**BEFORE THE ADJUDICATING OFFICER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**[ADJUDICATION ORDER NO. AK/AO- 18-22/2014]**

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

In respect of

**Falcon Tyres Limited** (PAN: AAACF7258E), **Mr. Pawan Kumar Ruia** (PAN: ACNPR3823K), **Mr. S Ravi** (PAN: ADEPR0817K), **Mr. Sunil Bhansali** (PAN: AKRPB5641H), and **Mr. MC Bhansali (**PAN: ACUPB0719P).

In the matter of

Falcon Tyres Limited

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**FACTS OF THE CASE**

1. Falcon Tyres Limited (hereinafter referred to as the '**Company'**) is a company registered under the Companies Act. During the investigation period i.e. June 01, 2009 to September 30, 2009, Mr. Pawan Kumar Ruia was the Chairman and Promoter Director of the company, Mr. Sunil Bhansali was the Executive Director of the company, Mr. S. Ravi was the Non-Executive Director of the company and Mr. M. C. Bhansali was the Company Secretary cum Compliance Officer of the company. Mr. Pawan Kumar Ruia, Mr. Sunil Bhansali, Mr. S. Ravi, Mr. M. C. Bhansali and the company itself are (hereinafter collectively referred to as the '**Noticees**').

2. During the investigation period, Securities and Exchange Board of India (hereinafter referred to as **SEBI**) vide letter dated October 25, 2010 had sought various information from the company such as the details of the promoters/ directors of the company; their names,

addresses, details of demat accounts, corporate announcements made by the company, minutes of the Board meeting held during the period from January 01, 2009 to September 30, 2009, a copy of Code of Internal Procedure and Conduct and Code of Corporate Disclosure Practices of the company in accordance with SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as '**PIT Regulations, 1992'**), the time of closing and opening of trading window with respect to the above announcements and the details of disclosures made to the company and to the stock exchanges under PIT Regulations, 1992 and SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as '**Takeover Regulations, 1997'**).

3. Vide letter dated March 30, 2011, the company submitted the above information sought by SEBI. From the submission of the company dated March 30, 2011, SEBI observed that there was no trading window system in the Company as directors/employees "do not trade in the company's securities." Further, on perusal of the copy of the Code of Conduct forwarded by the Company, SEBI observed that the company had forwarded a copy of the Code of Conduct and Ethics, instead of a copy of the Code of Internal Procedure & Conduct and Code of Corporate Disclosure Practices in accordance with the PIT Regulations, 1992.

4. SEBI vide letter dated March 06, 2013 *inter alia* brought the same to the notice of the company including the prima facie presumption arrived at in view of the above that the company did not have a Code of Internal Procedure and Conduct and Code of Corporate Disclosure Practices in place in accordance with PIT Regulations, 1992. Vide the aforesaid letter, it was also *inter alia* brought to the notice of the company that the fact that there is no trading window system in the company and directors/ employees do not trade in the company's securities, as stated in company's reply dated March 30, 2011, had also been taken note of. The company's comments, if any, on the same were specifically called for latest by March 08, 2013.

5. The Company vide letter dated March 12, 2013 in response *inter alia* submitted as follows: *"We are having a Code of Internal Procedure and Conduct and Code of Corporate Disclosure Practice in terms of the SEBI (Prohibition of Insider Trading) Regulation 1992. However, our directors/employees do not trade in the Company's securities."* No copy of such Code of Internal Procedure and Conduct and Code of Corporate Disclosure Practices in accordance with PIT Regulations, 1992, claimed to be in place, was provided by the Company along with the said reply. Also, the reply did not elicit any comment with regard to the fact of there being no trading window system in the company, taken on record by the Investigation of SEBI and specifically brought to the notice of the company.

6. In view of the above, investigation alleged that the Company did not have any trading window system. Further, since only a copy of the Code of Conduct and Ethics was furnished, investigation observed that the Company had not framed and adopted the Code of Internal Procedure and Conduct as near thereto Model Code of Conduct in terms of Regulation 12 (1), Schedule I, Part A of PIT Regulations, 1992. It was, hence, alleged that the Noticees have violated regulation 12 (1) read with Clause 1.2 under Part A of Schedule I of the PIT Regulations, 1992. The above violations make the Noticees liable for monetary penalty under Section 15 HB of SEBI Act, 1992.

**APPOINTMENT OF ADJUDICATING OFFICER**

7. Ms. Barnali Mukherjee was appointed as the Adjudicating Officer vide Order dated April 17, 2013 under section 15-I of SEBI Act read with rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as **SEBI Rules**).

8. Consequent upon the transfer of Ms. Barnali Mukherjee, the undersigned was appointed as the Adjudicating Officer on August 08, 2013 to inquire into and adjudge under Section 15 HB of the SEBI Act, for the alleged violation of the provision of Regulations 12 (1) read with Clause 1.2 under Part A of Schedule I of the PIT Regulations, 1992.

**SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING**

9. A Show Cause Notice (hereinafter referred to as '**SCN'**) Ref. No. EAD-6/BM/RSL/10981/2013, EAD-6/BM/RSL/10982/2013, EAD-6/BM/RSL/10984/2013, EAD-6/BM/RSL/10985/2013, EAD-6/BM/RSL/10987/2013 dated May 08, 2013 were issued to the Noticees under rule 4(1) of SEBI Rules communicating the alleged violation of PIT Regulations, 1992. The Noticees were also called upon to show cause as to why an inquiry should not be initiated against it and penalty be not imposed under Section 15HB of the SEBI Act for the alleged violations.

10. It is noted here that the Company, Falcon Tyres Limited and Mr. S Ravi have authorized Mr. M.C. Bhansali, Company Secretary to offer submission/replies on behalf of them in the current proceeding. Further, Mr. Sunil Bhansali has also authorized Mr. M.C. Bhansali to offer submission/replies on behalf of him and Mr. Pawan Kumar Ruia. Hence, the submissions made by Mr. M.C. Bhansali on behalf of the company are considered to be on behalf of the Noticees.

11. The Noticees vide letter dated May 20, 2013 denied the allegations levied against them in the SCN dated May 08, 2013 and had sought inspection of (a) all the original documentation/data etc. relied upon in the SCN; (b) the original documents/data etc. relied upon during the investigation period.

12. The Noticees vide letter dated May 29, 2013 and June 03, 2013 were informed that they can avail inspection of documents on any working day during the office hours from June 3rd to June 21st, 2013, with three working days advance intimation. The Noticees were further informed that the original of all the documents relied upon by SEBI and provided as Annexure to the SCN shall be open for inspection.

13. Pending inspection, the company vide letter dated June 14, 2013 on behalf of the Noticees, while denying all allegations made against the Noticees, have *inter alia* stated as follows:

*i. That they had inadvertently written that there was no trading window system in the Company, as directors/employees of the Company do not trade in the Company's securities. However the correct and factual position is that the Company did in fact have a trading window system and that has been duly mentioned in clause 6 of the "Code of Conduct for Prevention of Insider Trading in Shares" of the Company (the "Code of Conduct"). It was further stated that as per clause 6 of the Code of Conduct, a designated employee and his dependent family members shall trade in the securities of the Company only during a specific time period called "Trading Window" to be specified by the Company. Further, that the term "designated employee" as used in the Code of Conduct includes all Directors, Chief Vigilance Officer, all Executive Directors, the Chief General Managers/General Managers/ Head of Departments of the Company.*

*ii. That vide letter dated March 06, 2013, SEBI had asked for company's comments on the Code of Conduct, to which the company vide letter dated March 12, 2013 had submitted that they were having the code of Internal Procedure and Conduct and Code of Corporate Disclosure Practice in terms of PIT Regulations, 1992, however, their directors/ employees did not trade in the company's securities. It was submitted that the Code of Conduct has been made pursuant to Regulation 12 (1) of SEBI PIT Regulations, 1992 and in accordance with the model code of conduct as per Schedule 1 part A of the SEBI PIT Regulations, 1992 and Clause 49 of the Listing Agreement with the stock exchanges. Further, that their non-independent directors and compliance officer who are in charge of the company had adopted the Code of Conduct in accordance with Model Code of Conduct as per the Schedule 1 part A of the SEBI PIT Regulations, 1992. Also, that as per the Code of Conduct of the Company, the Directors, Chief Vigilance Officer, all Executive Directors, the Chief General Managers/General Managers/Head of Departments of the Company and their dependent family members have to conduct all their dealing in the Company's securities during a valid trading window and not deal in any transaction involving the purchase or sale of the Company's securities during the periods when the trading window is closed, or, during any other period as may be specified by the Company from time to time;*

*iii. That the Code of Conduct adopted by the company has not been diluted in any manner and is as near to the Model Code of Conduct and in complete compliance with the provision of Regulation 12(1) of PIT Regulations, 1992.*

14. Vide their aforesaid submission dated June 14, 2013, a copy of the aforesaid Code of Conduct made in terms of PIT Regulations, 1992 was annexed for the first time. The company on behalf of the Noticees submitted further that a supplementary reply would be filed after inspection of all original documents referred to and relied upon by SEBI.

15. Inspection of documents were provided to the Noticees on June 19, 2013 and the following documents were inspected by the Noticees:

    a) Copy of the appointment letter of Ms. Barnali Mukherjee as Adjudicating Officer;
    b) Copy of the SEBI letter dated October 25, 2010;
    c) Company's reply in original dated March 30, 2011;
    d) Copy of the SEBI letter dated March 06, 2013; and
    e) Company's reply in original dated March 12, 2013.

16. After the inspection of documents, the company vide letter dated June 25, 2013 on behalf of the Noticees *inter alia* stated that they were only provided with an inspection of documents/ data relied upon by SEBI in the show cause notice and that they were not provided with inspection of any of the documents/ data relied upon by SEBI during the investigation period. Further, that the original letter dated April 23, 2013 appointing Ms. Barnali Mukherjee as the Adjudicating Officer in the matter was not provided and only a photocopy of the same was provided.

17. Vide email dated September 17, 2013, the Noticees were informed that the inspection of all the relevant documents relied upon by SEBI in the SCN dated May 08, 2013 was availed of by the Noticees on June 19, 2013 and they were advised to send the list of documents sought by them for further inspection. The Noticees were also informed that the inspection of the original appointment order of the Adjudicating Officer would be provided on the day of the personal hearing.

18. Since, no response was received from the Company Secretary of the Company to the email dated September 17, 2013, in the interest of natural justice and in terms of rule 4(3)

of the SEBI Rules, the Noticees were granted an opportunity of hearing on October 11, 2013 vide notice dated September 24, 2013 and the said notice was duly acknowledged by the Noticees. Accordingly on October 11, 2013, Mr. Kedar Agarwal, Ms. Rohini Karol and Mr. Viplaw Kashyap, Authorized Representatives of the Noticees (hereinafter referred to as '**ARs'**) appeared on behalf of the Noticees and further sought to inspect the original documents/data relied upon by SEBI during the investigation period. During the personal hearing, the original appointment letter of the Adjudicating Officer Ms. Anita Kenkare was inspected and a copy of the same was provided to the ARs.

19. Vide letter dated November 12, 2013, the Noticees were informed to take up inspection on any working day during the office hours from December 09 to 13, 2013, with three working days advance intimation. The Noticees vide email dated November 20, 2013 were again advised to send a list of documents sought by them for inspection.

20. The company on behalf of the Noticees vide email and letter dated November 22, 2013 sought the following documents for inspection:

a) *Source of information, data on which SEBI relied upon and the outcome along with the data of the investigation of trading pattern in the Investigation Period, along with the other documentation and information relied upon by SEBI during the investigation period with respect to the investigation of trading pattern of the Company;*
b) *Documents, source and Information relied upon by SEBI for observing net profit of the Company in its quarterly and annual results for the period between March 31, 2009 to September 30, 2010;*
c) *Documents and the source of information that the promoter of the company had purchased 6,59,660 equity shares of the company from public under open offer;*
d) *Documents, source and information pertaining to increase of shareholding of the promoter in the Company in the quarter ending June 30, 2009 and decrease in quarter ending December 31, 2009;*
e) *Any other document, information, writing, transcripts, correspondences, emails, telephonic records relied upon by SEBI during the investigation period.*

21. The ARs appeared on behalf of the Noticees for the inspection on December 12, 2013 and the following documents were shown and inspected by the ARs:

a) Documents/ source relied upon by SEBI for observing net profit of the Company in its quarterly and annual results for the period between March 31, 2009 to September 30, 2010;

b) Documents/ Source of information that the promoter of the company had purchased 6,59,660 equity shares of the company from the public under the open offer;

c) Documents/ Source of information pertaining to increase of shareholding of the promoter in the company for the quarter ended June 30, 2009 and decrease in the quarter ending December 31, 2009.

22. The company vide letter dated December 12, 2013 on behalf of the Noticees *inter alia* submitted that the inspection as held on December 12, 2013 of the original documents, as requested, was incomplete as all documentation and information that was relied upon by SEBI during the investigation period with respect to the investigation of trading pattern was not provided to be inspected.

23. Vide hearing notice dated December 17, 2013, the Noticees were informed that the inspection of all evidence/documents relied upon while framing charges in the SCN dated May 08, 2013 have already been provided for inspection on June 19, 2013 and December 12, 2013. Vide the said hearing notice, it was further also informed that no allegation has been made with regard to the trading pattern of the company in the SCN and the same does not form a part of the allegation against the Noticees. The Noticees were given another opportunity of hearing on January 17, 2014.

24. Vide letter dated January 06, 2014, the Noticees while reiterating what was stated in their earlier submissions *inter alia* further stated as follows:

a) *It was reiterated that at the time of inspection on December 12, 2013, the ARs were not provided with inspection of documentation, data, information and source of such data and information that was relied upon by SEBI during the investigation period with respect to the investigation of trading pattern, therefore once again the inspection of all the original documents was not complete. Further, that they had requested vide their letter dated December 12, 2013 to allow the ARs an inspection of all the original documents relied upon by SEBI during the investigation period, in order to complete the process of inspection and enable the company to make further submission in the matter;*

b) *That they deny all allegations made against the Company and that they are in complete compliance with the provisions of Regulation 12 (1) of the SEBI PIT Regulations, 1992 as the Code of Conduct for Prevention of Insider Trading which the company had adopted in its meeting of the Board of Directors held on December 16, 2008, is entirely based on the Model Code of Conduct for prevention of Insider Trading for a listed company as mentioned in Schedule I Part A of the SEBI PIT Regulations, 1992.*

25. On January 17, 2014, the ARs appeared for personal hearing on behalf of the Noticees. During the hearing the ARs were informed that the inspection of all the documents relied upon while framing the allegations in the SCN dated May 08, 2013 was availed by the Company on June 19, 2013 and December 12, 2013. It was further brought to the notice of ARs during the hearing that the SCN does not make any allegations against the Company or any of the other Noticees based on the trading pattern of the Company and no reliance is placed on the trading pattern of the company while making allegations against the Noticees.

26. The ARs reiterated the submissions made vide its earlier letters with respect to the allegations in the SCN and submitted that the statement earlier made by the company that "there is no trading window system in the company, as directors, employees do not trade in the company's securities" was a typographical and an inadvertent error, and the actual fact is that there is a trading window system in the company, but, directors, employees do not trade in the company's securities. In view of the said submission, clarification was sought at hearing as to whether the said typographical and inadvertent

error on the Noticees part was informed to Investigation of SEBI. The ARs replied that only after receipt of SCN they realized the error on their part and hence accordingly communicated and clarified vide their reply dated June 14, 2013 to the SCN. At the hearing, the ARs were *inter alia* advised to submit the following information/ documents:

a) Details as to when the model code in terms of Regulation 12 (1) of PIT Regulations, 1992 as submitted vide letter dated June 14, 2013 came into effect;
b) Details (i.e date, minutes etc) of the Board of Directors meeting in which the aforesaid Model Code of Conduct was approved and why the same were not made available;
c) Details as to when the compliance officer was appointed along with the copy of the appointment letter and the details of the authority i.e. name, designation etc. of the authority appointing him;
d) Details of every occasion when the trading window was closed and subsequently opened during the period June 01 to September 30, 2009 along with the reason for such closure;
e) Instances of pre-clearance of trades sought by any of the directors/ officers/ designated employees of the company and their dependants as defined by the company, who intended to deal in securities of the company, as well as pre-clearances granted/ rejected, if any, along with the name and designation of the authority who took such action;
f) Details of initial/ continual/half-yearly/annual disclosures made by directors/ officers/ designated employees of the company during June 01 to September 30, 2009;
g) Details of penalty imposed by the company, if any, on any employee/ officer/ director of the company for contravention of Code of Conduct in the past;
h) Instances of information provided to SEBI, if any, by the company/ compliance officer, regarding violation of PIT Regulations, 1992 anytime in the past, other than the correspondences exchanged during the investigation period.

The ARs stated that they will submit the said information/ documents by January 31, 2014.

27. Vide email and letter dated January 31, 2014, extension of time by one week was sought by the Noticees to submit the aforesaid information/ documents. In response, vide email dated February 03, 2014 it was communicated that the response may be submitted by February 07, 2014 and that no further extension of time would be granted in the matter. Since no reply was received thereafter again upto February 09, 2014, vide email dated February 10, 2014, it was communicated that in view of the fact that no submissions were received from the Noticees, it is presumed that the Noticees have no further submissions to make and the matter would be proceeded with on the basis of evidence available on record. Subsequent to the same, vide email dated February 10, 2014 the Noticees informed that the delay was due to technical issues in their system and assured to submit a detailed reply by February 11, 2014. Vide email dated February 11, 2014 a letter dated February 07, 2014 was attached from the company on behalf of the Noticees which *inter alia* stated as follows:

a) *That the company had vide a meeting of the Board of Directors held on December 16, 2008, adopted the Model Code of Conduct for Prevention of Insider Trading in shares of the company in terms of Regulation 12 of SEBI PIT Regulations, 1992. A copy of the agenda and minutes of the meeting of the Board of Directors dated December 16, 2008 approving and adopting the Code of Conduct were also attached;*
b) *That in response to SEBI's letter dated October 25, 2010 seeking a copy of Code of Internal Procedure and Conduct and Code of Corporate Disclosure Practice in accordance with SEBI PIT Regulations, 1992, vide letter dated March 30, 2011, inadvertently a copy of the Code of Conduct and Ethics made pursuant to clause 49 of the Listing Agreement was sent;*
c) *That the error came to their notice only when the same was pointed out by SEBI vide letter dated March 06, 2013. Hence, vide letter dated March 12, 2013, it was clarified/ confirmed that company did have a Code of Internal Procedure and Conduct and Code of Corporate Disclosure Practice, however, enclosing a copy was again inadvertently missed out;*
d) *That they had appointed Mr. M.C. Bhansali as the Company Secretary in accordance with the provisions of Section 383A of the Companies Act on December 30, 2008 with effect from January 01, 2009 and that the Board of Directors vide their meeting held on January 20, 2009 had approved the appointment of Mr. M.C. Bhansali as the Company Secretary and Compliance Officer. A copy of the minutes of the meeting of the Board of*

*Directors dated January 20, 2009 and a copy of the appointment letter dated December 30, 2009 were also attached;*

e) *That during the investigation period from June 01, 2009 to September 30, 2009, the trading window was closed for directors/ officers/ designated employees of the company and their dependant family members from July 25, 2009 to July 31, 2009 and from August 02, 2009 to August 09, 2009 and was opened for trading only upon the expiry of twenty four hours after the information was made public;*

f) *That none of their directors/ officers/ employees trade in the securities of the company and none of the directors/ officers/ designated employees or any of their dependants including spouse, children, parents and any other family members had traded in the securities of the company when the trading window was closed;*

g) *That there were no instances of pre clearance of trades sought by any of the directors/ officers/ designated employees of the company and their dependants as defined by the company;*

h) *That the directors, officers and employees of the company have always been in compliance with the provisions of the Code of Conduct adopted by the company as per the SEBI PIT Regulations, 1992 and no enquiry or penalty has been imposed on any director/ officer/ employee for contravention of the Code of Conduct any time in the past;*

i) *That SEBI has not taken any action against the Noticees under the provisions of SEBI PIT Regulations, 1992, Takeover Regulations 1997 and 2011 at any time in the past.*

**CONSIDERATION OF ISSUES**

28. I have carefully perused the written submissions of the Noticees and the documents available on record. It is observed that the allegation against the Noticees is that they have failed to adopt/comply the Model Code of Conduct as specified under Part A of Schedule I of PIT Regulations, 1992.

29. The issues that, therefore, arise for consideration in the present case are:

a. Whether the Noticees have violated the provision of Regulations 12 (1) read with Clause 1.2 under Part A of Schedule I of the PIT Regulations, 1992?

b. Does the violation, if any, attract monetary penalty under Section 15 HB of SEBI Act?

c. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?

**FINDINGS**

30. Before moving forward, it is pertinent to refer to the provisions of Regulations 12 (1) read with Clause 1.2 under Part A of Schedule I of the PIT Regulations, 1992, which reads as under:

**POLICY ON DISCLOSURES AND INTERNAL PROCEDURE FOR PREVENTION OF INSIDER TRADING**

**Code of internal procedures and conduct for listed companies and other entities.**

***12.*** *(1) All listed companies and organisations associated with securities markets including :*

*(a) the intermediaries as mentioned in section 12 of the Act, asset management company and trustees of mutual funds ;*

*(b) the self-regulatory organisations recognised or authorised by the Board;*

*(c) the recognised stock exchanges and clearing house or corporations;*

*(d) the public financial institutions as defined in section 4A of the Companies Act, 1956; and*

*(e) the professional firms such as auditors, accountancy firms, law firms, analysts, consultants, etc., assisting or advising listed companies, shall frame a code of internal procedures and conduct as near thereto the Model Code specified in Schedule I of these Regulations [without diluting it in any manner and ensure compliance of the same]*

**INSIDER TRADING FOR LISTED COMPANIES**

**1.0 Compliance Officer**

*1.1 ……*

*1.2 The compliance officer shall be responsible for setting forth policies, procedures, monitoring adherence to the rules for the preservation of "Price Sensitive Information", pre-clearing; of designated employees' and their dependents' trades (directly or through respective department heads as decided by the company), monitoring of trades and the implementation of the code of conduct under the overall supervision of the Board of the listed company.*

*Explanation : For the purpose of this Schedule, the term 'designated employee' shall include :—*

*(i) officers comprising the top three tiers of the company management 66[***];*

*(ii) the employees designated by the company to whom these trading restrictions shall be applicable, keeping in mind the objectives of this code of conduct.*

31. Before going to the facts of the matter, I would like to address the repeated contention of the Noticees that they were not provided with an inspection of documentation, data, information and source of such data and information that was relied upon by SEBI during the investigation period with respect to the investigation of trading pattern. The Noticees have maintained that, therefore, the inspection of all the original documents was not complete.

32. In the matter, I would prefer to once again reiterate what was informed to the ARs at the time of hearing on January 17, 2013 - that the inspection of all the documents relied upon while framing the allegations in the SCN dated May 08, 2013 was availed by the Noticees on June 19, 2013 and December 12, 2013. The SCN does not make any allegations against the Company or any of the other Noticees based on the trading pattern of the Company and no reliance is placed on the trading pattern of the company while making allegations against the Noticees.

33. In this context, it becomes necessary to quote the judgment of the Hon'ble Securities Appellate Tribunal, in the case of *Mayrose Capfin Private Limited V/s. Securities and Exchange Board of India* (Appeal No. 20 of 2012) dated 30.03.2012, The Hon'ble SAT has observed in the matter that *"The principles of natural justice require that the inquiry officer should make available such document and material to the delinquent on which reliance is being placed in the inquiry. It is not necessary for the inquiry officer to make available all the material that might have been collected during the course of investigation, but, has not been relied upon for proving charge against the delinquent. No prejudice can, therefore, be said to have been caused to the appellant on this count*".

34. I further find that in Chandrama Tiwari vs. Union of India (AIR 1988 SC 117), the Hon'ble Supreme Court has also observed that "*It is not necessary that each and every document must be supplied to the delinquent government servant facing charges; instead only material and relevant documents are necessary to be supplied to him. If a document even though mentioned in the Memo of charges is not relevant to the charges or if it is not*

*referred to or relied upon by the enquiry officer or the punishing authority in holding the charges proved against the government servant, no exception can be taken to the validity of the proceedings or the order passed on the ground of non-supply of the copy of the order. If a document is not used against the party charged, the ground of violation of principles of natural justice cannot be successfully raised. Violation of the principles of natural justice arises only when a document, a copy of which may not have been supplied to the party charged, is used in recording findings of guilt against him*." In view of the above, I find that the principle of natural justice has been met with.

35. With the same in place, I will now move to the facts of the case. I note that SEBI had during the process of investigation advised the company vide letter dated October 25, 2010 to furnish by November 11, 2010 certain information pertaining to the period of investigation i.e. June 01, 2009 to September 30, 2009. The same *inter alia* included the copies of agenda as well as the minutes of the Board meetings held during the period January 01, 2009 to September 30, 2009, the time of closing and opening of the trading window, if any, with respect to the corporate announcements made by the company during the period January 01, 2009 to September 30, 2009, and, a copy of Code of Internal Procedure and Conduct and Code of Corporate Disclosure Practices in accordance with PIT Regulations, 1992 being followed by the company.

36. I find that the company furnished the information sought in response to SEBI's letter dated October 25, 2010 vide its letter dated March 30, 2011, i.e. after five months from the date of the letter. As regards the closing and opening of the trading window, it was informed therein that there was no trading window system in the company as Directors/ Employees do not trade in the company's securities. Further, as regards the copy of Code of Internal Procedure and Conduct and Code of Corporate Disclosure Practices in accordance with the PIT Regulations, 1992 of the company, the same was stated to be enclosed. The said letter, I find was signed at the level of the Company Secretary cum Compliance Officer. It was noted that what was claimed to be a copy of the Code of

Internal Procedure and Conduct and Code of Corporate Disclosure Practices in accordance with PIT Regulations, 1992 was actually a copy of the Code of Conduct and Ethics.

37. I find that SEBI vide letter dated March 06, 2013 *inter alia* brought the same to the notice of the company including the prima facie presumption arrived at in view of the above that the company did not have a Code of Internal Procedure and Conduct and Code of Corporate Disclosure Practices in accordance with PIT Regulations, 1992. Vide the aforesaid letter, it was also *inter alia* brought to the notice of the company that the fact that there is no trading window system in the company and directors/ employees do not trade in the company's security, as stated in company's reply dated March 30, 2011, has been taken note of. The company's comments, if any, on the same were specifically called for latest by March 08, 2013.

38. I find that in response to the same, the company vide letter dated March 12, 2013 *inter alia* merely claimed that they were having a Code of Internal Procedure and Conduct and Code of Corporate Disclosure Practices in terms of the PIT Regulations, 1992, however, their Directors/ Employees do not trade in the securities of the company. I further find that despite SEBI's earlier letter seeking a copy of the Code of Internal Procedure and Conduct and Code of Corporate Disclosure Practices in accordance with PIT Regulations, 1992 being followed by the company, the company even at this stage, did not find it necessary to forward the correct approved copy to SEBI, in case there existed such a Code in terms of the PIT Regulations, 1992, different from the one earlier forwarded to SEBI vide its letter dated March 30, 2011. Further, I find that even at this stage, the company did not refute or comment otherwise, on the fact regarding there being no trading window system in the company, taken on record by SEBI.

39. Thus, I note from the above that even after two and half years from SEBI seeking the information from the company, the company did not provide a copy of the Code of Internal Procedure and Conduct and Code of Corporate Disclosure Practices in accordance

with the PIT Regulations, 1992 to SEBI. Also, despite specifically bringing to the notice of the company that SEBI had taken note of the fact that the company did not have trading window system in the company and directors/ employees do not trade in the company's security, the company did not refute or comment otherwise on the same.

40. I, thus, note that it was only vide letter dated June 14, 2013, in response to the SCN issued to the Noticees that the company for the first time submitted a Code of Conduct for Prevention of Insider Trading in shares of the company claimed to be made pursuant to regulation 12(1) of PIT Regulations, 1992, as amended. However, here too I find that the date from which the Code in the aforesaid document had come into effect was not mentioned therein. Neither were the details such as date, minutes etc. of the Board of Directors meeting in which the aforesaid document had been approved by the company's Board was provided. Further, I note that vide the aforesaid letter dated June 14, 2013, the company claimed that the correct and factual position with respect to the trading window was that it did, in fact, have a trading window system, and that had been duly mentioned in clause 6 of the Code of Conduct for Prevention of Insider Trading. The statement made vide its earlier letter dated March 30, 2011 that there was no trading window system in the company as directors/ employees of the company did not trade in the company's securities was claimed to be an inadvertent mistake at this stage.

41. Vide its subsequent letter dated January 06, 2014 i.e. again after a period of six months after making available the copy of the Code of Conduct claimed to be framed in accordance with the PIT Regulations, 1992, the company stated that the company had adopted the Code of Conduct in complete compliance with the provisions of Regulation 12 (1) of the PIT Regulations, 1992 in its meeting of the Board of Directors held on December 16, 2008. However, I find that here again the company did not provide a copy of the relevant Board minutes approving the same. I note that it is only in response to a specific query raised at the time of hearing held on January 17, 2014 as to why the details such as date, minutes etc. of the meeting of Board of Directors in which the aforesaid

Model Code of Conduct was approved was not made available, the Noticees vide letter dated February 07, 2014 (emailed on February 11, 2014) provided a copy of the same. Further, I note that vide this letter dated February 07, 2013, the Noticees claimed that they had earlier inadvertently missed attaching a copy of the Code of Conduct adopted in compliance with the provisions of Regulation 12 (1) of the PIT Regulations, 1992 along with their letter dated March 12, 2013 to SEBI.

42. I note that all the aforesaid replies of the company have been signed by the same Company Secretary cum Compliance Officer of the company. It is difficult to believe that a Company Secretary cum Compliance Officer, who is expected to be a professional with core competence in compliances and corporate governance, could make an inadvertent mistake of communicating in writing to SEBI contrary to the factual aspect, not just on an isolated occasion, but, repeatedly. It is pertinent to note here that the issue in concern is not just a question of routine correspondence between company and SEBI, but, a serious matter concerning implementation of a Code of Conduct under the PIT Regulations, 1992, which was raised by SEBI in the process of an investigation conducted by it.

43. The company, I find, has altered its submission not on one aspect, but, on two aspects concerning the PIT Regulations, 1992 viz. trading window and code of conduct. Further, I note on each aspect, the company has made different submissions on different occasions. Vide letter dated March 30, 2011, it was informed that there was no trading window system in the company as directors/ employees of the company did not trade in the company's securities, when the fact of the matter, as claimed by the company in reply to the SCN was that the company did, in fact, have a trading window system. The company vide letter dated June 14, 2014 has claimed that it had earlier inadvertently written that there is no trading window system in the company. Even for a moment presuming that the same was an inadvertent mistake, it is further difficult to accept that even after SEBI vide its letter dated March 06, 2013 specifically brought to the notice of the company that it had taken note of the fact that there was no trading window system in the company, the company preferred to conveniently ignore the same then, and, point out as an

inadvertent mistake on its part only while responding to SCN issued by the Adjudicating Officer. Further, I note that when copy of the Code of Internal Procedure and Conduct and Code of Corporate Disclosure Practices in accordance with PIT Regulations, 1992 was sought by SEBI, instead a copy of Code of Conduct and Ethics was made available by the company. Despite this being brought to the notice of the company, the company did not make any attempt to rectify the mistake by providing the copy of the Code of Internal Procedure and Conduct and Code of Corporate Disclosure Practices in accordance with the PIT Regulations, 1992, if such a code did exist, but, merely claimed that it had one in place. The company vide letter dated February 07, 2014 again claimed that it had earlier inadvertently submitted the Code of Conduct and Ethics made pursuant to clause 49 of the Listing Agreement. At the adjudication stage when a copy of a code of conduct under the PIT Regulations, 1992 was provided by the Noticees claiming the same to be in place during the investigation period, the Noticees promptly again claimed that they missed attaching a copy of the same vide their letter dated March 12, 2013 inadvertently. Besides, it appears that the said Code of Conduct and Ethics pursuant to clause 49 of the Listing Agreement was also not in place then, since the said Code *inter alia* states that the Code will become effective from the date it is approved and adopted by the Board of Directors of the company.

44. I note that under Regulations 12 (1) of PIT Regulations, 1992 all listed companies are required to frame a Code of Internal Procedures and Conduct as near thereto the Model Code specified in Schedule I of PIT Regulations, 1992, without diluting it in any manner and to ensure compliance of the same. When SEBI had sought a copy of the Code of Internal Procedures and Conduct as specified under the PIT Regulations, 1992, the same was not produced within a reasonable period of time. I would like to emphasize here that the same was not produced even after two years from the issue of letter seeking the same. A document which is internal to a listed company, if not produced within a fairly reasonable period of time when sought by the regulator, and is produced only at a late stage, such as in the instant case when it was submitted at the adjudication stage, raises

doubt as to whether the document was in place at the relevant point of time. Further, in absence of any requirement to file a copy of the said Code of Conduct with a third party, I consider here the credibility of the Noticees as an important factor in ascertaining whether the company actually had a Code of Conduct in place under the PIT Regulations, 1992 during the period of investigation. I further believe that (a) plausibility, (b) consistency and (c) corroborating evidence - all go into establishing such credibility before an Adjudicating Officer. Though the Noticees have made available a piece of evidence at the adjudication stage claiming that it did have a Code of Conduct in place at the relevant point of time, I believe that such piece of evidence pertaining to records that are solely internal to the company, need to be backed by adequate corroboration justifying its contradictory statements, rather than merely labeling them as "*inadvertent mistakes*".

45. I note that under SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, an opportunity is to be given to the Noticees to produce such documents or evidence, as the Noticees may consider relevant to the inquiry. This evidence I believe are the facts that may have changed in the intervening period between the investigation stage and the adjudication stage. For example, a subsequent judgment or a different interpretation taken in a similar situation. This will require an adjudicating officer to evaluate what is technically new evidence before arriving at his decision, because investigation could never have considered that judgment or interpretation. Also, there may be some new evidence that is truly new, in the sense that it could not have been presented to investigation because it was unavailable for legitimate reasons. Such evidence is different from what information that could have been provided, but, was not provided to investigation and only provided at the adjudication stage. The same further assumes significance in proceedings where documents/ new facts provided at the adjudication stage, are solely the internal information/ records of the entity, and, could have been readily produced at the investigation stage within a reasonable period or fairly extended time period, when specifically sought. In the instant case, I find that notable inconsistencies have emerged with respect to facts and records, coupled with failure of

the Noticees to develop adequate corroboration to substantiate its contradictory statements.

46. Besides, I note that the Code of Conduct for Prevention of Insider Trading in Shares of the company provided vide letter dated June 14, 2013 has been claimed to be on the basis of Model Code of Conduct for Prevention of Insider Trading for a listed company as mentioned in Schedule I Part A of the SEBI PIT Regulations, 1992 and approved in the meeting of the Board of Directors held on December 16, 2008. On a perusal of the said Code, I find that the Code, on the contrary, urges all officers and other designated employees *to inter alia*:

i. *"Pass on Price Sensitive Information to any persons Directly or Indirectly by way of making a recommendation for the purchase or sale of securities of the company; or*
ii. *Disclose Price Sensitive Information to their family members, friends, business associates or any other individual; or*
iii. *Price Sensitive Information in public places; or*
iv. *Disclose Price Sensitive Information to any other employee who does not need to know the information for discharging his or her professional duties; or*
v. *Recommend to anyone that they may undertake dealing in securities of the company while being in possession, control or knowledge of Price Sensitive Information; or*
vi. *Be seen or perceived to be dealing in securities of the company on the basis of unpublished Price Sensitive Information."*

47. As per Regulation 12(1) read with Clause 1.2 under Part A of Schedule I of the PIT Regulations, 1992, the compliance officer is *inter alia* responsible for setting forth policies, procedures, monitoring adherence to the rules for the preservation of "Price Sensitive Information", pre-clearing of designated employees' and their dependents' trades, monitoring of trades and the implementation of the code of conduct, under the overall supervision of the Board of the listed company. At the relevant point of time, I find that Mr. M. C. Bhansali was the Company Secretary as well as the Compliance Officer of the company. I further note that the facts and documents at the relevant stages – both at investigation stage as well as adjudication stage were communicated to SEBI and the Adjudicating Officer respectively by the same Company Secretary cum Compliance Officer

Mr. M. C. Bhansali. I further find from the company's reply dated March 30, 2011 that the day to day management of the company at the relevant point of time was looked after by Mr. Pawan Kumar Ruia, the Chairman and Promoter Director of the Company and Mr. Sunil Bhansali, the Executive Director of the company. Further, Mr. S. Ravi was the Non-Executive Director of the company at the relevant point of time and as a Non-Executive Director, I consider him to be a custodian of the governance process and responsible for monitoring the executive activity.

48. I further note that the Hon'ble Securities Appellate Tribunal in the case of *N. Narayanan v. The Adjudicating Officer, SEBI* (Appeal No. 29 of 2012 decided on October 05, 2012), while commenting on the role of directors, had observed that:

*"With the changing scenario in the corporate world, the concept of corporate responsibilities is also rapidly changing day by day. The director of a company cannot confine himself to lending his name to the company, but, taking light responsibility for its day to day management. While functions may be delegated to professionals, the duty of care, diligence, verification of critical points by directors cannot be abdicated. The directors are expected to have a hands on approach in the running of the company and take up responsibility not only for the achievements of the company, but, also the failings thereto."*

49. The Noticees, I find, were, thus, required to adopt a Model Code of Conduct as specified under Part A of Schedule I of PIT Regulations, 1992 and it can be safely concluded that they failed to comply with the same. Hence, taking a holistic view in the matter and on a preponderance of facts and evidence before me, I conclude that the Noticees have violated the provision of Regulations 12 (1) read with Clause 1.2 under Part A of Schedule I of the PIT Regulations, 1992.

50. The next issue for consideration is as to what would be the monetary penalty that can be imposed on the Noticees for violation of the provision of Regulations 12 (1) read with Clause 1.2 under Part A of Schedule I of the PIT Regulations, 1992 at the relevant point of time. The Hon'ble Supreme Court of India in the matter of *SEBI Vs. Shri Ram Mutual Fund*

[2006] 68 SCL 216(SC) held that *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant…".*

51. In view of the foregoing, I am convinced that it is a fit case to impose monetary penalty under Section 15HB of the SEBI Act, which reads as under:

***"15HB.Penalty for contravention where no separate penalty has been provided.-*** *Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees."*

52. While determining the quantum of monetary penalty under Section 15 HB, it is important to consider the factors stipulated in section 15J of SEBI Act, which reads as under:

***"15J - Factors to be taken into account by the adjudicating officer***

*While adjudging quantum of penalty under Section 15-I, the adjudicating officer shall have due regard to the following factors, namely:*

*(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*

*(b) the amount of loss caused to an investor or group of investors as a result of the default;*

*(c) the repetitive nature of the default."*

53. In view of the charges as established, the facts and circumstances of the case and the judgments referred to and mentioned hereinabove, the Noticees as per Section 15 HB of the SEBI Act are liable to a penalty which may extend to one crore rupees. Further, under Section 15-I of the SEBI Act, the adjudicating officer has to give due regard to certain factors which have been stated as above while adjudging the quantum of penalty.

54. However, I note that the objective of framing a Code of Conduct under the PIT Regulations, 1992 is to prevent insider trading and prevent misuse of the price sensitive

information which undermines the confidence of the investors. It is, thus, a preventive measure rather than a post facto remedial action. Hence, I find that the quantum of penalty cannot primarily depend upon the disproportionate gain or unfair advantage made by the Noticees or the monetary loss to the investors. On the contrary, it will largely be guided by the conduct of the Noticees in complying with the relevant regulations.

55. I have taken note of the claim of the Noticees that none of their directors/ officers/ designated employees or any of their dependents including spouse, children, parents and other family members have traded in the securities of the company when the trading window was closed. Also, I have taken note of the fact claimed by the Noticees that all the Noticees have complied with the provisions of the PIT Regulations, 1992 as well as the Takeover Regulations, 1997 & 2011, and, further that SEBI has not taken any action against any of the Noticees under the said regulations at any point of time in the past. However, in view of the repeated change of stand by the Noticees, it is difficult for me to rely on the aforesaid claim of the Noticees. This is more so, since there is substantial evidence on record which shows that the conduct of the Noticees does not merely indicate an isolated incident of inadvertent mistake or an exceptional case of negligence, but, a case of repeated change of stand.

56. Further, it is difficult to accept and does not appear plausible, from any which way one looks at it, that having put in place regulatory requirements as prescribed, the regulated entity could fail to inform the regulator when specifically asked. The plea of the Code being in place and having missed out inadvertently in the submissions made to SEBI, can at best be considered as a juvenile attempt by the Noticees to save themselves from the repercussions of having failed to comply. Further, providing a draft Code of Conduct and Ethics under clause 49 of the Listing Agreement when Code of Conduct under the PIT Regulations, 1992 was called for, not providing the correct and approved copy despite being brought to notice and merely confirming its existence, can at best be termed as '*negligence*', and, at worst a conscious and deliberate attempt on the part of the Noticees to cover up for the non-existence of the code by using all means possible. The last such

attempt from the Noticees of forwarding the Code vide letter dated June 14, 2013 and claiming it as being in place since December 2008 with the approval of the Board of Directors, I find, is the most outrageous, as the so called Code advocates officers and other designated employees to pass on Price Sensitive Information of the company.

57. I, thus, conclude that the lackadaisical and uninvolved manner in which the Noticees have conducted themselves, irrespective of whether the Model Code as specified under the PIT Regulations, 1992 is considered to be in place or not, provided ample scope for misuse of price sensitive information. I, therefore, am of the view that the Noticees deserve maximum penalty under the law.

**ORDER**

58. Thus, after taking into consideration all the facts and circumstances of the case, I impose a penalty of ₹. 1,00,00,000/- (Rupees One Crore only) under Section 15 HB on the Noticees. The Noticees shall be jointly and severally liable to pay the said monetary penalty which will be commensurate with the violations committed by the Noticees.

59. The Noticee shall pay the said amount of penalty by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, within 45 days of receipt of this order. The said demand draft should be forwarded to Mr. Pranjal Jayaswal, Deputy General Manager, Investigation Department, SEBI Bhavan, Plot No. C – 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400 051.

60. In terms of rule 6 of the Rules, copies of this order are sent to the Noticees and also to the Securities and Exchange Board of India.

Date: **February 26, 2014** **Anita Kenkare**
Place: **Mumbai** **Adjudicating Officer**