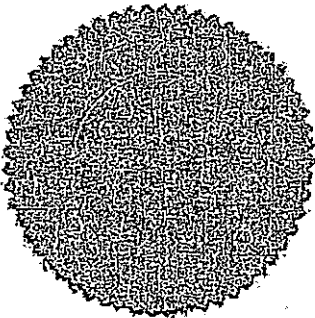
BIDHU PANICKER
B.Com., LL.B.
ADVOCATE HIGH COURT
NOTARY (Govt. of India)
Res: 303; Sandeep Apt., Plot No. A/197,
Sector-20, Near Belaji Temple,
Nerul (W), Navi Mumbai, Maharashtra.

Notary Reg. Sr. No. 8835 | 2022
In Book No. VII

- 1 DEC 2022



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ANNEXURE-A-4

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ITEM NO.21

COURT NO.5

SECTION XVII

S U P R E M E C O U R T O F I N D I A
R E C O R D O F P R O C E E D I N G S

CIVIL APPEAL Diary No(s). 791/2023

(Arising out of impugned final judgment and order dated 29-07-2022 in AN No. 750/2021 & 04-11-2022 in RA No. 37/2022 passed by the Securities Appellate Tribunal, Mumbai)

SECURITIES AND EXCHANGE BOARD OF INDIA

Petitioner(s)

VERSUS

SANDIP RAY & ORS.

Respondent(s)

(IA No.23362/2023-CONDONATION OF DELAY IN FILING and IA No.23365/2023-EXEMPTION FROM FILING C/C OF THE IMPUGNED JUDGMENT and IA No.23360/2023-STAY APPLICATION)

Date : 13-02-2023 This petition was called on for hearing today.

CORAM : HON'BLE MR. JUSTICE AJAY RASTOGI
HON'BLE MS. JUSTICE BELA M. TRIVEDI

For Petitioner(s) Mr. Pratap Venugopal, Adv.
Mr. Abhishek Baid, Adv.
Mr. Praneet Das, Adv.
Mr. Ashok Kumar Jain, Adv.
Mr. Anup Jain, Adv.
M/S Expletus Legal, AOR

For Respondent(s)

UPON hearing the counsel the Court made the following
O R D E R

Delay condoned.

The civil appeals are disposed of in terms of the signed order.

Pending application(s), if any, stands disposed of accordingly.

(VIRENDER SINGH)
BRANCH OFFICER

(ASHWANI KUMAR)
ASTT. REGISTRAR-cum-PS
(Signed order is placed on the file)

IN THE SUPREME COURT OF INDIA

CIVIL APPELLATE JURISDICTION

CIVIL APPEAL NO(S). . /2023
(@ CIVIL APPEAL Diary No(s). 791/2023)

SECURITIES AND EXCHANGE BOARD OF INDIA APPELLANT(S)

VERSUS

SANDIP RAY & ORS.

RESPONDENT(S)

O R D E R

Delay condoned.

The grievance of the appellant is that once a finding of violation of Section 15HB of SEBI Act, 1992 has been recorded, there appears no justification for the Tribunal to reduce the penalty below Rs. 1,00,000/- which is the minimum as permissible under Section 15HB of SEBI Act, 1992. Section 15HB of SEBI Act, 1992 is extracted below:

"15HB. Penalty for contravention where no separate penalty has been provided. - Whoever fails to comply with any provisions 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."

Signature Not Verified
Digitally signed by
Ashwini Kumar
Date: 2023.07.15
16:04:38 IST
Reason:

Learned counsel for the appellant submits that the

Tribunal while upholding the violation of Section 15HB has reduced the penalty from Rs. 3,00,000/- to Rs. 75,000/- which was in conflict of the mandatory requirement and there is no discretion left with the authority to reduce the penalty below the minimum prescribed, as indicated under Section 15HB of the SEBI Act, 1992.

Learned counsel for appellant further submits that even review application filed to make a correction in the order and to justify that the order reducing the penalty below Rs. 1,00,000/- is not permissible under Section 15HB of the SEBI Act, 1992.

After we have heard learned counsel for the appellant, it clearly manifests that the Tribunal has not taken into consideration the effect and mandate of Section 15HB of the SEBI Act, 1992.

Taking into consideration the facts and circumstances of this case, there appears no justification in calling upon the respondent and we modify the order impugned dated 29.07.2022 and the penalty of Rs.75,000/- as inflicted upon noticee no.5 (Mr. Sandip Ray) and noticee no.6 (Mr. Rajkumar Sharma), as referred to in para no. 13 of the order impugned, is modified and substituted to

Rs.1,00,000/- in terms of Section 15HB of SEBI Act, 1992 and with this modification the present appeals stand disposed of.


We make it clear that if the respondents have any objection in reference to the modification made by this Court, they are always at liberty to make an application, if so advised.

Pending application(s), if any, shall stand disposed of.

.....J.
[AJAY RASTOGI]

.....J.
[BELA M. TRIVEDI]

NEW DELHI;
FEBRUARY 13, 2023.


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IN THE SUPREME COURT OF INDIA
CIVIL ORIGINAL JURISDICTION

I.A. NO. 27729 2024

IN

CIVIL APPEAL NO. 1551 OF 2024

IN THE MATTER OF:-

SECURITIES AND EXCHANGE BOARD OF INDIA

...APPELLANT

VERSUS

PRAKESH C. KANUGO

...RESPONDENT

AN APPLICATION FOR EX-PARTE AD-INTERIM STAY

TO,

THE HON'BLE CHIEF JUSTICE OF
INDIA AND HIS COMPANION OTHER
JUDGES OF THE SUPREME COURT OF
INDIA

THE HUMBLE PETITION OF THE
PETITIONER ABOVENAMED

MOST RESPECTFULLY SHOWETH:-

1. The present Statutory Appeal under Section 15Z of the Securities and Exchange Board of India Act, 1992 ("the SEBI Act"), is being filed by the Securities and Exchange Board of India ("SEBI") against common final order dated 06.11.2023 ("impugned order") passed by the Ld. Securities Appellate Tribunal, Mumbai ("SAT") in Appeal

No. 709 of 2022, whereby the Ld. SAT without appreciating the legal position under the SEBI (Prohibition of Insider Trading) Regulations, 2015 ("PIT Regulations") has held that price sensitive information ("PSI") with regard to the financial results came in existence for the first time only on May 18, 2016, when the draft financial accounts was submitted to the management of the company and thereby set aside the violation of the PIT Regulations. The Ld. SAT has further without discussing the violations committed under the SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations 2015 (hereinafter referred to as the "PFUTP Regulations") and the Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as the "SCRA"), sub-silentio on the said aspects reduced the penalty to below the minimum threshold limits as provided for the said violations.

2. The Ld. SAT while upholding the violation for non-disclosure has misconstrued the charging sections under which the penalty should be imposed i.e. Regulation 4 of the PFUTP Regulation over and above the Regulation 7(2)(a) of the PIT Regulations.
3. Thus, once the violation has been upheld, as per the scheme of the SEBI Act, 1992, penalty becomes *sine qua non* of the violations as held in the case of *Chairman, Securities and Exchange Board of India Vs. Sri Ram Mutual Funds (2006) 5 SCC 361*.
4. Likewise, in the present case also, the Ld. SAT has essentially not dealt with the minimum penalty that can be imposed under Section

15HA of SEBI Act, 1992, even after upholding the violations of Respondent, and therefore such finding being in teeth with the express penalty provisions of the SEBI Act, 1992, wherein the minimum penalty that can be imposed is mentioned therein. Moreover, the penalties under Regulation 23H of the SCRA have also been completely ignored by the Ld. SAT while passing the impugned Order, therefore the Appellant has preferred the present appeal.

5. That the contents of the accompanying civil appeal may be treated as part and parcel of the present application and the same are not repeated herein for the sake of brevity and to avoid repetition.
6. In view of the above, it is humbly prayed that the order dated 06.11.2023 passed by Learned Securities Appellate Tribunal ("SAT"), ("the Impugned Orders") may be stayed during the pendency of the present appeal otherwise grave prejudice would be caused to the investors and integrity of the securities market.

PRAYER

In view of the above, it is most respectfully prayed that your lordships may graciously be pleased to:-

- a. Pass an order granting ex parte ad interim stay on operation of order dated 06.11.2023 passed by Learned Securities Appellate Tribunal ("SAT"), Mumbai in Appeal No. 709 of 2022; and

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b. Pass such other order as this Hon'ble court may deem fit and convenient in the interest of justice.

And for this act of kindness the petitioner shall as in duty bound ever pray.

Drawn on: 09-01-2024

Filed on: 12-01-2024

FILED BY



KASHAR & CO.
ADVOCATE FOR THE APPELLANT