ADF FOODS LTD.
Feeding the world..

March 30, 2021

DCS-CRD
BSE Limited
Phiroze Jeejeebhoy Towers
Dalal Street
Mumbai 400 001

DCS-CRD
National Stock Exchange of India Ltd.
Exchange Plaza
Bandra-Kurla Complex
Bandra (E), Mumbai - 400 051

Scrip Code: 519183

Scrip Code/Symbol: ADFFOODS

Sub: Intimation under Regulation 30 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

Dear Sir/ Madam,

Pursuant to Regulation 30 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, we wish to inform you that SEBI vide its Order dated March 30, 2021 has imposed certain strictures on certain Promoters of the Company viz. Mr. Bhavesh Thakkar, Mrs. Priyanka Thakkar and four other deemed to be connected persons in an insider trading case for trading in the Company's shares while in the possession of Unpublished Price Sensitive Information. The copy of the aforesaid SEBI Order is enclosed.

Please note that none of the persons against whom the aforesaid SEBI Order has been passed hold directorship of the Company or are involved in the Company's management at present. Further, Mr. Bhavesh Thakkar and Mrs. Priyanka Thakkar do not hold any shares in the Company as per the latest beneficiary data available with the Company.

Please also note that no penalty or stricture has been levied on the Company.

You are requested to take the same on record.

For **ADF Foods Limited**

Shalaka

ADF FOODS LIMITED MUMBAI

Shalaka Ovalekar
Company Secretary
Encl: A/a

WTM/SM/IVD/ID9/11239/2020-21

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER SECTION 11(1), 11(4) AND 11B OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 IN THE MATTER OF ADF FOODS LIMITED

IN RESPECT OF:

Noticee No.	Name of the Noticee	PAN
1.	Pallavi Navinchandra Mehta	AAHPM5896P
2.	Shefali Bhupendra Mehta	ACAPM7034N
3.	Bhavesh R. Thakkar	AABPT2787J
4.	Navin Mansukhlal Mehta	AAVPM5354Q
5.	Abhishek Mehta	CLJPM2392B
6.	Priyanka Thakkar	AAVPM5355R

(*The above entities are individually referred to by their corresponding names/numbers and collectively referred to as "Noticees")*

1. The present proceeding is emanating from a show cause notice dated June 04, 2019 (hereinafter referred to as **" SCN"**) arising out of an investigation conducted by Securities and Exchange Board of India ("**SEBI**") into the trading in the scrip of ADF Foods Limited (hereinafter referred to as **"ADF"** or the **"Company**"), for the period of May 21, 2016 to July 27, 2016 (hereinafter referred to as the "**investigation period**"), wherein the *Noticees* have been charged to have acted in violation of provisions of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the "**SEBI Act, 1992**") and Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as the "**PIT Regulations, 2015**").

2. Upon completion of the aforesaid investigation, SEBI vide an *ex-parte ad interim* order dated February 22, 2019 (hereinafter referred to as the "**the interim order**") directed for impounding the amount of the profits of INR 1,02,63,169.81 [alleged gains of INR 77,23,637.73 along with interest of INR 25,39,532.08 calculated for the period of May 21, 2016 to February 15, 2019] allegedly made from the trades executed in the scrip of ADF in violations of PIT Regulations,

2015, which the *Noticees*, vide their letter dated March 15, 2019, have informed to have complied with by depositing the aforesaid amount in the escrow accounts opened in the names of *Noticee nos. 1* and *2*, and have further informed that lien has been marked on such accounts, in favour of SEBI.

3. Before proceeding further, at this stage it is imperative that the facts leading to the issuance of the SCN which are also necessary for the purpose of adjudication of charges levelled in the SCN, be narrated in brief as under.

i. The *Company* having got incorporated in the year 1992, is engaged in the business of manufacturing products like canned, bottled and processed vegetables, fruits and foods, for export as well as domestic markets.

ii. The scrip of the *Company* is listed on National Stock Exchange of India Ltd. ("**NSE**") and BSE Ltd. ("**BSE**").

iii. The *Company* had made certain major corporate announcements during the investigation period, details of the same and their respective impact on the price of the scrip are tabulated herein under:

Table no. 1: Details of Corporate announcements and their impact

<table>
<tr><th>S. No.</th><th>Date-Time</th><th>Announcement/News</th><th>Price Impact/Shares Traded</th><th>Remarks</th></tr>
<tr><td>1.</td><td>27/05/2016

(20:09)</td><td><u>Outcome of Board Meeting</u>

ADF Foods Limited informed the exchange that the Board of Directors of the Company at its meeting held on May 27, 2016, inter alia, has deferred decision on dividend on equity shares and buyback proposal till the next Board meeting.</td><td>
<table>
<tr><th>Date</th><th>O</th><th>H</th><th>L</th><th>C</th><th>No. of shares traded</th></tr>
<tr><td>27.05.2016</td><td>94.80</td><td>94.80</td><td>89.15</td><td>90.55</td><td>37,812</td></tr>
<tr><td>30.05.2016</td><td>89.00</td><td>89.05</td><td>86.70</td><td>87.05</td><td>20,880</td></tr>
</table>
</td><td>The number of shares of ADF traded recorded a decrease by 1.81 times</td></tr>
<tr><td>2.</td><td>27/07/2016

(15:24)</td><td><u>Board approves Buyback of Equity Shares</u>

ADF Foods Limited informed BSE that the Board of Directors of the Company at its meeting held on July 27, 2016 has approved a buyback of Equity Shares at a price not exceeding INR 125 per equity share of INR 10/- each for an aggregate</td><td>
<table>
<tr><th>Date</th><th>O</th><th>H</th><th>L</th><th>C</th><th>No. of shares traded</th></tr>
<tr><td>27.07.2016</td><td>98.00</td><td>116.00</td><td>98.00</td><td>114.00</td><td>10,53,096</td></tr>
<tr><td>28.07.2016</td><td>114.00</td><td>114.00</td><td>106.20</td><td>111.45</td><td>2,89,849</td></tr>
</table>
</td><td>The number of shares of ADF traded recorded a decrease by 3.6 times</td></tr>
</table>

<table>
<tr><td></td><td></td><td>amount not exceeding INR 18 crore.</td><td colspan="6"></td><td></td></tr>
<tr><td rowspan="3">3.</td><td rowspan="3">04/08/2016

(15:52)</td><td rowspan="3"><u>Buy back Offer</u>

ADF Foods Limited has submitted to BSE a Copy of Public Announcement in relation to the Buyback Offer to the shareholders/beneficial owners of the Equity Shares.</td><td>Date</td><td>O</td><td>H</td><td>L</td><td>C</td><td>No. of shares traded</td><td rowspan="3">No substantial movement in scrip price</td></tr>
<tr><td>04.08.2016</td><td>113.60</td><td>114.80</td><td>108.70</td><td>110.25</td><td>29,529</td></tr>
<tr><td>05.08.2016</td><td>110.15</td><td>114.00</td><td>109.80</td><td>112.00</td><td>24,002</td></tr>
</table>

iv. On May 23, 2016, the *Company* informed the stock exchanges that a meeting of its Board of Directors was scheduled on May 27, 2016 to consider to recommend a dividend for financial year ended on March, 2016 or buyback of equity shares of the *Company*, or a combination thereof. The agenda papers for the aforesaid proposals to be discussed in the meeting on May 27, 2016 were sent to the Directors of the *Company* on May 23, 2016.

v. On July 27, 2016, at 03:24 pm, the *Company* made a public announcement through stock exchanges that in the meeting held on the even date, the Board of ADF had approved a buyback of equity shares at a price not exceeding INR 125 per equity share of INR 10 each, for an aggregate amount not exceeding INR 18 Crore.

vi. While responding to a query raised by SEBI, the *Company*, vide its letter dated March 17, 2018, has informed that: "…*the idea to undertake the buyback of equity shares was first discussed on May 21, 2016 amongst Girish Nadkarni (representative of Motilal Oswal), Bhavesh R. Thakkar (Executive Director of the Company) and Mishal A. Thakkar (Senior Manager of the Company). Thereafter, it was decided to refer the proposal of buyback or dividend or both to the Board of Directors for their approval. Further, the option of dividend declaration was in line with the company's previous practice of dividend payment every year over 12 consecutive years. Accordingly, the relevant papers with the agenda to consider buyback or dividend or both were circulated to the Board members on May 23, 2016 for the purpose of consideration in the Board Meeting scheduled on May 27, 2016. Simultaneously, the intimation of the same was given to both the stock exchanges where the company's shares are listed i.e. BSE and NSE vide letter dated May 23, 2016*."

vii. Vide its letter dated November 27, 2017, the *Company* has furnished the following chronology of events, pertaining to the aforesaid announcement of buyback of shares:

Table no. 2: Chronology of events

Sr. No.	Date	Action (Phone/ meeting/ approvals etc.)	Details of names and designations of persons present in the discussion	Event
1.	May 21, 2016	Meeting	Girish Nadkarni (Motilal Oswal) Bhavesh Thakkar (Executive Director) Mishal A. Thakkar (Senior Manager)	Discussion on the idea to undertake buyback or payment of dividend was first tabled.
2.	May 22, 2016	E-mail	Girish Nadkarni (Motilal Oswal) Bhavesh Thakkar (Executive Director)	Motilal Oswal Investments Advisor Private Limited gave a presentation on the buyback of shares, highlighting the pros and cons of buyback of shares, as a merchant banker.
3.	May 23, 2016	E-mail	Ashok Thakkar(Chairman) Bhavesh Thakkar Bimal Thakkar (Managing Director) Mishal A. Thakkar Shalaka Ovalekar(Company Secretary)	The Company Secretary of the Company was communicated to initiate preparations for the proposal to undertake buyback of shares
4.	May 23, 2016	Letter to stock exchanges	Ashok Thakkar	The stock exchanges were intimated that the board of directors of the Company will consider proposals for announcement of dividend or buyback of shares, or a combination thereof, in

				its meeting to be held on May 27, 2016.
		Letter to directors of the company	Anjali K. Seth (Independent director) Ashok Thakkar Bhavesh Thakkar Bimal Thakkar Jay Mehta (Independent Director) Nipun Shah (Independent Director) Ravinder Jain (Independent Director) Shalaka Ovalekar Viren Merchant (Independent Director) Yasir Varawala (Independent Director)	The agenda papers pertaining to the proposals for announcement of dividend or buyback of shares, or a combination thereof, to be discussed at the board meeting to be held on May 27, 2016 were sent to the directors.
5.	May 27, 2016	Meeting of the board of directors of the company	Anjali Seth Ashok Thakkar Bhavesh Thakkar Bimal Thakkar Dilip Golwala (General Manager – Accounts) Jay Mehta Mansi Dani (Asst. Company Secretary) Mishal Thakkar Nipun Shah Ravinder Jain Shalaka Ovalekar	The board of directors of the Company deferred the decision on proposals for announcement of dividend or buyback of shares till next board meeting.

			Viren Merchant	
6.	July 14, 2016	E-mail	Nisha Shah (Motilal Oswal) Shalaka Ovalekar	In preparation for the meeting of the board of directors of ADF on July 27, 2016, Motilal Oswal was approached in order to reconsider the proposed buyback of shares.
7.	July 15, 2016	E-mail	Subodh Mallya (Motilal Oswal) Shalaka Ovalekar Nisha Shah	Motilal Oswal gave financial details of buyback including the pricing of the issue to the Company Secretary
8.	July 19, 2016	Letter to directors of the company	Anjali K. Seth Ashok Thakkar Bhavesh Thakkar Bimal Thakkar Jay Mehta Nipun Shah Ravinder Jain Shalaka Ovalekar Viren Merchant Yasir Varawala	The agenda papers pertaining to the proposals for announcement of dividend or buyback of shares, or a combination thereof, to be discussed at the board meeting to be held on July 27, 2016 were sent to the directors.
9.	July 21, 2016	Letter to stock exchanges	Shalaka Ovalekar	The stock exchanges were intimated that the board of directors of the Company will consider proposals for announcement of dividend or buyback of shares, or a combination thereof, in its meeting to be held on July 27, 2016

10.	July 27, 2016	Meeting of the board of directors of the company	Anjali Seth Ashok Thakkar Bhavesh Thakkar Bimal Thakkar Dilip Golwala Jay Mehta Mansi Dani Mishal Thakkar Nipun Shah Ravinder Jain Shalaka Ovalekar Viren Merchant	The board of directors of the Company approved the buyback of shares.

viii. The aforesaid letter dated November 27, 2017 *inter alia* has also mentioned that the trading window was closed from May 20, 2016 to May 29, 2016, for the Board Meeting that was held on May 27, 2016 and for the Board Meeting held on July 27, 2017, the trading window was closed from July 20, 2016 to July 29, 2016.

ix. Vide its letter dated March 26, 2018, the Merchant Banker for the buyback offer, viz., Motilal Oswal Investment Advisors Pvt. Ltd. (hereinafter referred to as "**Motilal Oswal**"), has also furnished a chronology of events.

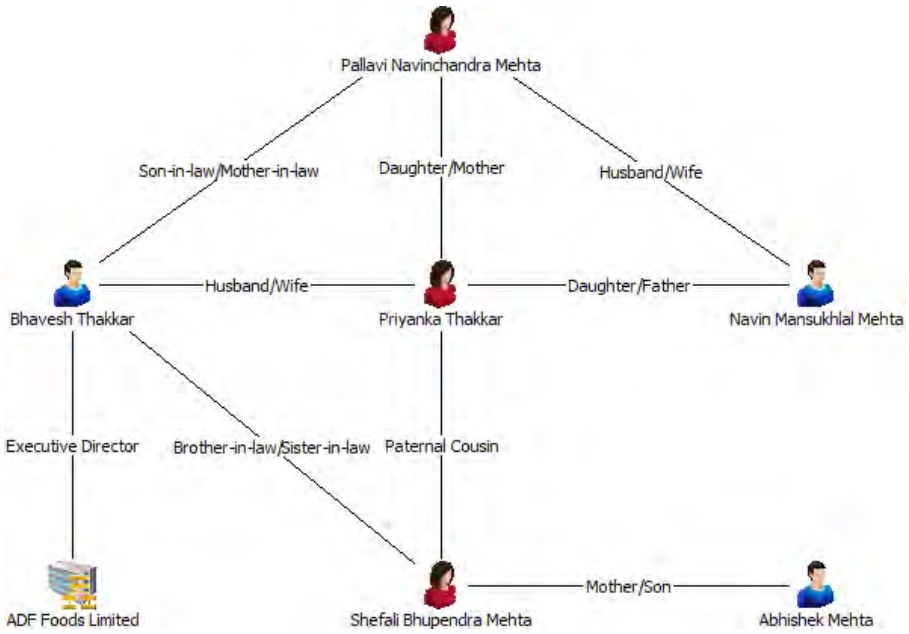
x. As per the agenda papers of the Board Meeting held on May 27, 2016, the proposed range of buyback (i.e. INR 10-15 Crore) was only known to the insiders and was not generally known to public and therefore the proposed range of buyback was allegedly an unpublished price sensitive information (hereinafter referred to as "**UPSI**"), in terms of PIT Regulations, 2015.

xi. As stated earlier, the proposal of buyback of shares was first discussed on May 21, 2016 and decision on the issues of dividend and buyback was taken in the Board meeting held on May 27, 2016, but was deferred till next Board meeting, which was held on July 27, 2016. In terms of the agenda papers of the Board Meetings held on May 27, 2016 and July 27, 2016, the proposed issue of buyback was known to the insiders only and was not generally available to the public. Finally, the proposal for buyback was approved by the Board of Directors and the same was disclosed to the stock exchanges on July 27, 2016 at 03:24 PM. Therefore, the

period of May 21, 2016 (when the issue of buy back was first considered) to July 27, 2016 is alleged to be the actual UPSI period.

xii. In terms of the information submitted by the *Company* vide its letter dated November 27, 2017, furnishing the list of persons having access to and /or possession of the UPSI and the list furnished by the Merchant Banker detailing out the persons having access to and/or possession of the UPSI, it is noticed that one person who appears in both the lists (provided by the *Company* as well as by the Merchant Banker) is Mr. Bhavesh Thakkar (*Noticee no. 3),* who is the Executive Director of ADF. Ms. Pallavi Navinchandra Mehta, the *Noticee no. 1* is the mother- in- law of the *Noticee no. 3*, i.e. she is the mother of the spouse of the Executive Director of the *Company*. It is also noted that Ms. Shefali Mehta (*Noticee no. 2),* is the paternal cousin of Ms. Priyanka Thakkar (*Noticee no. 6*,) and the *Noticee no. 6* was one of the promoters of ADF during the relevant period and is also wife of the *Noticee no. 3*. Thus, the *Noticee no. 2* is related to the *Noticee no. 3* as sister-in-law and *Mr.* Abhishek Mehta *(Noticee no. 5)* is also related to *Noticee no.3* being a son of the *Noticee no. 2*. Further, the *Noticee no. 4* is the husband of the *Noticee no. 1* or the father of the spouse of the *Noticee no. 3*.

xiii. The allegations with respect to inter-connectedness of the *Noticees* are demonstrated in the following diagrammatic representation:



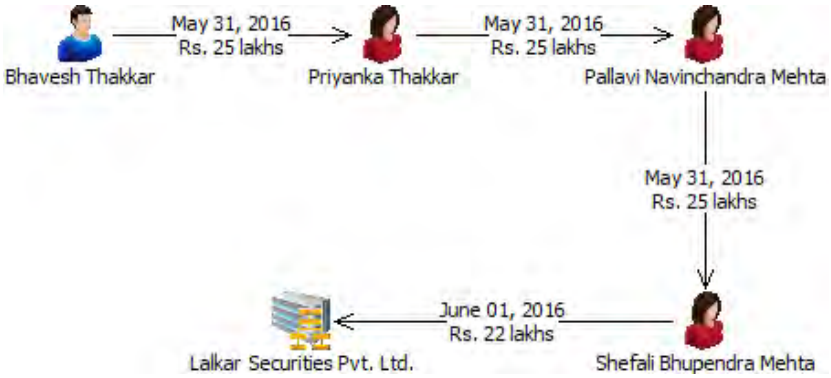
xiv. The investigation has revealed that certain entities having direct or indirect connection with the *Company* or through its connected persons were indulged in trading in the scrip of ADF during the UPSI period. It has been noticed that the *Noticee nos. 1* and *2* have traded in the scrip of the *Company* during the pre-UPSI period, during UPSI and post UPSI period,

whereas the *Noticee no. 1* has purchased 1,54,857 shares and the *Noticee no. 2* has purchased 3,07,368 shares of ADF while being in possession of UPSI.

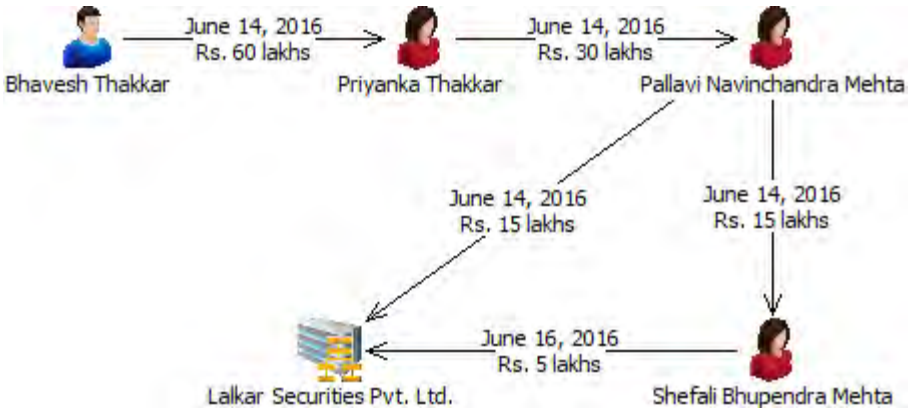
xv. The investigation also noticed that the source of funds used by the *Noticee nos. 1* and *2*, for buying the aforesaid shares of ADF were traced back to the *Noticee no. 3*. Details of funds transacted amongst the related/connected entities as captured in the SCN are represented herein below:

Fund transactions before UPSI got published

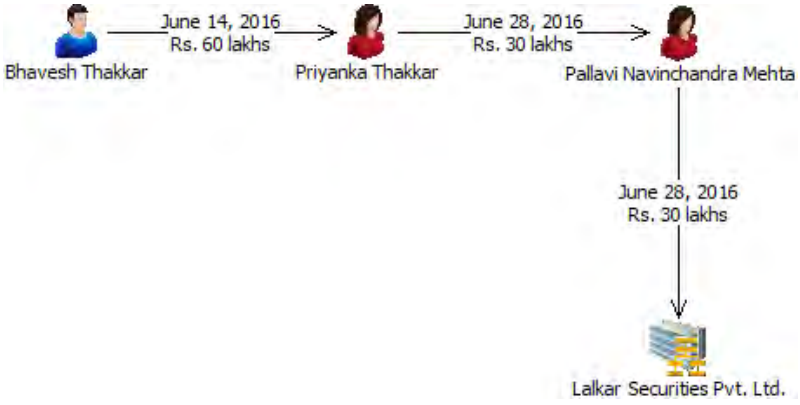
a) Funds transfers amongst the *Noticees* on May 31, 2016 and June 01, 2016.



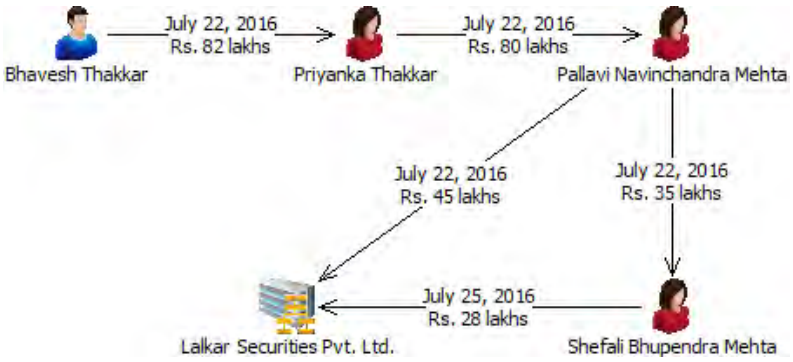
b) Funds transfers amongst the *Noticees* on June 14, 2016 and June 16, 2016.



c) Funds transfers among the *Noticees* on June 14, 2016 and June 28, 2016.



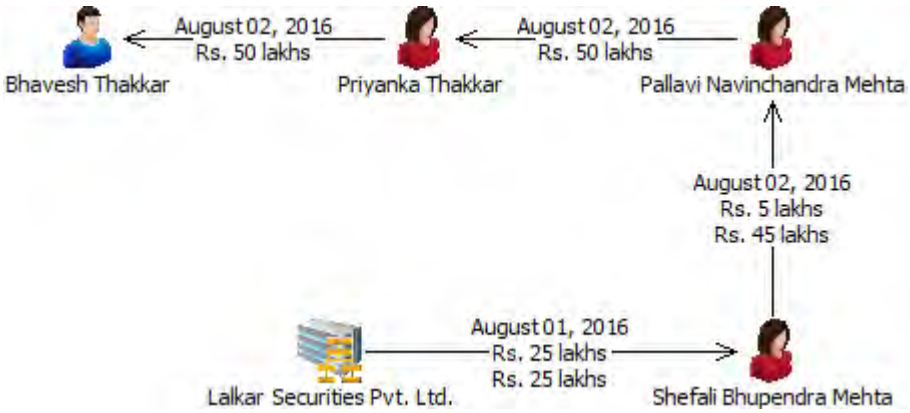
d) Funds transfers among the *Noticees* on July 22, 2016 and July 25, 2016.



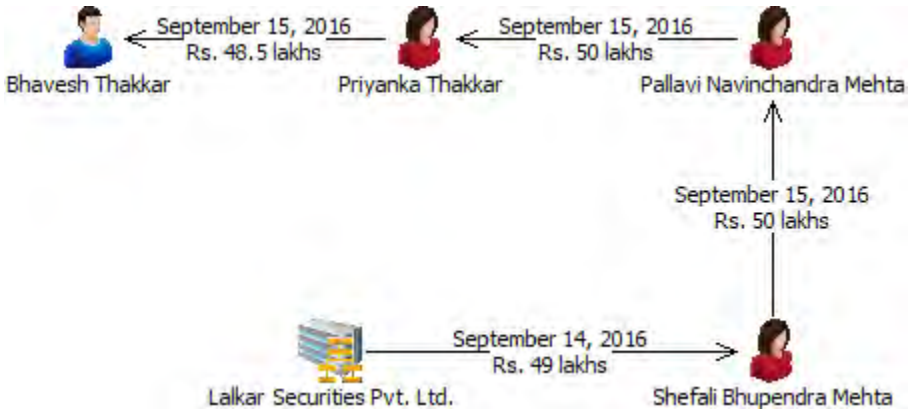
xvi. Apart from the aforesaid transactions of funds, there were also transactions of funds after the UPSI was disclosed. For illustrations, fund transactions, as enumerated in the SCN in a diagrammatic representation are presented as follows:

After UPSI got published

a) Funds transfers amongst *Noticees* on August 01, 2016 and August 02, 2016.



b) Funds transfers amongst *Noticees* on September 14, 2016 and September 15, 2016.



xvii. Being a Director of the *Company, Noticee no. 3* is alleged to be a connected person [regulation 2 (1) (d) (i)] and in possession of and having access to the UPSI, hence, is an insider in terms of regulation 2(1)(g) (i) and (ii) of the PIT Regulations, 2015.

xviii. As stated earlier, the *Company*, vide its letter dated November 27, 2017, *inter alia*, has furnished the list of persons who were having access to and/or possession of UPSI. Another list of persons having access to and/or in possession of UPSI was furnished by Motilal Oswal vide its letter dated March 26, 2018. The said lists, apart from mentioning the names of others, contained the name of Mr. Bhavesh Thakkar, *Noticee no. 3* herein, who is the Executive Director of ADF. Accordingly, the *Noticee no. 3*, being the Director of the *Company* is alleged to be an insider under regulation 2(1)(g) (i) and (ii) of the PIT regulations as well as being a connected person in terms of regulation 2 (1) (d) (i) and was alleged to be in possession of and having access to the UPSI

xix. From the illustrations of transactions in funds, as presented in the SCN, it is noted that the funds were first transferred from the bank accounts of the *Noticee no. 3* to the bank accounts of the *Noticee no. 1* and *2*, via the bank account of the *Noticee no. 6*; and subsequently, certain funds were also received back in the bank accounts of the *Noticee no. 3* from the bank accounts of the *Noticee nos. 1* and *2,* again via the bank accounts of the *Noticee no. 6*. Furthermore, the funds that were transferred from the bank accounts of the *Noticee no. 3* were noticed to have been ultimately used for the trading in the accounts of the *Noticee nos. 1* and *2*. Thus, based on the aforesiad, it has been alleged that the *Noticee no. 6*, who was the Promoter of ADF during the quarter ending June 2016 and September 2016, and is also the wife of the *Noticee no. 3* (an insider), had access to UPSI and her (*Noticee no. 6's*) bank account was used to transfer funds to the *Noticee nos. 1* and *2* which were allegedly utilised for trading in the scrip of ADF during the UPSI period. Accordinlgy, the *Noticee no. 6* being the

promoter of the *Company* as well as the wife of the *Noticee no. 3* (MD of the *Company*) is alleged to be an insider in terms of regulation 2 (1) (d) r/w 2 (1) (g) (1) of the PIT Regulations and is also alleged to have indulged in insider trading in the scrip of ADF.

xx. The common stock broker of the *Noticee nos. 1* and *2*, viz., Lalkar Securities Private Limited, vide its letter dated January 15, 2018 has furnished certain documents and infromation with respect to the operation of the trading accounts of the aforesaid two *Noticees*. In terms of the said information, *Noticee no. 1* had duly authorized in writing, the *Noticee no. 3* or the *Noticee no. 4* to execute trades in her trading account on her behalf. Similarly, another authorizartion letter was provided by the aforesaid stock broker wherein the *Noticee no. 2* had authorized Mr. Abhishek Mehta (*Noticee no. 5*) and *Noticee no. 4* to execute trades in the said account on her behalf. It was further informed by the stock broker that the orders in the trading accounts of the *Noticee nos. 1* and *2* were being placed by the *Noticee nos. 3, 4* and *5* from the mobile nos. 98204XXXXX ; 98207XXXXX; and 93235XXXXX (*mobile numbers masked to maintain privacy).*

4. Based on the above factual revelations , the allegations made in the SCN against the *Noticees* are summarised in the following paragrpahs:

i. The issue pertaining to the proposed range (INR 10-15 Crore) of buyback of shares was known only to the insiders and was not publicly available. The said piece of information was UPSI and it remained out of the public knowledge during the period commencing from May 21, 2016 (the day it was first discussed) to July 27, 2016 at 03:24 PM (when it was disclosed), making the aforesaid period as UPSI period;

ii. The *Noticee nos. 1, 2, 4* and *5,* being insiders, have engaged in trading in the scrip of ADF during the aforesaid UPSI period and therefore have indulged in insider trading. The said acts of the *Noticees* are in violation of Section 12A (d) & (e) of SEBI Act, 1992 and regulation 4(1) of the PIT Regulations; and

iii. *Noticee no. 3* has allgedly communicated the UPSI to his connected entities including *Noticee nos. 1* and *2*. Further, the *Noticee no. 3* has provided funds to the *Noticee nos. 1* and *2* for trading in the scrip of ADF during the said UPSI period, and such fund transfers have been exeucted via bank accounts of the *Noticee no. 6*, wife of the *Noticee no. 3*. The said acts of the *Noticee no. 3* are in violation of Section 12A (d) & (e) of SEBI Act, 1992 read with regulations 3(1) & 4(1) of the PIT Regulations. Further, the acts by the *Noticee no. 6* in allowing her bank account to be used as a conduit to facilitate the trasfer of funds to the accounts of the *Noticee nos. 1* & *2* are alleged to be in violation of Section 12A (d) of SEBI Act, 1992 and regulation 4(1) of the PIT Regulations.

5. The public announcment dated July 27, 2016 made by the *Company* intimated the shareholders/investors that the Board of Directors of ADF has approved a buyback of equity shares of ADF at a price not exceeding INR 125 per equity share. On the said date, the closing price of the scrip was INR 114.00 on BSE and INR 112.70 on NSE, respectivly. As the price of buyback that was approved by the Board of ADF was higher than the closing market price of the scrip on the day of such pubic announcment, such an announcment is considered to be a positive news. Accoridingly, the *Noticee nos. 1* and *2* being the insiders in possession of UPSI, are alleged to have made unlawful gains in collusion/co-ordiantion with the *Noticee nos. 3* to *6* and the calculation of such alleged unlawful gains earned by them are is as under:

Table no. 3: Calculaton of unlawful gains

Particulars	(Noticee-1) (INR)	(Noticee-2) (INR)
No. of shares bought while in possession of UPSI	1, 54,857	3, 07,368
X Closing price on the day of UPSI becoming public	112.70	112.70
Subtotal (i)	17, 452, 383.9	34, 640, 373.6
(-) Less		
No. of shares bought while in possession of UPSI	1, 54,857	3, 07,368
X Weighted average purchase price	88.25	99.89
Subtotal (ii)	13, 666, 130.3	30, 702, 989.5
Unlawful gains made (approx.) ((i)-(ii)) (INR)	**37, 86,253.6**	**39, 37,384.1**

6. It is noted from the records that the *Noticees* have filed an application under the SEBI (Settlement Proceedings) Regulations, 2018. However, as the Settlement Terms offered by the *Noticees* were not in accordance with the aforesaid regulations, the said application filed by the *Noticees* was rejected.

Replies

7. The *Noticees*, vide their letter dated August 25, 2020 have filed a common written reply to the SCN. The submisisons made by the *Noticees* are summarised herein below:

i. It was the information pertaining to the *Company's* buyback proposal itself (which would have led to a change in capital structure of the *Company)*, which was the UPSI. In terms of the definition of UPSI provided under PIT Regulations [under regulation 2(1) (n) (iii) of PIT Regulations], events like change in capital structure is considered as UPSI. Therefore, the expected announcement of buy-back was the UPSI. There was no specific positive market reaction on disclosure of the alleged UPSI (range of buyback) whereas the market constantly reacted to the news of buy-back.

ii. In terms of Section 68 of Companies Act, 2013 and SEBI (Buy-Back of Securities) Regulations, 2018, a company can buy-back upto 10% of its paid-up capital and the free reserves, without shareholders' approval and Board's approval is sufficient for such an action. Further, a company is not permitted to buyback of its securities beyond 25% of the paid-up capital and free reserves of such company.

iii. By applying the aforesaid regulatory principles, the total paid up capital and free reserves of ADF for the F.Y. 2015-16 was INR 18,577 Lakhs, and the *Company* could have offered INR 18 Crore for buy-back without shareholders' approval. Hence, quantum of proposed buy-back was not price sensitive as it could be easily calculated from the generally available information in public domain.

iv. In the Board Meeting held in May 27, 2016, no decision on buyback was made, hence 'range of buyback' was not in picture. After the Board Meeting held on July 27, 2016, final decision in favour of buy-back was taken and a disclosure was made to the Stock Exchanges which read as: *...we hereby inform you that the Board of Directors of our Company in its meeting held today i.e. 27th July, 2016* ***has approved a buyback of Equity Shares at a price not exceeding INR 125 per equity share of Rs. 10/- each for an aggregate amount not exceeding INR 18 crore****. In view of the same, the Board did not declare interim dividend on the equity shares of the Company. Kindly take the same on record. The Board meeting started at 11.00 a.m. and closed at 3.00 p.m."*

v. As can be seen from the afore quoted disclosure, the amount of buy-back decided by the *Company* was equal to the amount that the *Company* could have put to use to execute a buy-back through a Board Resolution, under the extant regulatory framework. The actual range of buyback (INR 18 Crore) was higher as compared to the range of INR 10-15 Crore, which is considered as UPSI in the SCN.

vi. For an information to be UPSI, it is essential to demonstrate the price impact that happened on disclosure of such an information. In this connection, reliance has been placed on the decision of Hon'ble SAT passed in the matter of *Rajiv B. Gandhi Vs. SEBI* etc.

vii. In the present case, the announcement made by the *Company* on May 25, 2016 with respect to the 'proposal of buy-back' led to increase in price of the scrip by 3.11%. while the range of buy-back was not mentioned in the said announcement.

viii. Subsequently, in the Board Meeting dated May 27, 2016 it was decided to defer the decision on dividend on equity shares and buyback proposal to the next Board Meeting which led to a decrease in the price of the scrip by 3.36%. Again, on July 21, 2016, the announcement that Board would reconsider the proposals in its upcoming Board Meeting caused increase in the price of the scrip by 7.02%. There was reaction in the market on the news of buy-back, however on disclosure of alleged UPSI, the scrip of ADF did not witness positive movement.

ix. As per the agenda papers of both the Board Meetings dated May 27, 2016 and July 27, 2016, the proposed range of buy-back was INR 10-15 Crore and INR 15 Crore, respectively. However, the final quantum of maximum amount to be utilised towards buy-back was decided at INR 18 Crore. As the proposal of alleged buy-back range was finally not accepted, the same cannot be treated as the UPSI.

x. Announcement of *Company's* intention to consider the buy-back was made on May 23, 2016 and the range of buy-back could be calculated on the basis of applicable legal provisions, hence, the period of May 21, 2016 to July 27, 2016 has wrongly been taken as UPSI period, as the UPSI ceased to exist after the aforesaid announcement made on May 27, 2016.

xi. There was gap of 48 days between the two Board Meetings, as can be seen from the following table:

Table no. 4: Details of UPSI

Particulars	Start Date of UPSI	Date of Announcement
P1: The proposal for buyback of shares was initially considered in lieu of issue of final dividend for FY'16. The consideration was postponed till the next board meeting of the *Company*.	May 21, 2016	May 27, 2016 (08:09 p.m.)
P2: The proposal for buyback of shares was reconsidered in lieu of issue of interim dividend for FY'17 and was approved by the board of directors in their meeting held on July 27, 2016.	July 14, 2016	July 27, 2016 (03.24 p.m.)

xii. The first period of UPSI (P1) came into existence on May 21, 2016 when the idea of buy-back of shares was originally floated and the said period ended on May 27, 2016 as disclosure was made regarding the postponement of consideration of the proposed buy-back.

xiii. It was stated in the letter sent by the *Company* to SEBI containing the chronology of events that there was no discussion/communications regarding the proposed buy-back, either within the *Company* or with *Motilal Oswal*. The same is also stated in the letter dated September 28, 2018 of *Motilal Oswal*.

xiv. During the period of 48 days between the two Board Meetings, the trading window of the *Company* was kept open and further, certain other Promoters and Directors of the *Company* have also traded in its scrip during the said period.

xv. The second period of alleged UPSI (P2) came into existence on July 14, 2016 as a communication was sent to *Motilal Oswal* for reconsideration of the proposal regarding buyback of shares. The P2 came to an end on July 27, 2016 at 03:24 PM, when a disclosure of approval of the proposal for buy-back of shares was made to stock exchanges.

xvi. *Noticee no. 2* is not a connected person and not an insider, as SEBI has failed to establish the connection sufficiently. The SCN does not specify as to, by which criteria the *Noticee no. 2* becomes connected with the *Company*, in terms of the criterion laid down in the PIT Regulations. The *Noticee no. 2* is not having any professional, employment or fiduciary relationship with the *Company* nor is she employed by any of the Director/Promoter of the *Company*. *Noticee no. 2* is the parental cousin of *Noticee no. 6* and niece of the *Noticee nos. 1* and *4* and such relationships are not covered under the definition of immediate relative, hence the *Noticee no. 2* is not an insider/connected person.

xvii. It has not been shown how the UPSI has been communicated by *Noticee no. 3* to other *Noticees* nor any instance has been shown to reflect that the any of the *Noticees* (except *Noticee no. 3*) was in possession of UPSI.

xviii. Except for the *Noticee nos. 3* and *6*, other *Noticees* are not connected with the *Company* in any manner.

xix. Even assuming that the *Noticee nos. 1* and *2* were having possession of UPSI, the alleged trades were not influenced and motivated by the possession of UPSI and the same is evident from the trading pattern itself and no illegal gains have been made out of those trades. *Noticees* have relied on the observation of the Hon'ble SAT in the matter of *Mrs. Chandrakala Vs. Adjudicating Officer, SEBI (Date of decision:31.01.2012)* to support the submission that the trading pattern of the alleged insider trading is a crucial aspect to

adjudge the culpability. Further, in support of the submissions, it was stated that the *Noticees* have traded in the scrip of ADF prior to as well as post the UPSI.

xx. The *Noticee no. 1* had purchased a total of 154857 shares of ADF during the investigation period but did not sell any share. Had she purchased the shares acting on the basis of the alleged UPSI, she would have used the said UPSI to make gains by selling the shares when the price of the scrip would have gone up on disclosure of the alleged UPSI.

xxi. The *Noticee no. 2* did purchase certain shares during the relevant period but the said purchase was not on the basis of alleged UPSI as no profits were made upon disclosure of the alleged UPSI on July 27, 2016. On the contrary, even on the date of disclosure of the alleged UPSI, i.e., July 27, 2016, *Noticee no. 2* had purchased shares of ADF. The same is inconsistent with the behaviour of an insider acting on UPSI.

xxii. The charge of insider trading being a serious charge, the burden to prove the same is greater, as have been held in the matter of *Dilip S. Pendse Vs. SEBI* and sufficient collateral material needs to be placed on record, as have been held in the matter of *Mr. A Vellayan, WTM/SR/SEBI/EFD/26/05/2016*. Further, in cases of insider trading, the charges need to be provided on cogent materials and in accordance with law, as have been held by Hon'ble SAT in the matter of *Samir Arora v. SEBI, Appeal No. 83 of 2004*. Further, in the matter of *GTC Industries Limited v. ACIT [(2017) 187 TTJ (Mum) 369]*, it was held that the evidence must be weighed on the test of preponderance of probabilities and the proceedings should be dropped in favour of the *Noticees* having more favourable factors.

xxiii. The *Noticee no. 1* has not traded in the scrip of ADF during the relevant period when the UPSI subsisted, i.e., between the Board Meeting held on May 27, 2016 and the one held on July 27, 2016. Alleged trades were executed when the trading window was open for all.

xxiv. Both the *Noticee nos. 1* and *2* have traded in the scrip of ADF regularly during the period of February, 2016 to July, 2016 and the trades as alleged to have been executed during the investigation period were not the exclusive trades by the *Noticees*. Such trades should be considered by SEBI in deciding the allegations. Reliance has been placed on the decision of Hon'ble SAT in the matter of *Manoj Gaur Vs. SEBI (Appeal no. 64 of 2012)*, wherein it was observed that the trading pattern of a person should be looked into to decide the violation of insider trading.

xxv. The SCN has cherry picked certain fund transactions out of the numerous fund transactions that were executed between the *Noticee nos. 1* and *6*. There was continuous fund transfers from the *Noticees nos. 1*, *4* towards the *Noticee no. 6,* who is their daughter.

xxvi. A Memorandum of Understanding (MoU) was signed on July 28, 2016 between the *Noticee nos. 1*, *4* and *Noticee no. 6*, under which the *Noticee no. 6* agreed to purchase a flat co-owned

by the *Noticee nos. 1* and *4* for an amount of INR 5.09 Crore. Out of the said amount, INR 4.09 Crore was paid upfront and INR 1 Crore was to be paid on possession of the flat. In pursuance of the said MoU, the said flat is now owned jointly by the *Noticee nos. 1, 4* and *6*. Copy of notarised MoU has been filed.

xxvii. Further, the dates of the transfer of funds do not match with the trades executed by the *Noticee nos. 1* and *2*.

xxviii. Similarly, the details of fund transfers between the *Noticee nos. 1* and *2* are also cherry picked by SEBI, out of the following fund transfers:

Table no. 5: Fund transfer details between Noticee nos.1 and 2

Month	Received by Noticee No.1	Paid by Noticee No.1
May 23, 2016	-	20,00,000.00
May 25, 2016	-	20,00,000.00
May 31, 2016	-	25,00,000.00
June14, 2016	-	15,00,000.00
July 22,2016	-	35,00,000.00
July 28, 2016	-	70,00,000.00
July 28, 2016	-	50,00,000.00
July 28, 2016	-	44,00,000.00
August 02, 2016	5,00,000.00	-
August 02, 2016	45,00,000.00	-
August 25, 2016	-	50,00,000.00
September 15, 2016	5,00,0000.00	-

Total*	**1,00,00,000**	**3,29,00,000**

** The amount transferred between the two entities during the Investigation Period is highlighted in grey above and the total amount is INR 1.15 crore.*

xxix. The fund transactions were in form of personal loans exchanged between the *Noticee nos. 1* and *2* at interest rate of 10%. The said loans were duly reflected in their respective income tax returns.

xxx. The SCN has picked up transactions of only INR 75 Lakh, however, the total funds transferred between the said *Noticees* were to the tune of INR 1.15 Crore.

xxxi. There is huge disparity in funds exchanged and the amounts invested in trading. Had the transfers done only to facilitate insider trading, the entire funds could have been used for such trades. For example, out of INR 25 Lakh transferred from the *Noticee no. 1* to the *Noticee no. 2*, only an amount of INR 22 Lakh was transferred by the *Noticee no. 2* to her broker.

xxxii. *Noticee nos. 4* and *5* were merely authorized signatories for the *Noticee nos. 1* and *2* and all decisions with respect to the trades were taken by the *Noticee nos. 1* and *2* only. As the *Noticee nos. 4* and *5* have merely delivered the trading orders and since the trades have been decided to be executed by the *Noticee nos. 1* and *2*, no action should be taken against *Noticee nos. 4* and *5*.

8. It is noted from the record that personal hearing in the matter was intially scheduled on February 25, 2020, which was rescehduled to April 08, 2020, which was again rescehduled to August 05, 2020 due to lockdown imposed on account of Covid-19 pandemic. The *Noticees* conducted inspecion of the relevant documents on July 28, 2020 and made a request for adjourment of the personal hearing scheduled on August 05, 2020. The personal hearing was accordingly rescehduled on September 08, 2020 and on the said day, a common authorised represetnative on behalf of all the *Noticees* appeared and made submissions on the lines of their written replies, which have already been summarised in the previous paragrpahs. Based on the arguments so advanced during the personal hearing, the following queries were raised to the authorised representative of the *Noticees*:

i. Why the assumption was that buyback will be made without Shareholders approval?
ii. What were the reasons for trading by the *Noticee nos. 1* and *2* during UPSI period, specially by *Noticee no. 2*.?
iii. Trading details of *Noticee nos. 1* and *2* may be furnished for the period FY 2015 to 2018 to support their contention that they have been regular traders in the Securities Market and traded frequently in the scrip of ADF.
iv. Offer comments with documents in support of their claim that personal loan was given by *Noticee no. 1* to *Noticee no. 2* so as to justify irregular and sudden fund transfers between *Noticee nos. 1 and 2* during UPSI period.

v. Explanations to be furnished justifying the structure of transfers (i.e. from 3 to 6, to 1 to 2) as mentioned at page no. 8 of the SCN and also to explain the reasons behind the refunds made by *Noticees no. 1* and *2* to *Noticee no. 3* as mentioned at page no. 10 of the SCN.

vi. *Noticees* were asked to furnish documents to substantiate the claim of purchase of flat and execution of MOU as claimed to have been signed between *Noticee nos. 1, 4* and *6* along with the current status about the purchase of the flat.

vii. ITR copies of *Noticee nos. 1, 2, 3* and *6* for Assessment Year 2016-17 and 2017-18 and their bank statements for FY 2015-16 and 2016-17 highlighting the *inter-se* transactions to justify the loan transactions.

viii. Details to be furnished about the authorization given by *Noticee nos. 1* and *2* in favour of *Noticee nos. 3, 4* and *5* for trading on their behalf.

ix. *Noticees* to confirm whether the mobile numbers from which orders were placed, belong to them.

x. Period during which the trading window was closed.?

9. The *Noticees*, in repsonse to the aforesaid queries, submitted the following responses vide a common written submission dated September 25, 2020:

i. It was never the case of SEBI that the *Noticees* had the knowledge that the buyback would be conducted by way of Board Resolution and not by way of shareholder resolution and this information was an UPSI. Raising such a question at this stage would amount to rewriting the SCN.

ii. Buy-back of shares was not a strategic move to reduce the public float but was to reward the shareholders of the *Company*. Rewarding shareholders through buy-back was an ongoing trend at the relevant time.

iii. The process of obtaining the shareholders approval and achieving relevant compliances would have delayed the process. In view of the same, the *Company* had no reason to pursue such a lenghty process for the buy-back as the approval of buy-back through Board Resolution was a faster option.

iv. As distrubution of dividend would have incurred tax liability, it was a legitimate expectation of distrubutiuon of profits to the sharheolders.

v. In all cases of information asymmetry between management of a company and its shareholders, it cannot be held that UPSI exists. There is no prohibition on an insider to trade when some information asymmetery exists.

vi. The key test to define information asymmertry as UPSI is impact on price at the time of disclosure of such information. In the present case, the price moved on disclosure of buy-back but did not move on the dislcoure of the buy-back range, as there was no likelihood that the announcment of the said range of buy-back would impact the share price materially.

vii. The information as to whether the buy-back was to be approved by way of Board Resolution or shareholders' approval was neither considered as a material information nor was likely to be considered as a material information.

viii. There was no increase in the trading volumes of the *Noticee nos. 1* and *2*. The trading pattern of the *Noticee no. 1* during the alleged UPSI period was consistent with her previous trading patterns. *Noticee no. 2* also exhibited consistent trading pattern as compared to her trades executed in the previous year. In F.Y 2015-16, she had purchased 5.27 Lakh shares and in the next year, only 3.27 Lakh (approx.) shares were purchased by her, which is 60% less than the previous year. Trading details of the *Noticee nos. 1* and *2* in the scrip of ADF for the period of 2015 to 2018, are provided as under:

Table no. 6: Trading by Noticee No.1 and 2 in the scrip of ADF

Year	Noticee no. 1		Noticee no. 2	
	Buy	Sell	Buy	Sell
F.Y. 2015-16	1,19,546*	5000*	5,27,536	4,07,769
F.Y. 2016-17	1,91,720	76,565	3,27,934	4,20,723
F.Y. 2017-18	0	38,500	0	26,978

* *Trades between January to March, 2016.*

ix. The fund transfers between *Noticee nos. 1* and *2* was not irregular or immediate. There is a long term arrangement between the said two *Noticees* and exchange of funds continued even after the alleged UPSI period was over. Copy of ledger for F.Y. 2016-17 has been filed in support.

x. In the year 2016-17, the *Noticee no. 2* had paid INR 7.74 Lakh as interest to the *Noticee no. 1* and the same is reflected in the ledger as well as ITR of the *Noticee no. 1*.

xi. There was no structured transfer of funds between the *Noticee nos. 1, 2, 3* and *6* and the fund transfers took place out of two separate transactions. In the first transaction, the *Noticee no. 6* had transferred funds to her parents, viz., *Noticee nos. 1* and *4* towards purchase of the flats, whereas, the *Noticee no. 1* transferred funds as loans to the *Noticee no 2*.

xii. The family understanding of transfer of flat between *Noticee nos. 1, 4* and *6* was not executed due to the opinion dated July 30, 2016 received from a Chartered Accountant. In the said opinion, it was *inter alia* advised that transfer of flat shall incur income tax liability of INR 27 Lakh and also stamp duty @ 5% of total agreement value. It was opined by the CA that the flat may be gifted by the *Noticee nos. 1* and *4* to the *Noticee no. 6* and in return, she can gift the consideration which has already been paid.

xiii. In pursuance of the opinion of CA, a Gift Deed dated February 06, 2019 was registered on August 06, 2019, and at present, the said flat is co-owned by *Noticee nos. 1*, *4* and *6*. Copy of opinion of CA, Gift Deed etc., have also been filed.

xiv. It was decided to distribute the assets of the *Noticee nos. 1* and *4* between their two children. It was originally decided to transfer the entire ownership of the flat to the *Noticee no. 6*, however, after receipt of the opinion of CA, it was decided that the *Noticee no. 6* shall pay 50% of the price of the flat to purchase 50% right of her sister over the flat and become a joint owner of the said flat.

xv. The price of the said flat was INR 5.09 Crore which with stamp duty came to INR 5.34 Crore. Accordingly, the *Noticee no. 6* was required to transfer an amount of INR 2.67 Crore to the *Noticee nos. 1* and *4*. As she had already paid INR 4.09 Crore towards the sale consideration of the flat, it was decided that the excess amount of INR 1.42 Crore (INR 4.09 Crore -INR 2.67 Crore), would be gifted by the *Noticee nos. 1* and *4* to the children of the *Noticee nos. 3* and *6*. Copy of ledger account of Krish Bhavesh Thakkar and Prisha Thakkar, as stood in the Books of accounts of Navin Mehta (*Noticee no. 4*) have been filed.

xvi. The *Noticee no. 1* had, vide letter dated May 27, 2010, authorized the *Noticee nos. 3* and *4* to buy/sell shares on her behalf. Similarly, the *Noticee no. 2* had, vide letter dated June 24, 2015, authorized the *Noticee nos. 4* and *5* to buy/sell shares on her behalf.

xvii. The allegations that the *Noticee nos. 3, 4* and *5* were placing the orders in the account of the *Noticee nos. 1* and *2* are baseless. In terms of the statements provided along with the SCN, it is clear that only *Noticee no. 4* had placed orders on behalf of the said two *Noticees*, decisions for which were taken only by the *Noticee nos. 1* and *2* themselves.

xviii. Vide announcement dated May 16, 2016, the trading window was closed from May 20, 2016 to May 29, 2016, in the light of the Board Meeting scheduled on May 27, 2016. Similarly, vide announcement dated July 21, 2016, trading window was closed from July 20, 2016 till July 29, 2016 in the light of the meeting of Board of Directors scheduled on July 27, 2016.

xix. It's natural that extended family members of the promoters of the *Company* make some investment in the *Company* and such transactions should not be considered to be influenced by UPSI, especially in absence of any strong evidence. The evidence adduced under the SCN does not indicate communication of UPSI.

10. In order to deal with the aforesaid contentions as have been made by the *Noticees* who have been charged with violations of provisions of SEBI Act, 1992 and PIT Regulations, 2015 it would

be apposite to refer to the appropriate legal provisions as well other provisions relevant for the present case, which are reproduced herein below for the sake of ready reference and convenience:

SEBI Act, 1992

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

12A. No person shall directly or indirectly—

(d) engage in insider trading;

(e) deal in securities while in possession of material or non-public information or

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

PIT Regulations

Regulation 2(1)(d)(i): connected person" means,-

(i) any person who is or has during the six months prior to the concerned act been associated with a company, directly or indirectly, in any capacity including by reason of frequent communication with its officers or by being in any contractual, fiduciary or employment relationship or by being a director, officer or an employee of the company or holds any position including a professional or business relationship between himself and the company whether temporary or permanent, that allows such person, directly or indirectly, access to unpublished price sensitive information or is reasonably expected to allow such access.

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

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

Regulation 2(1)(f):

Immediate relative means a spouse of a person, and includes parent, sibling, and child of such person or of the spouse, any of whom is either dependent financially on such person, or consults such person in taking decision relating to trading in securities.

Note: *It is intended that the immediate relatives of a 'Connected person' too become connected persons for the purposes of these* Regulations.

Regulation 2(1)(g):

"insider" means any person who is:

i) a connected person; or

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

***NOTE**: Since "generally available information" is defined, it is intended that anyone in possession of or having access to unpublished price sensitive information should be considered an "insider" regardless of how one came in possession of or had access to such information…"*

***Regulation 2(1)(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.*
***Note**: Under the parliamentary mandate, since the Section 12A (e) and Section 15G of the Act employs the term 'dealing in securities', it is intended to widely define the term 'trading' to include dealing. Such a construction is intended to curb the activities based on unpublished price sensitive information which are strictly not buying, selling or subscribing, such as pledging, etc. when in possession of UPSI.*

***Regulation 2(1)(n)(iii):** '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:*
…
(iii) change in capital structure.

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

Regulation 4(1): Trading when in possession of unpublished price sensitive information.

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 …'

***Regulation 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.*

11. I have carefully gone through the contents of the SCN as well as the documents relied upon for issuance of the said SCN and after carefully perusing the arguments made by the *Noticees*, I observe that in order to evaluate the case on its merits, I need to first address the question as to whether the *Noticees* are 'insider' in terms of regulation 2 (1) (e) of the PIT Regulations and then

find an answer to the second question as to whether or not the *Noticees* have engaged in the act of insider trading while in possession of UPSI.

12. As noted above, on May 23, 2016, the *Company* informed the stock exchanges that a meeting of its Board of Directors was scheduled on May 27, 2016 to consider and to recommend issues relating to declaration of dividend for financial year ended on March, 2016 or declaration of buyback of equity shares of the *Company*, or a combination thereof. Facts revealed in the investigation also establish that the idea to undertake the buy-back of equity shares was discussed internally amongst the Senior Officials in the presence of the Merchant Banker for the first time on May 21, 2016. Subsequently the *Company* while making major corporate announcements during the relevant period has announced on May 27, 2016 that the Board of Directors of the *Company* at its meeting held on May 27, 2016, *inter alia*, has decided to defer the decision on dividend on equity shares and buyback proposal till the next Board meeting. It is also not denied that finally on July 27, 2016, at 03:24 pm, the *Company* made a public announcement through stock exchanges that its (ADF's) Board of Directors have approved a buyback of equity shares at a price not exceeding INR 125 per equity share for an aggregate amount not exceeding INR 18 Crore.

13. It has been submitted that in the present case, an announcement of buy-back can be treated as PSI but a subsequent announcement of a range of buy-back cannot be called a PSI. Seeking reference to the definition of UPSI, the *Noticees* have submitted that it was the 'disclosure about the proposed buy-back' and not about the 'range of the buy-back' *per se*, which was resulting into change in capital structure of the *Company*. Such a contention of the *Noticees* on the face of it may appear to be attractive, however, on a closer examination of facts, I find the aforesaid submissions advanced by the *Noticees* lack merit and do not deserve acceptance. I note that regulation 2(1) (n) defines the UPSI as any information, relating to a company or its securities, directly or indirectly, that is not generally available and which upon becoming generally available, is likely to materially affect the price of the securities and shall, ordinarily include but not restricted to inter alia "change in capital structure". The definition, specifically includes "change in capital structure" as an UPSI meaning thereby, any act on the part of a company that causes or is likely to cause a change in the capital structure of the company shall become an UPSI.

14. The *Noticees* have contended that the information about a range of buy back which was disclosed by the *Company* on July 27, 2016 can't be called an UPSI. I have already noted above that the definition of UPSI provides for change in capital structure *simplicitor* as UPSI without any qualification. Illustrations mentioned under the said definition clause in the PIT Regulations qualify to be called as UPSI, irrespective of the fact as to whether the said UPSI finally impacts the price of the scrip or not. The *Noticees* while arguing their case that an information about the range of proposed buy back (in terms of prescribed percentage) cannot be an UPSI, have not advanced any justification supporting their stand so as to establish as to whether the said range of the proposed buy- back led to any change in the capital structure or not. There are no two views on

the fact that an information about buy-back as well as the information about the range of the proposed buy- back would both cause a change in the capital structure of the *Company*. The SCN does not claim that pursuant to the implementation of the proposed buy-back in terms of the proposed range of such buy-back, the capital of the *Company* did not undergo any change. I find that in case the submissions of the *Noticees* are to be accepted, it would ostensibly lead to at least two different postulations, namely, (a) information about a proposed buy back of securities by a company is to be treated as UPSI since it results in change in capital structure of such company, and (b) a subsequent information about the range of the proposed buy back, which would also results into change in capital structure, but cannot qualify to be called an UPSI. Such an interpretation of definition of UPSI as prescribed under the PIT Regulations would be far-fetched one, while the law governing the definition of UPSI actually provides for only one circumstance in which any information pertaining to a proposed buy-back offer including the information about the range of the proposed buy-back offer, has to be called an UPSI because the circumstance postulated at (b) above is actually a sub set and extension of circumstance postulated at (a). The law does not envisage for two different circumstances emanating out of the same PSI as has been propounded by the *Noticees* since both the information (buy-back and range of buy-back) are integrally one information which was resulting in a change in the capital structure of the *Company*. Hence it will be fallacious to suggest that only one part of the information (buy-back) fulfils the criterion to be termed as UPSI and other part (range of buy-back) is not an UPSI. In my considered view, the law encompasses only one situation, i.e., change in capital structure hence, all the factors/ingredients that are responsible in causing change in capital structure are very much embedded into it and any unpublished information about any such factors/ingredients that is likely to cause change in the capital structure of a company is to be reckoned as an UPSI. In the event the perspectives/viewpoints and interpretations on the definition of UPSI offered by the *Noticees* are accepted, it would not only restrict the scope of the term 'UPSI' but also would defeat the very object of legislation pertaining to Insider Trading. Therefore, I can't agree with such an untenable and legally misleading arguments advanced by the *Noticees*.

15. The SCN narrates that the idea for buy-back was internally discussed for the first time on May 21, 2016 pursuant to which it was brought for discussion in the Board meeting held on May 27, 2016, but the Board deferred its decision till the next Board meeting and it was finally on July 27, 2016, that the Board accorded its approval to the said deferred proposal for buyback of equity shares at a price not exceeding INR 125 per equity share. Since the PSI about the so called "range of buy-back" was nothing but an extended and specific version of the PSI about the earlier proposal for buy-back, it may not be proper to artificially read into the definition of UPSI by segregating 'the range of the proposed buy-back' as an isolated item independent of 'buy-back' in a manner to construe that the said information about range of buy-back falls outside the purview of UPSI pertaining to the proposal of buy-back itself. It is a settled principle of law that the charges

of insider trading should be read as a whole and any attempt to read and interpret the same in bits and pieces would defeat the very objective of issuance of the SCN in this case. On a perusal of the SCN as a whole, it leaves no room for any doubt that the SCN suggests to label 'range of buy back' not independent of 'buyback' but only as a part of the same proposal for buyback, which was under active consideration by the *Company* since May 21, 2016 and before the Board of the *Company* from May 27, 2016. Further, the law is also settled that only that interpretation of law which intend to prevent the mischief and foster the object of legislation should be adopted. Applying the said principle to the legislative objectives of the "PIT Regulations", I find no ambiguity in the charges made in the SCN and therefore, the attempt of the *Noticees* to superficially split on UPSI by arguing that the information pertaining to the 'range of buyback' cannot be called an UPSI is rejected. The SCN and its charges have to be read as a whole and interpretation to the allegations made in the SCN have to be made only in the directions which lead to achievement of the avowed objective of the regulations, i.e., to prevent the insider trading. In the present case, the SCN unambiguously alleges the information about the 'range of buy-back' to be an UPSI and further, the UPSI period has also been defined as the period starting from May 21, 2016 till July 27, 2016. Admittedly, the idea of the buyback of the shares was first mooted on May 21, 2016 and the final approval of the said proposal for buy-back with a specific range of price and percentage by the Board of Directors was disseminated on July 27, 2016. When I consider both the factors, i.e., initiation of the proposal for buy-back and final decision with respect to the range of buy-back, the argument of the *Noticees* to treat only the original decision to go for buyback as an UPSI on a standalone basis disregarding the subsequent proposed range of buy-back, cannot be accepted by any stretch of imagination. In view of the aforesaid, I am constrained to observe that the information about the range of buyback was as much as a price sensitive information as the proposal of buy-back, which till its disclosure to the public by way of announcement made on stock exchange pursuant to Board approval, remained in the realm of an unpublished price sensitive information.

16. I note that as per the written reply of the *Noticees* the proposal to do buy-back has been admitted to be an UPSI having exclusive bearing with change in capital structure as prescribed under the definition of UPSI. Therefore, the contention of the *Noticees* to limit the UPSI only to the 'proposed buy-back' and not to the subsequent information about 'proposed range of buyback', if taken on its face value, will lead to nothing but absurdity. As the range of buy-back of shares by the *Company* essentially represented the estimated quantum of the impact on the capital structure of the *Company* likely to be brought about by the proposed range of buy-back, the same has to be read in conjunction with the decision of proposed buyback itself as both the proposals together constituted the UPSI in this case. Since the range of buy-back itself emanated from the earlier announcement of buy-back, the argument of the *Noticees* that the former (announcement of buy-back) was the UPSI and not the latter (range of buy-back) is misplaced on fact and is *sans* any foundation in law. The *Noticees* have painstakingly tried in vain to exclude the announcement on

the range of buy-back from being called as an UPSI, however, as the range of buy-back cannot be taken away from the disclosure of the buy-back itself, such an erroneous argument of the *Noticees* cannot be accepted.

17. The *Noticees* have further contended that while the price of the scrip saw an upward movement upon disclosure of the information about the proposal of buyback being put up to the Board for deliberation, there was no positive movement in the price of the scrip upon disclosure of the range of the buyback on July 27, 2016. It has also been argued that the said disclosure about the range of buyback should not be held as UPSI for the reason that the said disclosure had hardly any impact on the price of the scrip. It has to be reiterated here that all the illustrations of various events/information cited under the definition of UPSI in the PIT Regulations, would squarely constitute price sensitive information, irrespective of whether such events/information did cause any 'actual impact' or absence thereof on the price of the scrip upon disclosure of such even/information to the public. The definition has consciously used the expression 'likely' to materially affect the price of the securities which further leaves no room for any ambiguity about the stated regulatory provision that the information in question having a potential to impact the price of the scrip in either direction is sufficient to qualify to be held as UPSI. A definite and sure impact on the price or absence thereof, shall have no bearing on such information being called a UPSI. A careful perusal of the definition does not indicate that the actual impact caused or not caused, by an event/information on the share price of a company is *sine qua non* for such an event/information to become eligible to be classified as an UPSI, since the Regulations postulates that it's the potential and likely impact and not the actual impact on price which is the litmus test for any information to be treated as an UPSI. It is, therefore, not necessary that an unpublished price sensitive information on being published, would invariably and predictably cause only a positive price impact. It can have a negative impact as well, especially in the case of an event/information containing less than expected or dismal financial results of the *Company*. One can definitely presume that an insider would indulge in insider trading while in possession of an UPSI either for reaping profit or for avoidance of loss. As stated before, the aforesaid definition of UPSI in PIT Regulations illustrates certain types of events/information which are deemed to be price sensitive. I find that the UPSI involved in the present case as per the SCN, is deemed to be an UPSI in terms of regulation 2(1) (n) of the PIT Regulations, 2015, which adequately demolishes any argument or dispute about the price sensitivity of the said information. As mentioned above, an event or information could also be held as price sensitive, which in ordinary sense is likely to be capable of materially affecting the prices of securities. Thus, it is the likelihood of material effect on the price of the securities of a company which clothes an information to be called "price sensitive" and this likelihood of an event/information to materially impact the price is the cornerstone of the definition of UPSI under the PIT Regulations. Consequently, if there was

a likelihood of an information to have an impact on the price of the securities of a company, that likelihood itself is capable of characterizing the information as a 'price sensitive information'.

18. The said definition of UPSI does not pre-suppose any certainty about a price rise (or a price fall) to be triggered by such UPSI. Further there cannot be any thumb rule to predict with certainty that a positive or negative PSI, when published in public domain, would decidedly have positive or negative impact on the share price of a company, as market price of securities on any given day is also influenced by a host of internal, external including domestic & international factors beyond the realm of affairs or performance of a company. Hence, in my view, the proposed buyback of equity shares including in the form of a proposed range of buyback, impinging upon the change of capital structure of the *Company*, upon publication, was likely to impact the price of the scrip of ADF and therefore, falls within the definition of UPSI. There are always a multitude of factors at play on a given day which determine the prices of a stock, be it publishing of a price sensitive information or otherwise, sectoral performance, macro and micro economic policies, general trend in performance of the stock exchange, international trend, any relevant news, etc. Further, in order to cement my above observation, I would like to refer to the findings of the Hon'ble SAT in the matter of *V.K. Kaul Vs SEBI (Appeal no. 55 of 2012, date of decision: October 08, 2012)*, observing as: *"We are, therefore, of the view that the term price sensitive information used in regulation 2(ha) is wide enough to include information relating directly or indirectly to 'a company'."*

19. From the aforesaid, there is no denying the fact that the announcement of proposed buyback did impact the price of the scrip and only for the reason that upon disclosure of the subsequent information about the range of the said proposed buy-back , the scrip did not witness sufficient upward movement, the argument that the said event/information about range of buy-back cannot be held as UPSI would not be a sustainable ground to exclude the said information from the purview of being called as an UPSI. Thus, the argument of the *Noticees* that the information about the range of buy-back could not be a UPSI as its disclosure did not impact the price of the scrip, is patently erroneous and not maintainable under the provisions of PIT Regulations, hence is rejected without any further examination.

20. It has further been argued that the range of proposed buyback has been wrongly alleged to be UPSI since the said fact was not exclusively known to the *Noticees* but was a matter of generally available information. To buttress this argument, the *Noticees* have argued that the range of the buy-back is calculated as per the statutory provisions laid down under Companies Act, 2013 and SEBI (Buy-back of Securities) Regulations, 2018 (hereinafter referred to as "**the Buyback Regulations)** which allow buy-back of maximum 10% of the equity share capital and free reserves with Board's approval (without approval of shareholders). Since it was a public knowledge that the total paid up capital and free reserves of ADF was INR 185.77 Crore (approx.), the range of buyback with Board's approval could have been up to INR 18 Crore only, without obtaining the approval of shareholders. In this regard, I note that the extant regulatory framework governing

buyback of securities (Section 68 of Companies Act, 2013 read with regulation 5 of the Buyback Regulations) allows a company to buy-back its shares, if the Articles of Association of the Company authorise such buyback; and (i) such proposal of buyback has been approved by the Board of that company, by way of resolution, in case the buyback is limited to 10% of the total paid up equity capital and free reserves of that company or (ii) a special resolution has been passed at a general meeting in case the proposed buyback exceeds 10% upto 25% of the total paid up equity capital and free reserves of company; 25% being the maximum permissible limit of buyback.

21. From the said regulatory framework, it is observed that a company may go for buyback well beyond 10% of the total paid up equity capital and free reserves of company, if it is able to achieve a special resolution in favour of such a proposal for buyback. For the purpose of 'special resolution', as stipulated under Section 114 of Companies Act 2013, the intention to propose the resolution as a special resolution has to be intimated in the notice therein calling for a general meeting and special resolution shall be called on to be passed when more than 75% of the total votes cast, are in favour of the proposal. Having regard to the aforesaid regulatory and legislative conditions precedent to propose a buy-back offer and taking into account the arguments advanced by the *Noticees,* during the personal hearing the *Noticees* were requested to furnish the reason/rationale, which according to them was providing a compelling assumption with certainty, that the proposed buyback was to be offered without obtaining shareholders' approval. However, I note that instead of providing more clarity so as to strengthen their claim that the range of buy-back was a matter generally available (to the public), the *Noticees* instead have challenged the aforesaid query put forth by me during their personal hearing and have brushed it aside by claiming that raising such a query tantamount to rewriting the SCN and have stated that the process of buy-back through Board Resolution provided a faster and efficient alternative to distribute profit amongst the shareholders. It is also relevant to add here that the sequence in which things have progressed wherein the *Company* has discussed the proposal for buyback in its Board Meetings held on May 27, 2016 and July 27, 2016, there was no indication coming out of such Board Meetings or public announcements as to whether the *Company* has ever considered to go for a special resolution, for which, as discussed above, an advance notice was required to be issued to the shareholders. Since the proposed range of buy-back (10% or more and the price to be offered) remained an uncertain and internal information till such time the *Company* came out with an announcement on July 27, 2016, it was certainly an UPSI till the date it was made generally available by the *Company*.

22. Notwithstanding the above, it is pertinent to mention here that both the statutory thresholds as discussed above, i.e., 10% and 25% are the two upper limits of offering buyback in two circumstances, which at the best were indicative of the fact that the *Company* was well within its rights to proceed for the buyback of its equity shares for a maximum quantum up to 25 %. At the same time, the proposed buyback can remain less than 10% of the total paid up equity capital

and free reserves of the *Company* if the *Company* takes a conscious decision to keep the proposal within 10% of the total paid up equity capital and free reserves. The contention of the *Noticees* that the alleged UPSI is deducible from the details of financials available in public domain has no strength. As stated above, the threshold of 10% was only the upper limit in case the buy-back is made through Board Resolution and the quantum of 10% was not a compulsive aspect. The inherent discretion of the Board to go for the quantum of buy-back anywhere in the range of 0-10% was the aspect which was not generally available and which ultimately painted the information as a price sensitive information. I observe that by making the announcement on July 27, 2016, the information which was unpublished, i.e., the range of the buy-back, was made available generally by dissemination through the stock exchanges. In case the contention of the *Noticees* hold good, there was no need for dissemination of information regarding the range of the buy-back, which was supposed to be available in public domain, as claimed by the *Noticees*.

23. Under the circumstances, it would be grossly erroneous to claim that the quantum of proposed buy-back was a matter of generally available information based on the relevant statutory provisions and its account available in the public domain, hence did not have any price sensitivity about it. The *Noticees* have attempted to demonstrate as if the facts already available in the public domain were suggesting for no other option left for the *Company* than to go for a buyback for only 10% of total paid up equity capital and free reserves of the *Company*, information about which was generally available, and the aggregate amount for the said 10% came to be to INR 18 Crore only. As observed earlier, the *Company* was contemplating to either declare dividend, or offer buyback of equity shares or offer a combination thereof. Thus, the *Company* had kept all the options open before it and it very well knew that through a special resolution, it can buy-back upto 25 % while by way of only a Board resolution, it can buy-back upto 10 % of its total paid up equity capital and free reserves as available in its balance sheet during the relevant financial year. In terms of the above discussion, I observe that the *Company's* attempt to disregard the Board approved threshold of proposed buyback up to 10% of the paid up capital and free reserves as an UPSI under the alibi that such an information was generally available, cannot be considered as a valid argument under law since the said threshold of 10% decided by its Board was neither a fixed formula nor was the only statutory and regulatory option available to the *Company* but was only an indicative limit proposed at the time of announcing the decision for the proposed buy-back offer to the public.

24. On the contrary, I find that the information about the range of proposed buyback was known only to the persons closely connected with *Company* and who were part of the decision making in the *Company*. The *Noticees* have also contended that it is erroneous on the part of SEBI to take the proposed buy-back range of INR 10-15 Crore as UPSI, as the said proposal was not accepted as such, and finally the buyback was approved by the Board was for INR 18 Crore. However, in my view, since the final buyback offer that was approved by the Board of the *Company* was well above the earlier proposed range of buyback alleged to be UPSI (INR 10-15 Crore), the

said final range of buy-back approved by the Board cannot take the place of or supersede the previous proposed range so as to remove the same from the purview of UPSI at the time when it came to existence. Rather, the upward shift of the said range of buy-back pursuant to the Board resolution, further fortifies the allegations made in the SCN with respect to the treatment of the earlier proposed range (of INR10-15 Crore) being an UPSI in possession of the *Noticees* at the time when the *Noticee nos. 1* and *2* executed trades in the scrip of the *Company*. It may also be relevant to mention here that as per the agenda papers of the board meeting that was scheduled to be held on May 27, 2016, the proposed range of buyback was at that time, known only to the insiders and was not generally available. Keeping in view the aforesaid deliberations, I am of the view that the proposed buyback of equity shares by the *Company*, including the range of buyback, undoubtedly qualified to be a PSI during the given UPSI period.

25. I note that the SCN proceeds on the premise that the *Noticees* are connected persons, possessing and/or having access to the UPSI and therefore, were insider within the realms of PIT Regulations, 2015. I also note that the *Noticees* in their common reply have not contended, (except for the *Noticee no. 2*) that they did not enjoy connection. Therefore, the issue that requires consideration is whether, based on the examination of material available on record, the charge of trading in securities of ADF while in possession of UPSI would sustain or not.

26. It is noted that regulation 2 (1) (g) (i) of PIT Regulations, defines insider as any person who is a connected person or who is in possession of or having access to UPSI. It is further noted from SCN that the *Noticee no. 3* is an Executive Director of ADF and hence, being a Director of ADF, he falls undisputedly in the definition of connected person in terms of regulation 2(1) (d) (i) of PIT Regulations. Further, the *Noticee no. 3* has remained one of those persons, who attended all the relevant meetings pertaining to the buyback of securities. In this respect, the *Company* vide its letter dated March 17, 2018 has informed that the idea of buyback of equity share was first internally discussed on May 21, 2016 and amongst others the *Noticee no. 3* was present in the said meeting wherein it was decided to refer the proposal of buyback or dividend or both, to the Board of Directors of the *Company*. Further, as per the information submitted by the *Company* vide its letter dated November 27, 2017 pertaining to the names of persons who were having access to and were in possession of the USPI, the name of the *Noticee no. 3* is mentioned in the said list of names furnished by the *Company* in the said letter. Similarly, the name of the *Noticee no. 3* has also been mentioned in the list of names furnished by the Merchant Banker vide its letter dated March 26, 2018 about the persons who were having access to and/or in possession of the UPSI. I further note that the *Noticee no. 3* has neither advanced any argument denying his association either as a Director with the *Company* nor has made any denial about him being in possession of the UPSI related to the buyback of securities proposed to be offered by ADF. From the above, it becomes evident that the *Noticee no. 3* being the Director of ADF is unambiguously a connected person in terms of regulation 2(1)(d) of PIT Regulations and thereby becomes an insider under regulation

2(1)(g)(i) as well as (ii) of the PIT Regulations. Similarly, the *Noticee no. 6*, being undisputedly the Promoter of the *Company* and also as the wife of the *Noticee no. 3* and having not made any rebuttable submissions with supporting document to dispute her above stated connections, also satisfies the pre-requisites of regulation 2(1) (d) (ii) (a), r/w 2 (1) (f) to be held as an insider within the regulation of 2 (1) (g) (i) of the PIT Regulations.

27. The SCN proceeds to record that the *Noticee nos. 1* and *4* are parents-in-law of the *Noticee no. 3* or parents of the *Noticee no. 6,* both of whom (i.e. *Noticee nos. 3* and *6*) have not disputed to their status of being insiders of the *Company*. Facts as revealed during the investigation and also as stated in the SCN indicate that the *Noticee no. 4* as well as the *Noticee no. 3* were the authorised persons for the purpose of placing trades on behalf of the *Noticee no. 1*. The SCN also narrates about frequent (indirect) transfers of funds between the *Noticee no. 3* (Executive Director of ADF) and the *Noticee no. 1* during the relevant period and further alleges that the funds so transferred have been used for meeting the payment obligation against the trades executed in the shares of the *Company* on behalf of the *Noticee no. 1* during the relevant period. It is observed that there were certain transfers of funds on May 31, 2016, June 14, 2016 as well as on June 22, 2016 from the account(s) of the *Noticee no. 3* to the *Noticee no. 1* and such funds were routed *via* the account(s) of the *Noticee no. 6*. The SCN also states that the some of the funds so sourced from the *Noticee no. 3* has not remained at the level of or in the account the *Noticee no. 1* only, but also have travelled to the account of *Noticee no. 2* (who is the sister-in- law of the *Noticee no. 3*) and such funds have been noticed to have been used by the *Noticee no. 2* for trading in the scrip of the *Company*. It is also observed during investigation that the *Noticee nos. 4* and *5* have been authorised to place trades on behalf of the *Noticee no. 2*.

28. In the afore-discussed factual backdrop, the SCN alleges that *Noticee no. 3* being an Executive Director of the *Company* and attendee of all the relevant meetings wherein issues pertaining to buyback of equity shares were discussed, was absolutely in possessions of and or had access to the UPSI related to the proposed buyback, and the rest of the other *Noticees*, being very closely connected to the *Noticee no. 3* in one way or the other, have also to be deemed to be in possession of the said UPSI, through the *Noticee no. 3*. In this factual context, as the *Noticee nos. 1* and *2* are seen to have traded in the scrip of ADF and the orders for the trades done by them are found to have been placed by the *Noticee nos. 3, 4* and *5* as their authorised representatives, they have been alleged to have engaged/indulged in insider trading while in possession of the UPSI, received by them through the *Noticee no. 3*. Thus, the charges against the *Noticees* are that the *Noticee no. 3* being privy to the UPSI, pertaining to the impending buyback offer has acted as the Tipper and has passed on the PSI to his wife, mother-in-law, sister -in-law, father-in-law and son of the sister- in- law. The show-cause notice further alleges that the *Noticee nos. 1* and *2* have traded in the shares of ADF and have made an unlawful profit of INR 77.23 Lakh (approx.) while in possession of the UPSI relating to the impending buy-back offer of the *Company*. The trading pattern of the

Tippees i.e., *Noticee nos. 1* and *2* indicate that their trades in the scrip were influenced by the said inside information (UPSI) pre-dominantly due to the fact that the aforesaid two *Noticees* have only traded in the shares of ADF and did not trade in any other shares during the relevant period. It has thus also been alleged that the *Noticees* were not only connected persons but also were 'insiders' to ADF in terms of the PIT Regulations.

29. From the records of the present proceedings, that the details of the trades executed by and on behalf of the *Noticee nos. 1* and *2* in the scrip of ADF during the period, are found to be as under:

Table no. 7 Trading by Noticee no.1 in ADF during the Investigation Period

Date of Trading	BSE		NSE	
	Buy Qty.	Sell Qty.	Buy Qty.	Sell Qty.
03-06-2016	917	0	1,456	0
06-06-2016	656	0	400	0
07-06-2016	0	0	1,000	0
08-06-2016	1,529	0	2,876	0
09-06-2016	302	0	4,681	0
10-06-2016	06	0	1,006	0
13-06-2016	425	0	1,344	0
14-06-2016	1,165	0	10,149	0
17-06-2016	420	0	1,000	0
24-06-2016	2,510	0	11,527	0
12-07-2016	935	0	7,137	0
13-07-2016	1,752	0	12,789	0
14-07-2016	4,866	0	9,613	0
15-07-2016	2,276	0	14,383	0
18-07-2016	2,990	0	29,080	0

19-07-2016	4,624	0	21,043	0
Total	**25,373**	**0**	**1,29,484**	**0**
Total Buying	**154857**			

Table no. 8 Trading of Noticee no.2 in ADF during the Investigation Period

Date of Trading	BSE		NSE	
	Buy Qty.	Sell Qty.	Buy Qty.	Sell Qty.
23-05-2016	3,302	0	14,016	0
24-05-2016	4,807	0	15,193	0
25-05-2016	3,665	0	7,243	0
26-05-2016	1,390	0	5,889	0
27-05-2016	3,570	1,230	11,430	0
21-06-2016	0	1,285	0	0
20-07-2016	490	0	3,212	0
21-07-2016	8,836	0	18,839	0
25-07-2016	1,137	0	0	0
26-07-2016	8,772	0	45,577	0
27-07-2016	17,320	0	1,32,680	0
Total	**53,289**	**2,515**	**2,54,079**	**0**

30. As stated above, the charges made in the SCN narrates that the trades executed by the above said two *Noticees* are bad in law and in violation of provisions of PIT Regulations for the reason that these trades have not been executed in normal course of trading but have been executed while in possession of and under the influence of the UPSI pertaining to ensuing buyback offer of equity shares of ADF. The *Noticees* while presenting their own twisted interpretation and understanding with respect to the existence of UPSI have submitted that the afore-listed trades have been executed in normal circumstances since according to them, no UPSI was in existence during the intervening 48 days between the two Board Meetings held on May 27, 2016 and July 27, 2016. It has been contended that the UPSI came into existence with circulation of agenda for the Board meeting scheduled to be held on May 27, 2016 and came to an end with the conclusion of the said Board meeting. The UPSI again came into existence only on July 14, 2016 and finally came to an end with the disclosure of decision of the *Company* made on July 27, 2016. In this regard, I have already held earlier that the information relating to the proposed range of buy-back has to be treated as an UPSI along with and as an integral part of the first proposal to make buy-back offer per se, mooted by the *Company* and internally decided on May 21, 2016. Therefore, it has to be held that the UPSI pertaining to the buy-back offer not only came into existence on May 21, 2016 but also continued to remain in existence till July 27, 2016 when the *Company* made a public disclosure about the Board's approval of the proposed buy-back of the *Company* (with a proposed range of offer size and offer price).

31. The argument put forth before me that upon disclosure of the announcement made on May 23, 2016 stating that the decision to go for a buy-back has been deferred till the next Board meeting, the UPSI of the *Company* ceased to exist, holds no water in view of my finding that the range of proposed buy-back was also an essential part of the said UPSI which remained an insiders' information and was admittedly disclosed only on July 27, 2016. The argument that a price sensitive information having been created, ceases to exist only for the reason that the Board had deferred its decision about it till the next meeting, is patently erroneous. It is not the case of the *Noticees* that the issue of buyback was duly deliberated in the said Board meeting of the *Company* held on May 27, 2016 and for same reasons disclosed by the *Company* to the public, the said proposal for buy-back offer was dropped/rejected. Contrary to the above, the *Company* had merely announced that a decision on the issue was deferred to next Board Meeting, meaning thereby the issue was kept hanging for a future decision the details of which was not in public knowledge till the same was finally approved by the Board and was announced to the public only on July 27, 2016. I cannot ignore the fact that apart from the issue of buyback, which was very much kept live and under consideration, the issue pertaining to dividend or combination of both was also under active consideration before the *Company*. Under such circumstances, it is highly unreasonable to accept the point of view that the PSI came into existence on May 23, 2016 (when agenda was circulated) and ceased to exist on May 27, 2016 just because the decision on the proposal was deferred to next

Board meeting and the same PSI again re-surfaced as an UPSI before the next Board meeting. In my considered view, such an approach would amount to a distorted and myopic interpretation of the PIT Regulations pertaining to the definition of UPSI to the extent of defeating the very edifice of the said legislation, and acceptance of such an ill-conceived interpretation of the concept of UPSI would result in flagrant violation of provisions of PIT Regulations, abetting the insiders to take advantage of insider information to suit their personal interest before the same is generally available to public at large. In view of the admitted factual position that the decision on the proposed buyback was merely deferred to next Board meeting and no conclusive decision was taken by the Board on the issue till its next meeting held on July 27, 2016, the argument of the *Noticees* that the PSI ceases to exist as soon as the Board meeting was over on May 27, 2016, is liable to be rejected being without any merit.

32. The *Noticees* have also advanced arguments justifying the trades executed by them by submitting that they are regular traders in securities market and have been trading in the scrip of ADF on a regular basis. In this respect, as seen from the details presented in the above tables, the *Noticee no. 1* has purchased 154857 shares of ADF in a span of 16 trading days during the period from June 03, 2016 to July 19, 2016 and has not sold a single share during the relevant time The *Noticee no. 2* has purchased 307368 shares of ADF during May 23, 2016 to July 27, 2016 and has affected sell of only 2515 shares during such time. As noted above, the *Noticees* in their endeavour to justify the execution of their trades in the shares of ADF during the UPSI period, have submitted that they have been regular traders in the securities of ADF and to support this submission, the above said two *Noticees* have furnished the quantum of their trades in the scrip of ADF in earlier months too (in addition to the UPSI period) so as to justify that the trades executed by them in the scrip of ADF (during the UPSI period) have not been motivated by possession of UPSI. The details of their trades in ADF shares both prior to and during the UPSI period as furnished by the two *Noticees* are as under:

Table no. 9 - Trading of Noticee nos. 1 and 2 in the scrip of ADF

Month	Noticee no.1		Noticee no.2	
	Buy	Sell	Buy	Sell
January, 2016	0	0	0	0
February, 2016	84,012	0	81,756	0

March, 2016	35,534	5,000	1,210	12,756
April, 2016	33,480	6,926	0	22,466
May, 2016	3,383	10,786	88,111	4459
June, 2016	43,369	0	0	1,285
July, 2016	1,11,488	0	2,36,863	50,000
Total	**3,11,266**	**22,712**	**4,07,940**	**90,996**

33. The *Noticees* have made a reference to the order of Hon'ble SAT passed in the matter of *Manoj Gaur (Supra)* to contend that their trading pattern in the scrip of ADF would reflect that the alleged trades were executed without having been influenced by any UPSI. As regards the claim of being a regular trader in securities market, I note from the details of their trades furnished by the *Noticee nos. 1* and *2,* that during the entire period for which the trade details have been furnished by them, trades of the two *Noticees* have been confined to the scrip of ADF only. Infact, in their respective replies to the queries posed to them during the investigation, both *Noticee nos. 1* and *2* vide their letters dated April 09, 2018 (Annexure L to the SCN) and April 10, 2018 (Annexure M to the SCN) have admitted that they have not traded in any other scrip during the period of February 01, 2016 to December 31, 2016, except for trading in the scrip of ADF. Though the *Noticees'* claim of being regular traders of securities market has neither been challenged nor disputed in the SCN, from the records as available before me, I don't find any documents furnished by the two *Noticees* justifying their action as to why their trades during the entire period remained confined and restricted only to the scrip of ADF and did not include any other shares. The two *Noticees* have not furnished any details as why they have not preferred to trade in any other scrips during the relevant period. The reliance of the *Noticees* on the observations made by the Hon'ble Tribunal in the matter of *Manoj Gaur (supra)* is not appropriate as the said case is factually distinguishable. In the matter of *Manoj Gaur*, the Hon'ble Tribunal while considering the miniscule quantities of share trading done by the promoters of the *Company*, observed from the facts of that matter, that it would be difficult to hold that the trading was motivated by the possession of UPSI. However, in the instant matter, no such facts have been brought to my consideration, rather the records clearly suggest a sharp rise in the volume of trading by the two *Noticees* in the scrip of ADF only during the UPSI period.

34. It has been submitted by the *Noticees* that the trades have not been executed based on the possession of UPSI as they have not sold those of ADF shares immediately after the disclosure of the UPSI. The *Noticee no. 2* has submitted that she has even purchased some shares on July 27, 2016, which is the day when the UPSI was disclosed. I have carefully perused the aforesaid submissions and do not find them to be presenting the entire fact. It is seen from the SCN that the UPSI was disclosed to the stock exchange on July 27, 2016 at 03:24 pm. It is an undisputed fact that the trading is allowed on the platform of stock exchange till 03:30 pm only. As seen from the above Table no. 9, the *Noticee no. 2* had purchased as much as 1,50,000 shares on July 27, 2016 but there is nothing on record, nor even from the submissions of the *Noticees* to suggest as to whether the said 1,50,000 shares were purchased in the span of those 6 minutes that was left after the disclosure of the UPSI at 03:24 pm. I also don't find the argument advanced by the *Noticees* that the shares purchased during UPSI period were held in possession and were not sold after the disclosure of UPSI to be a convincing one, for the reason that the same (i.e. that the shares purchased during UPSI period needs to be necessarily sold) is not a pre-condition of law to allege insider trading under the PIT Regulations.

35. The *Noticees*, while relying on decision of the Hon'ble Tribunal in the matter of *Mrs. Chandrakala Vs. Adjudicating Officer, SEBI* have emphasised that the trading pattern would be a crucial test to come to a finding, while deciding the allegation of insider trading. In this respect, from the perusal of records (Annexure O to the SCN), a summary of the trades executed by the *Noticee nos. 1* and *2*, as culled out from the records, which deserve to be referred to here, is presented hereunder:

Table no. 10: Summary of trades of Noticee nos. 1 and 2

Details of purchase transactions				
Sr. No.	**Noticee no.**	**No. of shares purchased pre UPSI period (22.02.2016 to 20.05.2016)**	**No. of shares purchased during UPSI period (21.05.2016 to 27.07.2016)**	**No. of shares purchased post UPSI period (28.07.2016 to 28.10.2016)**
1.	Noticee no. 1	1,41,708	1,54,857	-
2.	Noticee no. 2	18,816	3,07,368	5190
Details of sale transactions				
Sr. No.	**Noticee no.**	**No. of shares sold pre UPSI period**	**No. of shares sold during UPSI period**	**No. of shares sold post UPSI period**

		(22.02.2016 to 20.05.2016)	(21.05.2016 to 27.07.2016)	(28.07.2016 to 28.10.2016)
1.	Noticee no. 1	22, 712	-	-
2.	Noticee no. 2	38,451	2515	2,98,955

36. A bare perusal of the aforesaid summary of trades clearly suggests that both the *Noticee nos. 1* and *2* have purchased large number of shares of ADF during the period of UPSI. It is noted that for the period of 03 months preceding the period of UPSI, the *Noticee no. 1* has purchased around 1.41 Lakh shares whereas during the period of UPSI, she has purchased around 1.54 Lakh shares, however, after disclosure of the UPSI, the *Noticee no. 1* has not purchased a single share for the next 03 months. Similarly, the *Noticee no. 2,* who had barely purchased 18816 shares in the three months' period prior to commencement of UPSI, engaged herself in buying 307368 shares of ADF during the two months UPSI period, however, in the next three months' period post the disclosure of the UPSI, she had barely bought 5190 shares of ADF. The aforesaid trading pattern shows that the *Noticee no. 2* had around 18 times more exposure to the shares of ADF during the relevant period. I note that apart from above, the *Noticee no. 2* is seen to have sold around 3 Lakh shares during the post UPSI period of 03 months, which is 10 times of the number of shares sold by her in the pre-UPSI period and more than 100 times from the number of shares sold during the UPSI period. Based on the above stated peculiar trading pattern adopted by the *Noticee no. 2*, it is beyond my acceptance to term her trades as normal trades, more so when I clearly observe that the *Noticee nos. 1* and *2* have displayed strong buying interest in the shares of ADF during the UPSI period which vanished off immediately after the disclosure of the UPSI. The allegations against the *Noticee no. 2* are further compounded from the admitted fact that 50,000 shares were sold by her on July 28, 2016, i.e., exactly on the next day, when the price sensitive information was disclosed. Thus, if the trading pattern of the two *Noticees* is considered holistically, a strong preponderance of probabilities emerges out of the aforesaid trading activities which make a compelling indication that the *Noticee nos. 1* and *2* had executed the trades in the scrip of ADF based on and while in possession of the UPSI pertaining to the proposed buy-back of shares by the *Company*.

37. I have noted above that the *Noticee no. 2* is being linked to the *Noticee no. 6* as both of them are first cousins and the *Noticee no. 6* is the wife of the *Noticee no. 3* (Executive Director of the *Company*). I have also noted that the *Noticee nos. 2* and *Noticee 4 (*uncle of the *Noticee no. 2)* remained connected and enjoyed close relationship. The *Noticee no. 2* has not only authorised the *Noticee no.*

4 to place trades on her behalf but also admittedly was consulting him for her investment decisions . In this respect, reliance is placed on the annexures to the SCN which *inter alia* include communication exchanged between SEBI and the two *Noticees i.e. Noticee nos. 2* and *4*. The *Noticee no. 2* in her letter dated April 10, 2018 (Annexure M to the SCN), responding to SEBI's letter dated April 03, 2018, has *inter alia* stated that: "*…I myself take all my financial investment decisions after discussing with my uncle, Mr. Navin Mehta (including trading in ADF). He also makes investment on my behalf. The orders of ADF were placed by my uncle from time to time through my broker Lalkar Securities ….".* Similarly, the *Noticee no. 4*, in his letter dated May 19, 2018 (Annexure N to the SCN), has *inter alia* stated that: "*…Shefali is my niece who on time to time seeks my advice for financial matters. In relation to investments in ADF Foods during the period of 1st February 2016 to 31st December, 2016, I had recommended her to invest as I believe in this company; however the final decision to invest was taken by her. I had also bought shares of ADF Foods during this time in my wife's account with the same belief.*"

38. The aforesaid statements of the *Noticee nos. 2* and *4*, clearly establish that the *Noticee no. 2* was in constant touch and interaction with the *Noticee no. 4* and she was also acting on the advice of the *Noticee no. 4*, for all her financial decisions including the investments made by her in the scrip of ADF. The relationship was not restricted to merely providing advice or consultation with respect to the investment, rather admittedly, the *Noticee no. 4* was making all the investment on behalf of the *Noticee no. 2*, including placing of the orders for purchasing shares of ADF for and on behalf of the *Noticee no. 2*.

39. I note that the SCN categorically and appropriately alleges that the *Noticee no.1*, being the mother-in- law of the *Noticee no. 3* and the *Noticee no. 4* being father-in-law of the *Noticee no. 3* are deemed to be connected person and hence were insiders of the *Company*. It is noted that the said allegation has not been contested by the *Noticees*. SCN also narrates how the transfers of funds originating from the accounts of *Noticee no. 3* has ultimately reached the accounts of *Noticee nos. 1* and *2* and the funds so transferred from the accounts of *Noticee no.3* were used for trading in the scrip of ADF. I note that none of these *Noticees* has offered any rebuttal disputing the said transfer of funds as highlighted in the SCN. The explanation offered by the *Noticees* justifying the said transfers of funds would be dealt with separately, however, for the purpose of establishing the close nexus that the *Noticees* have been enjoying amongst them, it would be sufficient to record here that neither the above discussed fact of *Noticee no.2* seeking consultancy/advice from *Noticee no.4* for investment decisions, nor the fact of placing of trading orders by one *Noticee* on behalf of other *Noticee* nor even the fact of transfer of funds from the accounts of *Noticee no.3* as pointed out above, has been disputed or denied by any of the *Noticees*.

40. Now, I proceed to examine the aspect of substantial amounts of transfers of funds from the accounts of the *Noticee no. 3* to the account of *Noticee no. 1* and further to the account of the *Noticee no. 2*. The SCN has alleged that a large chunk of funds so transferred by the *Noticee no.3* has been utilised towards purchase of the shares of ADF. The SCN, in para 11 at page 8-9 states that

an amount of INR 1.67 Crore was transferred from the account of the *Noticee no. 3* to the account of the *Noticee no. 6*, who is his wife and promoter of the *Company*. The *Noticee no. 6*, upon receipt of the said amount has transferred an amount of INR 1.65 Crore to her mother i.e. the *Noticee no. 1* and the *Noticee no. 1,* immediately upon receipt of the said amount from the account of her daughter, has transferred an amount equivalent to INR 75 Lakh to the *Noticee no. 2* and has transferred the balance amount of INR 90 Lakh to the account of her stock broker, who finally has used the said amount towards the trading in securities of ADF. Similarly, the *Noticee no. 2* upon receipt of amount of INR 75 Lakh from the *Noticee no. 1*, has transferred a sum of INR 55 Lakh to the account of the same stock broker, who in turn, utilises the amount towards meeting her payment obligations towards purchase of ADF shares on her behalf. The SCN also narrates that the investigation has witnessed further movement of funds after the disclosure of the UPSI and that there is also reverse transaction of funds, as the *Noticee no. 2* is noticed to have transferred INR 1.00 Crore to the *Noticee no. 1* and the *Noticee no. 1* in turn upon receipt the said entire 1.00 Crore, has transferred the entire amount back to the *Noticee no. 6*, who in turn has transferred INR 98.5 Lakh to the *Noticee no. 3*.

41. It is noted from the reply filed on behalf of the *Noticees* that there is no dispute as far as the movement of funds amongst the *Noticees* as highlighted in the SCN. What is being objected to is the nature of such fund movements as alleged in the SCN. The *Noticee no. 1,* in her attempt to explain the aforesaid transfers of funds to the account of *Noticee no. 2* has denied the allegation that the said funds transfers were made for the purpose of trading in securities and has contended that being the aunt of the *Noticee no. 2*, the amount was transferred to extend personal loans to *Noticee no.2* for which interest was also calculated at the rate of 10% per annum. While claiming that the said transfer of funds has taken place in the normal course of business, she has filed a copy of the ledger account and bank account statement to show that the interest income (on the said loan advance) has been reflected in her ITR.

42. I have gone through the aforesaid documents submitted by *Noticee no.1* produced in support of her claim of interest received by her from the *Noticee no. 2*, however, her submissions and claims do not inspire any credibility for the following reasons:

(A) The claim that such interest earning has been duly disclosed to the authorities especially in the Income-tax returns, in the absence of supporting documents like balance sheet, computation of income etc., remains unsubstantiated and unverifiable from the limited information filed in this respect.

(B) Similarly, the claim of having paid INR 7 Lakh (approx.) as an interest in the financial year 2016-17 by *Noticee no. 2* also remains unverified as no corroborating details have been furnished to explain as to when the loan outstanding was finally settled, what was the interest payment schedule etc.

(C) Without prejudice to the aforesaid, the claim of extending personal loans also appears to be hollow as none of the aforesaid two *Noticees* has submitted any explanation with regard to the specific timing chosen to transfer those specific amounts of funds amongst them so as to justify the nature of such funds transfers. The SCN categorically narrates how, upon receipt of the transferred amounts, the same were immediately transferred to the account of the stock broker (through whom ADF shares were purchased) for which no justifiable explanation has been received. No documents or explanation have been furnished by the *Noticee no. 1* to show that similar such transfers of funds have also been made to any other relatives on a frequent basis, to lay credence on her claim that such huge funds have been transferred by her in the normal course of her business transactions/relationships. On the contrary, in my considered view, the claim of lending of money at such a high rate of interest by *Noticee no.1* to *Noticee no.2* would go on to further strengthen the allegation that *Noticee nos.1* and *2* had indulged in insider trading by using borrowed capital, more so when no explanations whatsoever have been put forward by the *Noticee no. 2* with respect to the said loan purportedly obtained by her from *Noticee no.1* which was ultimately used by her for trading in securities of ADF. The claim of using borrowed money for trading in the scrip of ADF by *Noticee no. 2* would further justify the charge of insider trading since such a probability would be possible only in a situation where a person being in possession of some price sensitive information would be certain about a predictable amount of return on her investment which could be more than the interest payable by her on the said borrowed sum. I find that such a situation appears to be strongly evident in the facts of the matter of the present case, where the *Noticee no. 2* is found to have received money from *Noticee no.1* that was originated from the *Noticee no. 3* and traded in the scrip of ADF by using that money during the relevant UPSI period and later on has sold a substantial portion those ADF shares immediately after the disclosure of the PSI.

(D) I further note that there is no justifiable explanation offered by the *Noticees* for the transfer of funds observed from the account of *Noticee no. 3* to the account of *Noticee no. 6*. It has been contended that the loans were extended towards general business purposes. However, it is seen from the information submitted during the investigation that the *Noticee no. 1* has claimed to be a house wife, whereas the *Noticee no. 2* is admittedly a school teacher. Further, in the absence of any supporting documents to demonstrate that the *Noticee no. 2* had otherwise sufficient funds in her accounts to trade in the scrip of ADF or to substantiate that she has been taking such trading exposure otherwise also in normal course of trading, I am constrained to observe that the usage of funds by the *Noticee nos.1* and *2* immediately after receipt thereof in their accounts, towards purchase of securities through a broker are grounds compelling enough to substantiate that the funds so transferred to them by *Noticee no.3* via the accounts of *Noticee no.6*, were intended for trading in the scrip

of ADF only. The *Noticees*, while explaining the illustration of various funds transfers as highlighted in the SCN have claimed that there is a disparity in presentation of the funds so transferred amongst the *Noticees* and the funds transferred to the stock broker by *Noticee no.1* and *2*. However, a careful consideration of the transactions which have been demonstrated in the illustrations (captured at page 8-9)of the SCN shall reflect that the above arguments advanced by the *Noticees* alleging disparity in the funds transfers highlighted in the SCN is erroneous and without any substance. It is seen that on May 31, 2016, INR 25 Lakh was transferred by the *Noticee no. 3* to the *Noticee no. 6*. The *Noticee no. 6* transferred the same amount on the even date to the *Noticee no. 1* and the *Noticee no.1* further transferred the said amount onward to the *Noticee no. 2*. On the very next day, she (*Noticee no.2*) transfers INR 22 Lakh to her stock broker. I note that all other fund transfers alleged in the SCN travel in similar manner making it a complete chain, whereby funds are found to have been moved from the account of *Noticee no. 3* to the accounts of *Noticee nos. 1* and *2* and ultimately being paid to the stock broker. I may hasten here to add that there may be some disparity in presenting the fund transfers in the SCN, however, as noted from the illustrations quoted in the SCN, the funds so received were always greater than the funds so paid to the stock broker by the *Noticee nos. 1* and *2*. Therefore, the quick movement of funds and the unsubstantiated explanations offered by the *Noticees* shall always outweigh the so called disparity in the quantum of such fund transactions, thereby rendering the said argument of the *Noticees* as inconsequential and meaningless so far as the allegations of funds transfers are concerned, hence deserves to be rejected.

(E) Be that as it may, I observe that even accepting for once that the *Noticee no. 1* has received interest on the amount so advanced to the *Noticee no. 2*, the same would not be a ground on a standalone basis to exonerate the said two *Noticees* from the allegations of insider trading levelled against them in the present proceedings. As noted from the contents of the SCN, the *Noticee no. 1*, Ms Pallavi had received funds from the *Noticee no. 6*, Ms. Priyanka, and as and when such funds were received, the *Noticee no. 1* used to transfer such funds to the *Noticee no. 2*. As contended before me, there is no illegality in advancing loan between two relatives. However, I cannot be oblivious to the fact that the said funds which have been claimed to have been advanced as loans, were always coming from the account of the *Noticee no .6*, who was in turn receiving the funds from her husband, *Noticee no. 3* (Bhavesh Thakkar), which immediately got transferred to the *Noticee no. 2*, who in turn used such funds for buying the shares of ADF.

43. I note that the *Noticees* have been enjoying close *inter-se* personal relationship with each other and the same relationships have already been highlighted elsewhere in this order. In order to better understand the factual matrix of the case, the details of the relationships are placed on record herein below:

Table no. 11: Details of relationship

Sr. No.	Name of the Noticee	Relationship with other Noticees
1.	Ms. Pallavi Navinchandra Mehta	Wife of *Noticee no. 4* Mother of *Noticee no. 6*
2.	Ms. Shefali Bhupendlra Mehta	Parental Cousin of the *Noticee no. 6* Sister-in-law of *Noticee no. 3* Mother of *Noticee no. 5*
3.	Shri Bhavesh R Thakkar	Husband of *Noticee no. 6* Brother-in-law of *Noticee no. 2* Son-in-law of *Noticee no. 1* and *4*
4.	Shri Navin Mansukhlal Mehta	Husband of *Noticee no. 1* Father of *Noticee no. 6* Father-in-law of *Noticee no. 3* Uncle of *Noticee no. 2*
5.	Shri Abhishek Mehta	Son of *Noticee no. 2*
6.	Ms. Priyanka Thakkar	Daughter of *Noticee nos. 1* and *4* Wife of *Noticee no. 3* Parental cousin of *Noticee no. 2*

44. It is reiterated that there is no factual dispute with respect to the directorship of the *Noticee no. 3* with ADF at the relevant time. Further, as has been noted earlier, by virtue of being the Executive Director of ADF at relevant time, and having access to and/or having possession of UPSI, the *Noticee no. 3* was an insider under regulation 2 (g) (i) and (ii) of PIT Regulations.

45. The *Noticees* have vehemently contested the allegations levelled against them on the basis of the numerous fund transfers exchanged between the *Noticee nos. 1, 2, 3* and *6*. It has been noticed

that the funds which originated from *Noticee no. 3* have always reached the accounts of *Noticee nos. 1* and *2* via *Noticee no. 6*. It has further been noticed that the *Noticee nos. 1* and *2,* immediately after receipt of funds in their accounts, have transferred funds to the account of the stock broker to meet their payment liabilities against the trades executed by them in the ADF shares . Further, after the said UPSI got published, it was also noticed that there have been certain reverse transfer of funds, first from the stock broker to the *Noticee no. 2* and from the *Noticee no. 2* to the *Noticee no. 1,* which further travelled onwards to the account of the *Noticee no. 6* and finally from the account of the *Noticee no.6* to the account of the *Noticee no. 3*.

46. It is also observed that the *Noticees* have put forth certain explanations insofar as the aforesaid series of transactions of funds are concerned. In this connection the *Noticees* have given a detailed account of the funds transferred from the account of the *Noticee no. 6* and have also filed certain documents to justify the nature of those funds transfers. I deem it fit to enumerate the date wise events emanating from the said explanations/documents furnished by them for better appreciation of facts and reference:

Table no. 12: List of events

Sr. No.	Date	Event/Document
1.	28.07.2016	*Noticee nos. 4* and *1* executes an Agreement for Sale in respect of a flat with the *Noticee no. 6* (daughter of *Noticee nos.1* and *4*) recording a total consideration as INR 5.09 Crore. Out of INR 5.09 Crore, an amount of INR 4.09 Crore is claimed to have been already transferred by the *Noticee no. 6*. The balance amount of INR 1.00 Crore is undertaken to be paid at the time of possession of the said flat by the *Noticee no. 6*. The transfer of flat was agreed to be completed on or before December 31st, 2016.
2.	30.07.2016	An opinion of a Chartered Accountant is taken, who advises that: (i) Instead of transferring the flat to the *Noticee no. 6* as a "sale", the flat may be 'gifted' to the *Noticee no. 6*. (ii) The sale transaction shall incur Income tax liability on the *Noticee no. 4* as he is the sole owner of the flat. (iii) The amount of sale consideration of INR 5.09 Crore may be given by the *Noticee no. 6* (daughter) as a gift and the same will also save the stamp duty likely to be incurred on effecting transfer through registered sale deed.
3.	19.10.2018	Stamp paper for executing Gift Deed of the Flat is purchased

4.	01.01.2019	Letter of Society to the *Noticee no. 4* granting therein No Objection for transfer of the flat to the joint names of *Noticee nos. 1, 4,* and *6*.
5.	06.02.2019	Gift Deed is executed with following details: (i) *Noticee no. 4* claims to be the owner of the said flat and 5 shares of the society in which the flat is situated; (ii) The *Noticee no. 4*, by way of the Gift Deed, out of natural love and affection, donates, 1/3rd share of the aforesaid shares, each to the *Noticee nos. 1* (wife) and *6* (daughter).
6.	06.08.2019	Registration of the Gift Deed.

47. It has also been submitted by the *Noticees* that the SCN has cherry picked the transactions and funds transfers which in isolation, create confusion. In order to rebut the allegations and to present a complete and fair picture of all the transactions, *Noticees* have provided the details of the following other transactions of funds entered into by them:

Table no.13: Fund transfer details between Noticee No.1 and 6*

Sr. No.	Month	Received by Noticee no.1	Received by Noticee no. 6
1.	January, 2016	0.00	0.00
2.	12.02.2016	40,00,000.00	-
3.	18.02.2016	10,00,000.00	-
4.	22.02.2016	10,00,000.00	-
5.	02.03.2016	15,00,000.00	-
6.	31.03.2016	5,00,000.00	-
7.	13.05.2016	-	10,00,000.00
8.	19.05.2016	-	20,00,000.00
9.	23.05.2016	20,00,000.00	-
10.	25.05.2016	20,00,000.00	-
11.	31.05.2016	25,00,000.00	-
12.	14.06.2016	30,00,000.00	-
13.	28.06.2016	30,00,000.00	-
14.	18.07.2016	25,00,000.00	-
15.	20.07.2016	15,00,000.00	-
16.	22.07.2016	80,00,000.00	-
17.	28.07.2016	70,00,000.00	-
18.	28.07.2016	50,00,000.00	-
19.	28.07.2016	44,00,000.00	-
20.	02.08.2016	-	50,00,000.00
21.	25.08.2016	50,00,000.00	-

22.	15.09.2016	-	50,00,000.00
23.	October, 2016	0.00	0.00
24.	November, 2016	0.00	0.00
25.	December, 2016	0.00	0.00
	Total**	**5,39,00,000**	**1,30,00,000**

**Kindly note that the said amount was transferred to and from the joint account of Noticee No.1 and 4, being spouse*

*** The amount transferred between the two entities during the Investigation Period is highlighted in grey above and the total amount is INR 2.45 crore*

48. Based on their aforestated explanations citing the events listed at the Table no. 12 above and the inter-se transactions of funds listed out above, the *Noticees* have strongly contested the allegations premised on the fund transfers and have *inter alia* submitted that the funds transfers noticed amongst the *Noticee nos.* 1, 4 and 6 were actually effected in respect of purchase of a flat. In this respect, it has been submitted that the *Noticee no. 4* owns a flat which was agreed to be bought by the *Noticee no. 6* for which a Memorandum of Understanding (MoU/Agreement for sale) was entered into between the *Noticee nos. 4 and 6* on July 28, 2016. However, subsequently, acting on the advice of a Chartered Accountant (CA), the terms of MoU were not taken to their logical conclusion and were not acted upon by the parties to the said MoU, although subsequently the said flat has been parted with, on the lines of advice of the CA. The *Noticees* have also submitted documents viz., copy of MoU, Opinion of CA, Gift Deed, Share Certificate of the Flat etc., to provide justification to their contention that the said transfer of funds amongst the *Noticees* actually related to buy and sell of a flat. After examining those documents, I find that the transfer of flat *prima facie* appears to be a gift given to the *Noticee no. 6* by his father (*Noticee no. 4*). Notwithstanding the fact that a large number of documents have been produced by the *Noticees* to substantiate the funds transfers amongst them as relating to the sale & transfer of the Flat, the said documents are not sufficient to establish the *bonafide* of those funds transfers or to help in any manner to exonerate the *Noticees* from the charges levelled in the SCN, for the reasons discussed in the subsequent paragraphs.

49. It has been noticed that the *Noticee no. 4,* sole owner of the flat, is the father of the *Noticee no. 6*. As per their submissions, it was agreed to effect the transfer of the flat by way of sale for a consideration of INR 5.09 Crore, out of which an amount of INR 4.09 Crore was paid upfront (Ref. Table above: 5.39-1.30= 4.09 Crore) by *Noticee no.6* and the balance amount was to be paid on having the possession of the said flat. The *Noticees* have also filed a copy of an Agreement for Sale / MoU dated July 28, 2016. The said agreement narrates that the *Noticee nos. 1* and *4* have agreed to sell the said flat to the *Noticee no. 6* for a consideration of INR 5.09 Crore. However, immediately on the next day, i.e., on July 29, 2016, the *Noticee no. 4* approaches a CA and seeks his opinion pertaining to income tax liability arising out of the proposed sale transfer of flat. The said CA, on July 30, 2016, opined that instead of outright sale, the flat may be parted to the *Noticee no.*

6 by way of 'gift' and parting of the property through gift mode shall not only save the income tax liability arising from the capital gains, but would also save the stamp duty liability payable while transferring the Flat by way of sale.

50. The records thus reveal that the *Noticees*, instead of first taking a professional advice, went ahead and executed the MoU and suddenly immediately after execution of such agreement/MoU, they approached a CA to seek his advice on the issues of tax implication arising out of the said sale agreement. Further, even after having received the said advice, the *Noticees* did not take any step towards transfer of the said flat, either by way of sale as agreed under MoU or otherwise by way of execution of a Gift Deed as advised by the CA. It is after a long hiatus that the *Noticees* have again got together to give effect to the purported pending transaction/transfer, and it is only in the month of October, 2018, the requisite stamp paper for executing the Gift deed was purchased. NoC taken from the Society is dated January 01, 2019 and the Gift Deed was executed on February 06, 2019, however, the said Gift Deed was registered after another long period of 6 months i.e. on August 06, 2019. Perusal of the covenants of the said Gift Deed however reveals that the *Noticee no. 4* (Mr. Navin Mehta) owner of the said Flat, has gifted 1/3rd share of the said flat, each to the *Noticee nos. 1* and *6* and retained the rest 1/3rd shares with himself. One may argue that if it's a Gift *simplicitor* and delay in its execution and registration have no bearing to the present proceedings, however, upon scrutiny of the aforesaid transactions pertaining to the Flat claimed to have been executed by the *Noticees* so as to justify the transfers of funds amongst these *Noticees* during the relevant period, it is observed that the explanations so offered and justifications so advanced in this respect are mutually contradictory and do not inspire any credibility so as to accept the *bonafide* of those funds transfer and to grant exoneration from the charges made in the SCN.

51. I note that in the earlier proposed agreement for sale, the *Noticee nos. 1* and *4* are mentioned as the '**co-owners**' of the flat. However, in the Gift Deed, which is a registered document, only the *Noticee nos. 4* is stated to be the owner of the said flat and further, out of natural love and affection, *Noticee no. 1* and *Noticee no. 6*, both get 1/3rd share each in the said flat. Thus, it is clearly observed that at the time of the execution of the agreement for sale, the *Noticee no. 1* was not having any ownership interest in the title of the said flat and yet the *Noticees,* for reasons best known to them, had claimed in the said agreement for sale/MoU that the *Noticee no. 1* is a co-owner of the flat. The *Noticees* have not explained the reasons for mentioning *Noticee nos. 1* and *4* as co-owners of the said Flat.

52. As noted above, the *Noticee no. 6* has first transferred large amounts of money aggregating to INR 5.39 Crore through different transactions during the period of January, 2016 till July 28, 2016. The said transactions were in the range of INR 5.00 Lakh to INR 80.00 Lakh. Further, the intervening gap in such transactions is sometimes as less as 2 days. Furthermore, in the month of July, 2016, the largest chunk of amounts, i.e., INR 2.84 Crore was transferred over a period of only 4 days out of which, INR 1.64 Crore was transferred in three separate transactions executed on

July, 28, 2016. On the same day, the above-mentioned Agreement to Sale was purportedly executed, incorporating therein the details of all the payments/transfers of funds made by *Noticee no.6* from May 23, 2016 till the date of execution of the said agreement. It is noted from the claim of the concerned *Noticees* that the payments were made towards the purchase of the Flat starting from February 12, 2016 onwards and eventually on July 28, 2016, the purported Agreement for Sale was executed. I note that not only the parties to the said transactions were close family members, but also the manner in which the above noted payments have been made, raises serious doubts about the veracity of the claims made by the *Noticees*. The *Noticees* have not identified or pointed out at any specific single or multiple transfers of funds to suggest that these are the ones, which were effected pertaining to the sale agreement of the Flat, but instead, have tried to project the net adjusted value of all the gross 'to and fro' transactions as the sale consideration amount for the Flat. To elaborate further, it has been claimed that the *Noticee no. 6* has paid INR 5.39 Crore to the *Noticee no. 1* (in the joint account held between the *Noticee nos. 1* and *4*), and on the other hand, the *Noticee no. 1* has re-paid INR 1.30 Crore to the *Noticee no. 6* thereby leaving a residuary amount of INR 4.09 Crore, which has been claimed to be the net amount paid towards the consideration (INR 5.09 Crore) of the sale of the flat. It will be difficult to lay credence on the aforesaid claim of the *Noticees* and even a person of reasonable prudence would find it difficult to accept that a series of transactions involving transfers of large amounts of money between two family members is eventually followed up by an execution of an agreement of sale of a Flat and the said sale agreement claims that the net amount that remains payable from the end of the *Noticee no. 6* out of those transfers of funds that have already taken place between the said two family members prior to the execution of the sale agreement, actually represented the sales consideration amount of the Flat for which the said sale agreement was executed between the said family members. The unreliability of such a claim gets further compounded when the proposed sale of Flat is ultimately abandoned as the transacting parties realise that such a deal which is being executed amongst the family members shall attract tax liability and expenses towards stamp duty which can be avoided by executing a Gift deed instead of a Sale deed.

53. As noted above, the *Noticees* have advanced a justification stating that the transfers of funds that had taken place between them were related to sale and purchase of a flat for which a MoU/ agreement to sell was entered into, however, subsequently, acting on the advice of a CA to avoid tax liability arising out of the sale of the flat, it was thought fit to accomplish the transfer of the Flat by way of gifting the said flat. As per the MoU, the entire flat was to be purchased by the *Noticee no. 6* for a total consideration of INR 5.09 Crore. However, while responding to the queries raised during the personal hearing, it was explained through a written submission for the first time before me that the said flat was to be divided between their two children for the purpose of distribution of the estate of the *Noticee nos. 1* and *4*. It has further been asserted in the post hearing written submissions that after receiving the opinion from *CA*, it was decided that the *Noticee no. 6*

shall pay 50% of the price of the flat to purchase the 50% right of her sister over the said flat. As the price of the flat was valued INR 5.09 Crore and expenses towards stamp duty was coming to INR 25 Lakh, therefore the *Noticee no. 6* was supposed to pay INR 2.67 Crore to the *Noticee nos. 1* and *4* for owning 50% interest/title in the said flat and since by that time the *Noticee no. 6* had already paid INR 4.09 Crore, the excess amount of INR 1.42 Crore (4.09 Crore -2.67 Crore) was transferred back by the *Noticee nos. 1* and *4* to the *Noticee no. 6* in the form of gifts made favouring the children of *Noticee nos. 3 and 6* in support of which a copy of ledger has been filed. I find that , although the *Noticees* have submitted an explanation to justify the transfer of funds, the said justification is silent on the following aspects leaving many queries unanswered and unexplained:

(i) Since, the *Noticee no. 6* was buying only 50% interest in the flat, why the excess amount of INR 1.42 Crore was not returned to her.

(ii) When the *Noticee no. 6* had paid 50 % of the agreed sale consideration, why then only 1/3rd portion/ interest in the said flat was gifted to her.

(iii) Since the 1/3rd portion of the Flat was gifted to the *Noticee no. 6,* then what was the objective of taking INR 2.67 Crore from *Noticee no. 6* and how the said amount has been disclosed by the *Noticee no. 4* in his accounts and Income Tax Returns.

(iv) As per submissions, the *Noticee no. 6* was required to pay 50 % of the determined sale consideration to buy the undivided ½ shares belonging to her sister in the said flat, however, the payments, instead of being made in favour of her sister, has been made out of her account favouring the *Noticee nos. 1* and *4*.

(v) *Noticees* have valued the flat as INR 5.09 Crore, however, the said valuations have not been supported by any independent valuation report or any applicable ready reckoner rates prescribed by local authority. It appears that the value of INR 5.09 Crore has been adopted randomly without any basis, only to fit the inter-se fund transfers into the said MoU/Agreement for sale of the Flat so as to offer an explanation for those fund transfers. As per the submissions, expenses towards stamp duty and registration was coming to INR 25.00 Lakh. Admittedly, to avoid tax liability, they have decided to follow the gift deed mode, however, while settling their account, the *Noticees* have taken the value of the property/flat as INR 5.34 Crore (including the stamp duty) and not as INR 5.09 Crore. No explanation has been brought before me to justify as to what prompted the *Noticees* to incorporate the amount of stamp duty in the total value for the purpose of dividing their estate, which as per their own claim they wanted to save.

(vi) No documents have been furnished by the *Noticee nos. 1* and *4* to substantiate that the funds so received from the *Noticee no. 6* and the ownership of the Flat claimed to have been gifted to the *Noticee no. 6* have actually been declared before the Income Tax authorities as a gift.

54. In view of the above stated factual observations, I find that all the explanations offered by the *Noticees* involving the sale of Flat grossly suffer from factual deficiencies, inconsistencies, contradictions including different versions of explanation at different time thereby making it clear that these explanations are merely an afterthought exercise having no substance to rely upon. What has been submitted is that a flat owned by the *Noticee no. 4,* who wanted to divide his estate amongst his two children and in order to buy the 50% rights of the said flat which notionally accrued on her sister, the *Noticee no. 6* has claimed to have paid exactly 50% of the value of the flat to her father, including the stamp duty and ultimately the *Noticee no. 6* gets the 1/3rd share of the flat by way of a gift deed. The abovesaid explanation based on which the *Noticees* have tried to justify their inter se funds transfers, is full of ambiguities and concoction. It is a matter of settled law that the *Noticee no. 4* was free to transfer his flat by dividing the ownership equally between his 2 children if he wished to do so. However, what has been submitted before me is that the *Noticee no. 6*, who had agreed to buy out the 100% ownership of the said flat, finally paid 50% of the value of the flat under the impression of getting the 100 % interest in the flat, but received only 1/3rd undivided share in the said flat. Strangely enough, it has been claimed that the she (*Noticee no.6*) paid 50% of the value of the flat (INR 2.67 Crore) towards purchase of rights of her sister over the said flat, however the said amount has not been paid to her sister for winning over her (sister's) rights over the flat, and instead the amount has been paid to the parents, i.e., the *Noticee nos. 1* and *4,* who in turn have not submitted any proof to suggest that the said amount was subsequently transferred to their other daughter. The transactions narrated above and the explanation so offered do not end here. As noted above, the *Noticee no. 6* had transferred INR 4.09 Crore leaving an excess of INR 1.42 Crore in the hands of the *Noticee nos. 1* and *4*. However, the *Noticee nos.1* and *4* instead of crediting the said excess amount back to the account of the *Noticee no. 6* have now claimed to have gifted the said amount to the children of the *Noticee nos. 3* and *6*. Such actions on the part of *Notice nos.1* and *4* in dealing with the money supposedly owed to *Noticee no.6*, raises a *bonafide* suspicion if the said sums of money ever belonged to *Noticee no. 6* at all.

55. To sum it up, first the *Noticees* tried to justify the funds transactions in the name of an absolute sale of the flat, which was not pushed through on the advice of the CA; secondly, no steps were taken by them in pursuance of the said transaction for 2-3 years and it is only in the year 2019, steps were taken to gift a portion of the flat (1/3rd)to the *Noticee no. 6*, instead of making an outright sale to her for which she had supposedly paid 50% of the value of the Flat determined in the year 2016 itself. Thirdly, to minimise the cost of stamp duty and tax liability, mode of gift was preferred over mode of sale, however, the said cost of stamp duty got included while settling the accounts between the *Noticees* and lastly, I find there is no document on records to substantiate any payment having been made to settle the rights of the sister of *Noticee no.6*. I observe that apart from glaring contradictions and gaping loopholes in the explanations and narratives offered by the *Noticees* to justify the series of funds transfers between them as pointed out earlier, there are also a

host of other unanswered questions as far as the transfer of the flat is concerned. To name a few, the Agreement for sale was not a registered agreement and was merely a notarized document which raises questions about the authenticity of the claim of the *Noticees* having executed a sale agreement pertaining to the said Flat. Further, the claim of the *Noticees* that the *Noticee no. 6* (Priyanka Thakkar) had transferred a series of amounts as part of consideration of approx. INR 5 Crore towards the purchase of the said Flat, lacks credibility in the backdrop of the fact that the Income Tax Return of the said *Noticee* for Assessment Year 2016-17 and 2017-18 shows her income merely in the range of INR 18- 36 Lakh. Similarly, the *Noticee's* attempt to take shelter under the opinion of a Chartered Accountant immediately after executing the agreement for sale as a reason for not going ahead with the sale transaction, is apparently an evasive attempt by the *Noticees* to concoct an after-thought explanation to justify the funds transfers as well as their action of not registering the sale deed. It may be recalled that the CA had advised that the flat may be gifted to the *Noticee no. 6* and the consideration so received by the *Noticee no. 4* may also be attributed as gift. However, the *Noticees* have been able to produce a gift deed with respect to only 1/3rd share of the said flat and despite the same being a gift, the *Noticees* have tried to justify the funds transactions by connecting them to the value of the flat. It is however, not explained as to what treatment has been given to the amount of INR 2.67 Crore (Paid to the *Noticee no. 4*, as stated above), in the books of accounts as well as the Income Tax Returns of the *Noticee no. 4*. In my view, the *Noticees* were under a bounden obligation to set the records of the transactions straight by explaining and clarifying each and every fund transfer so made by the *Noticees* with corroborative and verifiable supporting evidence. However, as already noted above, there was already a gap of 3 years between those transfers of funds and the transfer of property's share as gift, which shows that all the transactions that have been shown in the present proceedings and the unsubstantiated explanations offered in support of those transactions are not worthy of acceptance. Under the circumstances, the *Noticees* have miserably failed to persuade me to accept that the funds transfers amongst them were related to transfer of flat or share in the flat.

56. Besides, there is another factor that completely turns around the preponderance of probabilities against the claim of the *Noticees* with respect to such fund transfers. There is no dispute that the imputed fund transfers pertained to the year 2016 and for that period, the *Noticees* have furnished only a notarised agreement for sale, which admittedly never reached its destiny of actual sale of flat and no effective follow up action, whatsoever, was taken by the *Noticees* till February 06, 2019 when the *Noticees* executed the Gift Deed of the said flat. It is pertinent to note from the records that by April, 2018, the investigation by SEBI in the present matter was in progress and vide letters dated April 03, 2018 issued by SEBI, various information were sought from the *Noticees*, in response to which, the *Noticees* had furnished certain information pertaining to their case. Further on February 22, 2019, vide the *interim* order, the alleged unlawful gains of INR 1.02 Crore (approx.) have been impounded by SEBI. Therefore, the chain of events, as

demonstrated above clearly suggest that the claim of the *Noticees* of having an agreement for sale between the father and mother (where mother is not even the owner); the purported advice received from a CA; the execution of gift deed after a gap of 3 years from the date of agreement for sale and finally the act of registration of such gift deed after another 6 months, all point towards nothing but events that have been deliberately manufactured and concocted by the *Noticees* only to avoid any likely enforcement actions. The factors recorded above are sufficient to reasonably come to a finding that in all likelihood, due to the on-going investigations/proceedings initiated by SEBI, the *Noticees* have created these documents ex-post facto and have eventually transferred 1/3rd portion of the flat as gift to daughter only to impart a colour of genuineness to their aforesaid fictitious claims, which are found to be far from the truth.

57. Additionally, it is pertinent to note that in the instant matter, the charges levelled against the *Noticees* are towards indulging in communication of UPSI and dealing in securities of the *Company* while in possession of UPSI. In this regard it is to be noted that the transfer of funds amongst the *Noticees* to trade in the securities of the *Company* per se is not an element *sine qua non* to establish the charge of engaging in insider trading. Regulation 3 provides that no insider shall communicate, provide or allow access to any UPSI related to a company to any person, whereas regulation 4 of the PIT Regulations, mandates that no insider shall trade in securities when in possession of UPSI. Thus, establishment of funds transaction amongst *Noticees* is neither essential to charge nor is it required as a precondition to establish the violations of PIT Regulations. Transfers of funds amongst the delinquents is only a corroborative factor for strengthening the *prima facie* suspicion while the charge of insider trading is otherwise amenable to be established even *de hors* the transfer of funds. Therefore, even assuming for a moment that the submissions of the *Noticees* related to the fund transfer are *bonafide* and can be taken on their face value, the same would not be sufficient in isolation, to cause exoneration of the *Noticees* from the charges of insider trading made in the SCN. The charges are thus required to be seen, examined and considered within the realm of ingredients of insider trading as prescribed under the relevant provisions of law.

58. It has also been argued on behalf of the *Noticees* that the materials are not sufficient to establish the charge of communication of UPSI. It has further been argued that the SCN is not specific as to the circumstances in which the communication of UPSI took place and therefore, in the absence of the same, the materials available on record are not adequate to hold the *Noticees* guilty of the charge of indulging in communication of the UPSI and consequently of the charge of dealing in securities, while having access to or possessing the UPSI. It has been submitted that the allegations are based on surmises and conjectures and not based on any verifiable facts. The *Noticees* further have placed reliance on the order dated December 20, 2016 passed by Adjudicating Officer in the matte of *Navneet Publication India Ltd.*, to contend that it is essential to prove that the insider was in possession of UPSI. I find that the aforesaid contention of the *Noticees* do not merit any

consideration. In this respect, it has already been recorded in the preceding paras that the *Noticees* are part of a family and were undisputedly enjoying close family relationship during the relevant period. It has not been disputed that the *Noticee no. 3* was not only an Executive Director of the *Company* (ADF) but also remained present and attended all the relevant meetings wherein the issue related to proposed buyback and/or dividend or combination thereof was discussed. No denial or rebuttal has been put forward by the *Noticee no. 3* that he was not in possession of UPSI. He has also not advanced any submission that he was not having good relation with other *Noticees* or was not in touch with them. Keeping the above stated undisputed facts, the *Noticee no. 3* unquestionably becomes a connected person under regulation 2 (1) (d) (i) and thereby insider in terms of regulation 2 (1) (g) (i) as well as 2 (1) (g) (ii) by possessing the UPSI. Similarly, the *Noticee no. 6* is the promoter of the *Company* and the wife of the *Noticee no. 3* and the *Noticee nos. 1* and *4* being parents of the *Noticee no. 6* or the parent of the spouse of the *Noticee no. 3*, who in the absence of anything to the contrary, clearly satisfy the pre-requisites of being held as insider in terms of regulation 2 (1) (d) (ii) (a) r/w 2 (1) (f) of the PIT Regulations.

59. The *Noticee no. 2* is admittedly the parental cousin of the *Noticee no. 6* (Ms. Priyanka) as the *Noticee no. 2* is the daughter of the brother of the *Noticee no. 4* while the *Noticee no. 4* is the father of the spouse of an Executive Director of the *Company*. Arising out of the said relationship, the SCN after alleging the *Noticee no. 1* as insider, alleged the *Noticee no. 2* also to be a connected person. It further alleges that the person having connection directly or indirectly with any person connected with the *Company* also becomes insider. It is not disputed that the *Noticee no.2* has authorised the *Noticee no. 4* to trade on her behalf and the funds emanating from the accounts of the *Noticee no. 3* have been used for such trading. Additionally, as noted above, the *Noticee no. 2* enjoys a very strong relation with other *Noticees* and the word 'immediate relative' as defined under regulation 2 (1) (f) of the PIT Regulations makes it clear that the definition first defines only spouse of a person as immediate relative, and further, by the use of the word 'includes', incorporates certain other relations also to fall within the ambit of the term immediate relative. I note that the use of term "includes" signifies that the definition is not a close ended definition and is indeed an inclusive definition, meaning thereby the scope of the said definition is not restricted only to the relations named in the said definition. Applying the above principle in the instant matter, I find that it is not disputed that the *Noticee no. 2* used to consult the *Noticee no. 4* for her investment decisions and further has authorised the *Noticee no. 4* to place trades on her behalf, which further strengthens the belief that she was in constant touch with the *Noticee no. 4*. From the aforesaid observations, a clear legal position emerges that by usage of the term 'includes", the ambit of the immediate relatives travels beyond those specified in the said definition. Therefore, I have no hesitation to hold that the list of immediate relatives as illustrated in the said definition is not an exhaustive one and in a given facts of the case, even a relative which is not specifically included in the said definition can

also be considered to be held as connected person being an immediate relative, depending upon the facts of the matter.

60. I find that in addition to the fund transfers amongst the *Noticees*, there is no denial also to the fact that *Noticee nos. 3* and *4* were authorized to trade on behalf of the *Noticee no. 1* and *Noticee nos. 4* and *5* were authorized for the trades of the *Noticee no. 2*. The *Noticee no. 1* has acknowledged that trading orders were placed by her husband and the said facts got corroboration from the contents of letter dated May 19th, 2018 of the *Noticee no. 4* stating *inter alia* that: "*…I had also bought shares of ADF Foods during this time in my wife's account with the same belief*". Insofar as the trades by the *Noticee no. 2* are concerned, I note from the conjunctive reading of the information submitted by them that all the investment decisions were taken by her in consultation with the *Noticee no. 4*.

61. As regards the contention of the *Noticees* that the SCN does not make any specific reference of communication of UPSI and therefore the allegation in the SCN would not survive based on the evidences annexed in support thereof, I have to clarify here that the present proceedings are civil in nature wherein the violations alleged are required to the established following the principle of preponderance of probabilities. There are no two opinions that the *Noticees* are part of a family hence, finding direct and concrete evidences of one-to-one communication of UPSI in such circumstances are rare, however, the absence of any direct evidence would not result in exoneration or dropping of the allegations made in the SCN. It is a fundamental principle of law that proof of an allegation levelled against a person may be in the form of direct substantive evidence or, as in many cases, such proof may have to be inferred by a logical process of reasoning from the totality of the attending facts and circumstances surrounding the allegations/charges made and levelled in the SCN. While direct evidence is a more certain basis to come to a conclusion, yet, in the absence thereof, the adjudicating authority cannot be helpless. It is the duty of the authority to take note of the immediate and proximate facts and circumstances surrounding the events on which the charges/allegations are founded and to reach what would appear to the authority to be a reasonable conclusion therefrom. The test would always be that what inferential process that a reasonable/prudent man would adopt to arrive at a conclusion.

62. Applying the above settled test in the facts of the matter, I find that the *Noticee no. 3* is a connected person and admittedly an insider and was privy to the PSI related to buyback of securities. The other *Noticees* are related and closely connected to him and investigation has noticed transfer of funds amongst them during the relevant period. The trading pattern of the *Noticee no. 1* and *2* are writ large on its face itself to speak for themselves that the trades have been executed while in the possession of UPSI. The undisputed fact that *Noticee no. 3* was also a person authorised by the *Noticee no. 1* for placing trades on her behalf and the *Noticee no. 4* was a common person authorised to place trades on behalf of both the *Noticee nos. 1* and *2;* the absence of rebuttal to the fact that the mobile numbers used to place orders on behalf of *Noticee nos. 1* and *2* were not belonging to the said two *Noticees* in whose names trades were executed, are sufficient in themselves

to come to a finding that the trades executed by and on behalf of the *Noticee nos. 1* and *2* were influenced and motivated by the possessions of UPSI, which could have been accessed to or possessed from no other source than the communication made by the *Noticee no. 3*. The said finding further gets strengthened from the fact that the *Noticees*, though have claimed to be regular traders in the securities market, however, have admitted during the investigation that their trades were confined to the scrip of ADF only during relevant period. The fact that the *Noticee no. 2* has sold shares immediately after the disclosure of UPSI coupled with the fact that she had not furnished sufficient evidence to demonstrate having sufficient finance in her account to meet the trading liability, also gives a strong pointer to hold that the trades in ADF shares were executed while in possession of the said UPSI by the *Noticees*, with the financial support of the *Noticee no. 3* . The foregoing discussions, holistically leads to an irresistible conclusion that the *Noticee no. 3* had passed on the information to the other *Noticees* based on the which trades were executed by them as alleged in the SCN. Therefore, in view of the aforesaid, the Noticee no. 3 has violated regulation 3(1) of the PIT Regulations.

63. Thus, the chain of events in this case clearly shows that the *Noticee no. 3*, who is insider to the *Company* being its Executive Director, transfers funds to his wife (*Noticee no. 6*) who in turn transfer it to the bank accounts of her mother (*Noticee no. 1*) and she further having utilised a part of such funds in purchasing shares of ADF, transfers part of such funds to *Noticee no. 2*, who also utilises such funds towards purchase of the shares of ADF. I may hasten to add here that by authorising the *Noticee no. 3,* who is the Executive Director of the *Company* to execute trades in the trading account of the *Noticee no. 1,* the question of providing any evidence of actual communication of UPSI by *Noticee no.3* neither survives nor is required as the insider himself has been authorised to place trades in the scrip of the *Company* on behalf of other *Noticee* during the UPSI period.

64. I note that *Noticee nos. 4* and *Noticee no. 5* (son of the *Noticee no. 2*) have contended that they were mere authorized signatories for executing trades in the accounts of the *Noticee nos. 1* and *2* and the trades were placed as per the decisions of the respective account holders i.e., *Noticee nos. 1* and *2* and therefore, they can't be held guilty of the violation of insider trading. The *Noticees* have sought to create a wall of defence by claiming that they have acted as authorised person and placed orders as per the instruction of the account holders. Admittedly, the *Noticee nos. 4* and *5* have placed orders for and on behalf of the *Noticee nos. 1* and *2*. It is also not in dispute that *Noticee no. 4* used to advise the *Noticee no. 2* for investing in securities and he further has also acknowledged to have placed trades in the account of his wife (*Noticee no. 1*) in the scrip of ADF. Considering the above undisputed facts, in my view the contention that the two *Noticee nos. 4* and *5* should not be held liable for placing orders in the accounts of the *Noticee nos. 1* and *2* are erroneous and rejected. I can't ignore the fact the *Noticees* are family members and not third parties. Under the circumstances, it becomes highly unbelievable to accept that the above said two *Noticees* have placed orders like

ordinary third party authorised persons and no discussion took place with the *Noticee no.1* and *2* on the basis of the UPSI which they had received from *Noticee no.3* before it was decided to trade only in the scrip of ADF during the UPSI period. Thus, in view of the admitted factual position with respect to the *Noticee nos. 4* and *5*, I am constrained to reject the argument that they acted as mere postman for the trades executed in the accounts of the *Noticee nos. 1* and *2*.

65. Having held that the *Noticees* had access to the UPSI pertaining to buyback, the reliance placed by the *Noticees* on various judicial decisions to argue that no adverse inference could be drawn against them only on the basis of proximity of relationship and a person cannot be held guilty only on the strength of proximity of relationship with the Tippee, are distinguishable on facts and are not applicable in the instant case. It is also observed that reliance placed on the order of Hon'ble SAT in the matter of *Dilip S. Pendse Vs. SEBI,* to contend, that to prove the charges of insider trading, higher degree of proof is required to be demonstrated, shall not help the *Noticees* as it has already been established how the *Noticees* were insiders owing to their inter-se relationships as well as due to the fact the *Noticee no. 3* was actually having access to the UPSI. The materials on record are more than sufficient to convince any prudent person to draw a reasonable inference that the UPSI has been imparted by the *Noticee no. 3* to other *Noticees* who, being influenced by the said UPSI have engaged in trading in the scrip of ADF during the relevant period and therefore the evidences on record are sufficient enough to bring home the charge against the *Noticees* for engaging in insider trading in the scrip of ADF.

66. I may add here that the Note to the Regulation 4 of the PIT Regulations stipulates that when a person who is in possession of the UPSI executes trades in the scrip of such company, it shall be presumed that such trades have been motivated by the knowledge of such information. Further, the insider or the alleged delinquent has very limited scope to rebut such a presumption and all such provisions that can be possibly be used to rebut the said presumption have also been listed out in the Proviso to the Regulation 4. In the present case, as has been noted earlier, the *Noticees* are part of a closed family and the channel of communication are so apparent that the *Noticee no. 3* who is an Executive Director of the *Company* and privy to the UPSI, is also one of the authorised representatives for placing the orders in the trading account of the *Noticee no. 1*. Further it is the *Noticee no.3* who is the originators of all the funds that were utilised by other *Noticees* or trading in the shares of ADF during the relevant period. I note that such explicit display of trading activities, apart from the close family connections of the *Noticees,* strongly tilt the preponderance of probabilities in support of the SCN, since the presumption created out under regulation 4 has not at all been attempted to be rebutted by the *Noticees* herein.

67. To sum up the proceedings, it is observed that the role of the *Noticee no. 3* was not only limited to being an insider, but based on the overt proximate facts governing the *inter-se* relationship with other *Noticees*, as discussed earlier, there appears to be no doubt that the *Noticee no. 3* has communicated the UPSI to the other *Noticees*. All the *Noticees* are part of a close-knit family and

admittedly, in such a family structure, there will be remote chances for the investigating officer to lay his hands on any concrete direct evidence of private communication of UPSI, more so when the underlying information is forbidden to be shared. The contention of the *Noticees* that the communication needs to be established clearly falls short for acceptance in the light of the explicit facts of usage of funds by the *Noticee nos. 1* and *2* in trading in the shares of ADF during the relevant period, the source of which has been traced back to the *Noticee no. 3* himself. Though the *Noticees* have tried to put forth various explanations for the fund transfers revolving around transfer of a Flat, for the reasons as detailed out in the preceding part of this order, all such explanations have been found to be baseless and devoid of merit. The story begins with the *Noticee no. 3* being a connected person and an insider of the *Company* having access to the relevant UPSI who shares the same with his other family members and relatives, who are found to have engaged in trading in the scrip of the *Company* during the relevant period. The pattern and volume of trading in the scrip by them (*Noticee no.1* and *2*), where, their trading has been found to be confined only to the scrip of the *Company* during the period, coupled with the facts that they (*Noticee nos.1* and *2*) were enjoying very close relationship with each other and used to consult other *Noticees* for trading in securities, are sufficient in themselves to conclude that their trades in the scrip during the UPSI period were influenced and motivated by the possession of and access to the said UPSI through the *Noticee no.3*. Admittedly, there were frequent funds transfers amongst the *Noticees* and major portion of the funds so transferred during the relevant period has been used to meet the payment obligation arising out of trades executed in the ADF shares during the period. Lastly, the fact that *Noticee nos. 3* to *5* were authorised to place trade orders on behalf of the *Noticee nos. 1* and *2* and their trading pattern in the scrip of the *Company* during the relevant period leaves no doubts about the possibility of UPSI being in possession of the *Noticees* during the relevant period. Thus, the contention that few fund transactions have been cherry picked also fall short to rebut the allegations made in the SCN and the SCN has successfully brought home the charges against the *Noticees* for indulging in insider trading while in possession of UPSI.

68. Having held that the trades executed by the *Noticee nos. 1* and *2* were indeed in the nature of insider trading, last issue that remains to be adjudged in the present case is the quantum of profits that accrued to the *Noticees* by virtue of the aforesaid unlawful activity of carrying out trading in the scrip of the *Company* based on the UPSI. I note that the SCN takes a uniform approach in order to calculate such unlawful gains and for the purpose of such calculation, the SCN relies on the closing price of the scrip, on the day when the UPSI became public. It is also noted that the *Noticee no. 2* had also sold 2,515 shares during the UPSI period, however, as the *Noticee no. 2* was already holding 51,121 shares of ADF before the UPSI period, the SCN consider such 2,515 shares to be part of the existing holding of the *Noticee no. 2*. The formula used for the calculation of the notional gains made by the *Noticee nos. 1* and *2*, as per the SCN is:

Unlawful gains made (in case of positive news) = No. of shares bought while in possession of UPSI X Closing price on the day of UPSI becoming public – No. of shares bought while in possession of UPSI X weighted average purchase price.

69. I find no reason from deviating from the aforesaid formula which appears to be reasonable in the given facts of the case. Applying the aforesaid formula to the facts of the case, the following calculation of the gain that accrued to the *Noticee nos. 1* and *2* through their insider trading in the scrip of ADF are as under:

Table no. 14: Calculation of unlawful gains

Particulars	(Noticee-1) (INR)	(Noticee-2) (INR)
No. of shares bought while in possession of UPSI	1, 54,857	3, 07,368
X Closing price on the day of UPSI becoming public	112.70	112.70
Subtotal (i)	17, 452, 383.9	34, 640, 373.6
(-) Less		
No. of shares bought while in possession of UPSI	1, 54,857	3, 07,368
X Weighted average purchase price	88.25	99.89
Subtotal (ii)	13, 666, 130.3	30, 702, 989.5
Unlawful gains made (approx.) ((i)-(ii)) (INR)	**37, 86,253.6**	**39, 37,384.1**

70. I find it relevant to mention here that there is no dispute to the fact that the trades were executed in the trading accounts of the *Noticee nos. 1* and *2* only, however, for the detailed reasons recorded while adjudging the culpability of the *Noticees*, I can firmly say that without the active involvement and action on part of the rest of the *Noticees*, the accrual of such profits in the hands of *Noticee no.1* and *2* was not at all possible. I may reiterate here that the *Noticee no. 3* being an Executive Director of the *Company* and apart from being privy to the UPSI, was also authorized to trade on behalf of the *Noticee no. 1*. Further, the *Noticee no. 6,* who was the promoter of the *Company* acted as a conduit to transfer funds from the *Noticee no. 3* to the *Noticee no. 1*, part of which were also transferred to the *Noticee no. 2,* and both of them executed trades based on the UPSI. Further, as discussed earlier, the *Noticee no. 4* was an insider being immediate relative of the *Noticee no. 6* and

was also the deciding force as well as one of the authorized persons for placing the trade orders executed on behalf of the *Noticee no. 2*. Lastly, it is seen that the *Noticee no. 5*, son of the *Noticee no. 2*, is also an important link being a person authorized to trade on behalf of the *Noticee no. 2* in her trading account and as the *Noticees* have failed to persuade me with the help of any cogent evidence that no trades were executed by the *Noticee no. 5*, the complicity of the *Noticee no. 5* in executing the trades motivated by the UPSI cannot be ruled out.

71. Insofar as the degree of proof is concerned, there is no gainsaying the fact that cases like the present one will seldom have any direct or concrete evidence and the case needs to be built upon the probabilities that emerge from the circumstances governing the facts of the case, more so when all the *Noticees* belong to one family. In the matter of V. *K. Kaul Vs. SEBI (supra),* Hon'ble SAT has *inter alia* observed as: "…*The measure of proof in civil or criminal cases is not an absolute standard and within each standard, there are degrees and probabilities…".*

72. To conclude, I observe that the insiders who are privy to the information which has potential to impact the price of the security upon disclosure of such information, have a statutory obligation to maintain the sanctity of such information. Any kind of action taken based on the access of information in exclusion of the general investing public clearly makes a dent in the level playing field. It has been time and again observed by various courts that the SEBI Act, 1992 entrusts a duty on SEBI to protect the interest of investors. However, when the insiders to a company craft a devise by roping in their family members and other relatives to indulge in insider trading, it becomes a difficult task to cure the mischief, as being very closely associated, the exercise to cull out direct communication of unpublished price sensitive information becomes a daunting task. Nonetheless, any such hurdle should not dissuade SEBI to achieve the avowed object of protecting the interest of investors of securities market. Any such act of insider trading, as noted in the present case, deserves firm action and as the gains that accrue to the *Noticees* are unlawful outcome of the violations committed by them, such notional gains need to be disgorged from them. At his stage, I refer to the observations of Hon'ble SAT passed in the matter of *Reliance Industries Vs. SEBI (Appeal no. 120/2017, Date of decision: November 05, 2020)* wherein Hon'ble SAT have observed *inter alia* that disgorgement is an equitable remedy more so when the amount is credited to Investor Protection Fund of SEBI for the benefit of small investors.

73. In view of the reasons recorded in this Order and in order to protect the interest of investors and the integrity of securities market, I, in exercise of the powers conferred upon me under Section 11, 11(4) and 11B of the SEBI Act, 1992 read with Section 19 of the SEBI Act, 1992, hereby issue the following directions:

i. The *Noticee nos. 1, 2* and *3* are restrained from accessing the securities market and are further prohibited from buying, selling or otherwise dealing in securities, directly or

indirectly, or being associated with the securities market in any manner, whatsoever, for a period of 6 months from the date of this Order;

ii. The *Noticee nos. 1, 2* and *3* are restrained from buying, selling or dealing in the securities of ADF Foods Limited, directly or indirectly, in any manner whatsoever, for a period of 1 year;

iii. The *Noticee nos. 4, 5* and *6* are restrained from accessing the securities market and are further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of 3 months from the date of this Order;

iv. The *Noticees nos. 1, 2* and *3* shall jointly and severally, disgorge the amount of unlawful gains as mentioned in Table no. 14, and accordingly, the amount deposited in the escrow account (along with the interest accrued so far) shall be transferred to IPEF within a period of 45 days. The particulars of SEBI Account for making e-payment are as under:

Name of the Bank	**Branch Name**	**RTGS Code**	**Beneficiary Name**	**Beneficiary Account No.**
Bank of India	Bandra Kurla Branch	BKID 0000122	Securities and Exchange Board of India	012210210000008

In case of e-payments, the Noticees are advised to forward the details and confirmation of the payments so made to the Enforcement department of SEBI for their records as per the format provided in Annexure A of Press Release No. 131/2016 dated August 09, 2016 which is reproduced as under:

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

7. Payment is made for (disgorgement amount and along with order details)	

74. It is clarified that during the period of restraint, the existing holding of securities, including the units of mutual funds shall remain under freeze in respect of the aforesaid debarred *Noticees.*

75. The obligation of the aforesaid debarred *Noticees*, in respect of settlement of securities, if any, purchased or sold in the cash segment of the recognized stock exchange(s), as existing on the date of this Order, can take place irrespective of the restraint/prohibition imposed by this Order only, in respect of pending unsettled transactions, if any. Further, all open positions, if any, of the *Noticees* debarred in the present Order, in the F&O segment of the stock exchanges, are permitted to be squared off, irrespective of the restraint/prohibition imposed by this Order.

76. The Order shall come into force with the immediate effect.

77. A copy of this Order shall be forwarded to all the *Noticees*, all the recognized Stock Exchange, depositories and registrar and transfer agents for ensuring compliance with the above directions.

-Sd-

DATE: MARCH 30TH, 2021 **S. K. MOHANTY**

PLACE: MUMBAI **WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA