

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. RA/DPS/ 307 /2018]

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:

1. **Chetan S Kothari** (PAN – AAFPK8568A), having address at Flat No. 1502, 15th Floor, Rasraj Height, Rokadia Lane, Borivali – West, Mumbai – 400092.
2. **Chetana Kothari** (PAN – AIXPK4898H), having address at Flat No. 1502, 15th Floor, Rasraj Height, Rokadia Lane, Borivali – West, Mumbai – 400092.

In the matter of Tricom Fruit Products Limited.

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') has initiated adjudicating proceeding against Chetan S Kothari, (**the Noticee No. 1 / Chetan**) and Chetana Kothari, (**the Noticee No. 2 / Chetana**). All the Noticees collectively referred as '**Noticees/ You**'. Adjudication proceedings have been initiated against the Noticees for the alleged violations of SEBI (Prohibition of Insider Trading) Regulations, 1992 read with current SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as '**PIT Regulations**') as mentioned below:-

Noticees	Violations
Noticee No. 1	Regulation 3(i) and clause 3.2-2 & 3.2-5 of Model Code of Conduct contained in Schedule I of Part A under regulation 12(1) of PIT

	Regulations, 1992 r/w regulation 12(2) of SEBI (PIT) Regulations, 2015.
Noticee No. 2	Regulation 3(i) of PIT Regulations r/w regulation 12(2) of SEBI (PIT) Regulations, 2015.

APPOINTMENT OF ADJUDICATING OFFICER

- SEBI has, therefore, initiated adjudication proceedings against the Noticees and I have been appointed as the Adjudicating Officer vide order dated February 4, 2016 under Section 15G and 15HB of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**'), to inquire into the aforesaid alleged violations against the Noticees.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

- Show Cause Notice No. SEBI/HO/EAD/EAO/OW/P/2016/15633/1 dated June 1, 2016 (hereinafter referred to as "**SCN**") was issued to the Noticee under rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be initiated and penalty be not imposed under section 15G and 15HB of the SEBI Act for the aforesaid alleged violations against the Noticees.
- SEBI conducted Investigation in trading activities in the scrip of Tricom Fruit Products Limited (hereinafter referred as **Tricom / Company / Scrip / TFPL**), during investigation it observed that Noticee No. 1 / Chetan Kothari (promoter and director of Tricom Fruit Products Ltd) and his spouse, Noticee No. 2 (Chetana Kothari) were trading during window closure period i.e. during August 12, 2012 to August 16, 2012 (hereinafter referred to as '**examination period**'), which was in the nature of insider trading. The shares of the company are listed on Bombay Stock Exchange (BSE). The details of alleged irregularities / violations by the Noticees are mentioned below:

5. During examination, it was observed the chronology of events, finally leading to the official announcement of quarterly results of quarter ending June 30, 2012 to the market as provided by company vide letter dated July 10, 2015 (Copy of the company letter dated July 10, 2015 was provided as **Annexure-2** of SCN) is as follows:

Sr. No.	Nature of events	Time	Date	Persons Involved
1	Preparation of Financial Results		From end of June Qtr till the date of Meeting	Director
2	Dispatch of Notice of Board Meeting (regarding declaration/discussion of financial results of company for the quarter ending June 2012) to all concerned persons		03/08/2012	All Directors, Auditors
3	Intimation of Notice of Board Meeting to Stock Exchange		03/08/2012	Company Secretary
4	Publication of Notice in News paper		10/08/2012	Company Secretary, News paper Agency
5	Conduction of Audit Committee Meeting	08:00AM	14/08/2012	Audit Committee Members, Director, Company Secretary
6	Conduction of Board Meeting	07:30PM	14/08/2012	Board of Directors, Company Secretary
7	Sending Outcome to stock exchange	08:18PM	14/08/2012	Company Secretary
8	Publication of results in news paper		15/08/2012	Company Secretary, News Paper Agency

6. Further, as submitted by company vide letter dated February 22, 2014, the Trading Window was closed for the period August 12, 2012 to August 16, 2012 for declaration of financial results on August 14, 2012 (Copy of the company's submission vide letter dated February 22, 2014 was provided as **Annexure – 3** of SCN).
7. Price sensitive Information (PSI) has been defined in Regulation 2(ha) of PIT Regulations, which reads as:

Reg. 2(ha) "price sensitive information" means any information which relates directly or indirectly to a company and which if published is likely to materially affect the price of securities of company.

Explanation.—the following shall be deemed to be price sensitive information:—

(i) Periodical financial results of the company;

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8. Therefore, corporate announcement related to financial results for the period ending June 2012 made by the company has been considered as PSI.

9. From the chronology of events tabulated at Para 5 above, it is observed that notice of board meeting regarding declaration/discussion of financial results of company for the quarter ending June 2012 was sent to all directors on August 03, 2012. Therefore it is alleged that, the Unpublished Price Sensitive Information (UPSI) came into existence on August 03, 2012. Company informed BSE on August 14, 2012 at 20:52 hrs about the Financial Results & Limited Review of the company for the period ended June 30, 2012. Therefore the PSI became public on August 14, 2012 at 20:52hrs. Copy of print out of BSE website indicating the date and time i.e. on August 14, 2012 at 20:52 hrs was made public about the Financial Results & Limited Review of the company for the period ended June 30, 2012 was provided as **Annexure – 4** of SCN.

10. The term "*Insider*" is defined in PIT Regulations, is as follows:

As per Regulation 2(e) of PIT regulations "*Insider*" means any person who,

(i) "is or was connected with the company or is deemed to have been connected with the company and who is reasonably expected to have access to unpublished price sensitive information in respect of securities of a company, or

(ii) has received or has had access to such unpublished price sensitive information.

Further, in terms of Regulation 2(h) of PIT Regulations, "*person is deemed to be a connected person*" if such person -

.....

viii) is a relative of connected person;

Further, as per Regulation 2(i) "*relative*" means a person, as defined in section 6 of the Companies Act, 1956.

According to section 6 of Companies Act 1956, a person shall be deemed to be a relative of another if, and only if,

(a).....

(b) they are husband and wife;

Further, in terms of Regulation 2(c) of PIT Regulations, "*connected person*" means any person who-

(i) is a director, as defined in clause (13) of section 2 of the Companies Act, 1956 (1 of 1956), of a company, or is deemed to be a director of that company by virtue of sub-clause (10) of section 307 of that Act; or

(ii) occupies the position as an office or an employee of the company or holds a position involving a professional or business relationship between himself and the company whether temporary or permanent and who may reasonably be expected to have an access to unpublished price sensitive information in relation to that company.

11. It is observed that the notice for the Board Meeting of August 14, 2012 was sent on August 03, 2012 to all the Board Members. Since notice of board meeting regarding quarterly financial result was sent to all concerned persons after finalizing the books of accounts and same was finalized by directors while in discussion with auditors, they were in possession of UPSI. Therefore it is alleged that, as per Regulation 2(e) of PIT Regulations all directors of company and their relatives were insiders since they were in possession of UPSI regarding financial results of company which were to be discussed in the Board Meeting held on August 14, 2012.

12. During investigation trades of entities who were in possession of UPSI during UPSI period were analysed. It was observed that, director, Noticee No. 1 / Chetan Kothari

and his wife Noticee No. 2 / Chetana Kothari had traded in the scrip of TFPL. Details of trades of Noticees No. 1 and 2 during the investigation period are as under:

Noticee No. 1 Chetan Kothari (Promoter / Director of TFPL)		
Date of transaction	No. of shares	Type of Transaction
13-Aug-12	15,400	Sell

Noticee No. 2 / Chetana Kothari (Wife of Chetan Kothari)		
Date of transaction	No. of shares	Type of Transaction
13-Aug-12	55,879	Sell

13. The trade details of Noticees No. 1 and 2 was provided as **Annexure – 5** of SCN.

14. In view of above, it is observed that on August 13, 2012, i.e., during the period of UPSI, Noticee No. 1, promoter / director of company sold 15,400 shares and his wife Noticee No. 2 sold 55,879 shares. Thus, it is alleged that both the Noticees No. 1 and 2 have traded in the shares of TFPL while in possession of the Price Sensitive Information before it was disseminated to the public, and thereby, the Noticee No. 1 had allegedly violated regulation 3(i) of PIT Regulations r/w regulation 12(2) of SEBI (PIT) Regulations, 2015 and clause 3.2-2 & 3.2-5 of Model Code of Conduct contained in Schedule I of Part A r/w Regulation 12(1) of PIT Regulations r/w regulation 12(2) of SEBI (PIT) Regulations, 2015 and Noticee No. 2 had allegedly violated regulation 3(i) of PIT Regulations r/w regulation 12(2) of SEBI (PIT) Regulations, 2015. The aforesaid regulations are reproduced as under;

PIT Regulations

Prohibition on dealing, communicating or counselling on matters relating to insider trading.

3. No insider shall—

(i) either on his own behalf or on behalf of any other person, deal in securities of a company listed on any stock exchange when in possession of any unpublished price sensitive information;

***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.
- (2) The entities mentioned in sub-regulation (1), shall abide by the code of Corporate Disclosure Practices as specified in Schedule II of these Regulations.
- (3) All entities mentioned in sub-regulation (1), shall adopt appropriate mechanisms and procedures to enforce the codes specified under sub-regulations (1) and (2).
- (4) Action taken by the entities mentioned in sub-regulation (1) against any person for violation of the code under sub-regulation (3) shall not preclude the Board from initiating proceedings for violation of these Regulations.

SCHEDULE 1

[Under regulation 12(1)]

PART A

MODEL CODE OF CONDUCT FOR PREVENTION OF INSIDER TRADING FOR LISTED COMPANIES

3.2-2 When the trading window is closed, the employees/ directors shall not trade in the Company's securities in such period.

3.2-5 All directors/ officers/ designated employees of the Company shall conduct all their dealings in the securities of the Company only in a valid trading window and shall not deal in any transaction involving the purchase or sale of the company's securities during the periods when trading window is closed, as referred to in para 3.2.3 or during any other period as may be specified by the Company from time to time.

15. The aforesaid alleged violations, if established, make the Noticees liable for monetary penalty under section 15G and 15HB of the SEBI Act, which reads as follows:

SEBI Act:

Penalty for insider trading.

15G. *If any insider who,—*

- (i) *either on his own behalf or on behalf of any other person, deals in securities of a body corporate listed on any stock exchange on the basis of any unpublished price-sensitive information; or*
- (ii) *communicates any unpublished price-sensitive information to any person, with or without his request for such information except as required in the ordinary course of business or under any law; or*
- (iii) *counsels, or procures for any other person to deal in any securities of any body corporate on the basis of unpublished price-sensitive information,*

shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher.

Penalty for contravention where no separate penalty has been provided.

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

16. In response to the SCN, the Noticees vide their separate letter dated June 20, 2016, and July 20, 2016 requested for extension of time for submitting a detailed reply to the said SCN. Finally the Noticees filed their replies separately vide letter dated August 1, 2016.

17. The key submissions/ reply of the Noticees in their reply dated August 1, 2016, towards the SCN are being reproduced below:-

A. Reply of Noticee No. 1 / Chetan S Kothari:-

- i) *I submit that no contentions or submissions made in the Show Cause Notice dated 1st June, 2016 bearing reference no. SEBI/HO/EAD/EO/P/2016/ 15633/1 (hereinafter referred to as 'SCN'), which has not been specifically dealt with or denied by me, should not be deemed to be admitted by me on account of non - traverse. I am filing the present reply for the limited purpose of opposing the alleged violations and contraventions against me, of SEBI (Prohibition of Insider Trading) Regulations, 1992 (Hereinafter referred to as 'PIT Regulations 1992') read with SEBI (Prohibition of Insider Trading) Regulations, 2015 (Hereinafter referred to as 'PIT Regulations 2015') as more specifically set out in the SCN. I crave leave to make further written and oral submissions should it become necessary and if so advised.*

- ii) *I am a law abiding citizen. Currently I am the promoter and Managing Director of Tricom Fruit Products Ltd. (hereinafter referred to as 'TFPL'). I have extended my full co-operation to SEBI and, to the best of my abilities; I have diligently answered all the queries raised by SEBI prior to the issue of the said SCN.*
- iii) *Para wise reply to the SCN:*
- iv) *With reference to para 1 of the SCN, I say that I have not violated any provisions of SEBI (Prohibition of Insider Trading) Regulations, 1992 read with SEBI (Prohibition of Insider Trading) Regulations, 2015 as more specifically set out in the SCN or otherwise*
- v) *With reference to para 2 and 3 of the SCN, I say that I have not violated any provisions of the SEBI Act 1992 or the provisions of the various Rules, Regulations, and Guidelines made thereunder. And no proceedings against me are warranted for against the alleged violations during the purported investigation period.*
- vi) *With reference to para 4 to 7, I say that the actual facts and figures of the financial results for the quarter ended June 2012 were not finalized until the board meeting dated 14th August, 2012 at 07:30pm. Also it is pertinent to mention that the recommendation of the said financial results by the Audit committee was not received until 14th August, 2012 at 08:00 am. Therefore the corporate announcement of the said financial results purported to be price sensitive information cannot be alleged as 'Unpublished Price Sensitive Information' (hereinafter referred to as 'UPSI') in retrospect before 14th August, 2012.*
- vii) *With reference to para 8, I say that, the notice dated 3rd August, 2012 sent to all the directors on 3rd August, 2012, did not contain the details of the financial results for the quarter ended June 2012 in any manner what-to-ever. Further the mere indication in the said notice for declaring / discussing the said financial results of the company at the board meeting which was to be held on 14th August, 2012 cannot be considered as UPSI. Therefore it cannot be said that the UPSI came into existence on 3rd August, 2012. Hereto annexed and marked as Annexure 'A' is a copy of the notice dated 3rd August, 2012 sent to the directors.*
- viii) *With reference to para 9 and 10, I reiterate that the financial results were finalized on 14th August, 2012 at 07:30 pm during the board meeting and after the recommendation from the Audit committee on the same date at 08:00 am: Therefore it cannot be said that UPSI came into existence on 3rd August, 2012.*
- ix) *With reference to para 9 and 10, I deny that the notice dated 3rd August, 2012 that was sent to the directors on 3rd August, 2012 was dispatched after finalization of the financial results for the quarter ended June 2012 and nor is it shown in the said SCN. Therefore in the absence of the UPSI itself it cannot be alleged that I being one of the directors of TFPL was in possession of any UPSI as per Regulation 2(e) of PIT Regulations 1992 as purported in the said para or otherwise.*
- x) *With reference to para 11 to 13, I say that the said sale transactions on 13th August, 2012 were executed by my brokers in order to recover my outstanding dues on their own volition before the purported UPSI came into existence i.e. before 14th August, 2012 and cannot be alleged as a violation of PIT Regulations 2015 as more specifically set out in para 13 of the SCN. Hereto annexed and marked as Annexure 'B' (colly) are copies of summary of transactions from the contract notes for the month of August, 2012 for brokers KGR Securities and Amrapali Aadya Trading and Investment Pvt. Ltd respectively.*
- xi) *With reference to para 14 and 15, I reiterate that I have not violated the provisions of SEBI Act, 1992, PIT Regulations 1992 read with PIT Regulations 2015 as set out in the SCN or otherwise. In view thereof I pray that no penalty may be imposed upon me under Section 15G and 15HB of the SEBI Act, 1992 or otherwise.*

B. Reply of Noticee No. 2 / Chetana Kothari:-

- i) I say that all the various statements and allegations as contained in the above Show Cause Notice dated 1st June, 2016 (hereinafter referred to as 'SCN'), except to the extent expressly admitted by me herein to be true, are denied by me, and the same are not to be treated as admitted on grounds of non traverse.*
- ii) I say that I am filing the present reply for the limited purpose of opposing the allegations as contained in the SCN. I crave leave to make further oral and written submissions if that be necessary and if so advised.*
- iii) I say that at the time of the alleged investigation period I was not the director of Tricom Fruit Products Ltd. (hereinafter referred to as 'TFPL') and therefore I was not in any way involved in the day-to-day management of the company at the relevant time. I am making the present reply based on the available records.*
- iv) With reference to para 1 of the SCN, I say that I have not violated any provisions of SEBI(Prohibition of Insider Trading) Regulations, 1992 (Hereinafter referred to as 'PIT Regulations 1992') read with SEBI (Prohibition of Insider Trading) Regulations, 2015 (Hereinafter referred to as 'PIT Regulations 2015') as more specifically set out in the SCN or otherwise.*
- v) With reference to para 2 and 3 of the SCN, I say that I have not violated any provisions of the SEBI Act 1992 or the provisions of the various Rules, Regulations, and Guidelines made thereunder. And no proceedings against me are warranted for the alleged violations during the purported investigation period.*
- vi) With reference to para 4 to 7, I say that I was not privy to the actual facts and figures of the financial results for the quarter ended June 2012 at the relevant time as I was not involved in the affairs of the company in any manner what-so-ever. It is pertinent to mention the said financial results were finalized by the board of directors during their meeting on 14th August, 2012 at 07:30pm and only after the recommendation given by the Audit committee which was received earlier on the same date at 08:00 am. The said financial results were thereafter sent to BSE Ltd. (herein after referred to as 'BSE') and were made public on 14th August, 2012, at 20:52hrs(08:52pm). Therefore the corporate announcement of the said financial results purported to be price sensitive information cannot be alleged as 'Unpublished Price Sensitive Information' (hereinafter referred to as 'UPSI') in retrospect before 14th August 2012.*
- vii) With reference to para 8 to 10, I say that at the relevant time, I was not a director of Tricom fruit Products Ltd therefore and neither was the said notice which was purportedly sent to all the directors on 3rd August, 2012 nor any purported financial results for the quarter ended June 2012 of TFPL were received by me at the relevant time. Moreover it is not shown as to how the alleged UPSI came into existing purportedly on 3rd August, 2012.*
- viii) Further as set out in para 4 of the SCN, the financial results for quarter ended June 2012 were finalized on 14th August, 2012 at , 07:30 pm during the board meeting and after the recommendation from the Audit committee on the same date at 08:00 am. I further reiterate that I was not present for any of the aforementioned meetings as I was not a Director of the Company at the relevant time and I was not privy to the facts and figures of the said financial results before they were made public on BSE on 14th August, 2012 at 20:52hrs (08:52pm).*

- ix) *With reference to para 9 and 10, I reiterate that the notice which was purportedly sent to all the directors on 3rd August, 2012 was not received by me as I was not the Director of the Company at the relevant time and I was not privy to any alleged finalization of the financial results for the quarter ended June 2012 and nor is it shown in the said SCN that how the alleged UPSI came into existence before 14th August, 2012. Therefore in the absence of the UPSI itself it cannot be alleged that I being the wife of one of the director of TFPL viz. Mr Chetan Kothari , was in possession of any alleged UPSI as per Regulation 2(e) of PIT Regulations 1992 as purported in the said para or otherwise.*
- x) *With reference to para 11 to 13, I say that the sale transactions on 13th August, 2012 were executed by my brokers before the alleged UPSI came into existence i.e. on 14th August, 2012. The said sale were executed in order to recover my outstanding dues on the brokers own volition and cannot be alleged as a violation of PIT Regulations 2015 as more specifically set out in para 13 of the SCN. Hereto annexed and marked as Annexure 'A' (colly) are extracts of my summary transactions from the contract notes for the month of August, 2012 for brokers Guinness Securities Ltd and Amrapali Aadya Trading and investment Pvt. Ltd respectively .*
- xi) *With reference to para 14 and 15, I reiterate that I have not violated the provisions of SEBI Act, 1992, PIT Regulations 1992 read with PIT Regulations 2015 as set out in the SCN or otherwise. In view thereof I pray that no penalty may be imposed upon me wlder Section 15G and 15HB of the SEBI Act, 1992 or otherwise.*

18. During the period of instant proceeding, the Hon'ble Supreme Court of India vide judgment dated November 26, 2015 in the case of *SEBI vs. Roofit Industries Ltd.* held that Adjudicating Officer has no discretion in deciding quantum of penalty under Chapter VI A (except in u/s 15F(a) and 15HB of the SEBI Act). The issue involved in *Roofit* case was differently interpreted in case of *Sidharth Chaturvedi* (decided on March 14, 2016) and accordingly, the legal issue / matter was pending for Larger Bench of Hon'ble Supreme Court of India. Meantime, as per "The Finance Act 2017" (Notified for Part VIII of Chapters VI came into effect from April 26, 2017) following has been *inter - alia* clarified in respect of adjudication under SEBI Act-

147. In section 15J of the principal Act, the following Explanation shall be inserted, namely:-

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

19. Consequent to the clarity brought into the Finance Act, 2017, an opportunity of hearing was provided to the Noticees on February 1, 2018 vide notice dated January 17, 2018. Hearing on February 1, 2018 was attended by the authorized representative (AR) of the

Noticees. AR of the Noticees reiterated as submitted in their replies dated August 1, 2016 and submitted that we would like to submit additional submissions by February 8, 2018. Noticees submitted their additional submissions vide letter dated February 8, 2018 separately.

20. The key additional submissions/ replies of the Noticees vide letter dated February 8, 2018 towards the SCN are being mentioned below;

A. Reply of Noticee No. 1 / Chetan S Kothari:-

- i) *I request reference to the personal hearing dated February 01, 2018 wherein I was permitted to make additional submission. This submission is in continuation to my earlier submission made vide letter dated August 01, 2017. I am the Promoter and Managing Director of Tricom Fruit Products Limited ("TFPL or the said Company") being the Noticee No. 1 to the captioned notice submit as under:-*
- ii) *Tricom Fruit Products Ltd was a fruit processing company that processes and exports a variety of fruits in the form of puree, puree concentrate and frozen clear juice concentrate. It is important to note that due to financial loss the Company's property, assets taken over by the Edelweiss Asset Reconstruction Company Limited (EARC). Copy of the possession letter of (EARC) attached as Annexure A.*
- iii) *I further state that at the relevant time the Company was under financial stress and many of my shares were pledged for raising necessary loans to meet the liabilities of the Company. As submitted in the earlier letter and the documents annexed thereto I had a debit balance in the trading account maintained with the brokers. The declining financial status of the company had put me under tremendous stress and mental duress.*
- iv) *SEBI has conducted an investigation in the scrip of TFPL for the period between August 12, 2012 to August 16, 2012 and have issued the captioned SCN alleging the violation of the provisions of Regulation 3(i) of SEBI (Prohibition of Insider Trading) Regulations, 1992 ("PIT Regulations") r/w regulation 12(2) of SEBI (PIT) Regulations, 2015 and clause 3.2-2 & 3.2-5 of Model Code of Conduct contained in Schedule I of Part A r/w Regulation 12(2) of SEBI (Prohibition of Insider Trading) Regulations, 2015 ("PIT Regulations 2015") against me for the following transaction:*

<i>Date of Transaction</i>	<i>No. of Shares</i>	<i>Type of Transaction</i>
<i>13-Aug-12</i>	<i>15400</i>	<i>Sell</i>

- v) *The transaction under question pertains to sale of shares by the brokers who sold these shares without my knowledge to recover the debit balance. At the time of sale I was completely unaware of the transaction, but since it was to recover the debit balance, I did not raise any dispute thereafter as I understand that the brokers have a primary lien on shares of their clients and can sell the same to recover the outstanding. Copies of ledgers reflecting that the sale was for recovery of debit balance are already furnished to your good self.*
- vi) *Further the delivery of these shares was never given from my demat account and the shares were delivered from earlier retained shares in the demat account of the brokers as there was a debit balance. The shares were delivered to the Exchanges from the "client beneficiary account"*

maintained by the Brokers, where they are authorised to retain such shares if the clients have a debit balance. Copy of the Demat statements of August month is enclosed herewith as Annexure B representing that shares were not delivered from my Demat account.

vii) I say that there was no ill intention to carry out insider trading using the alleged UPSI which is evident beyond doubt from the fact that I was holding stake of 651587 shares in TFPL on 30th September, 2017 which representing approx 6.12% which is a date later to the alleged insider trades executed by me. If I had intentions to earn from insider trading, I would have sold huge quantity of shares rather than selling only 15400 shares that are under question in the SCN. Copy of the shareholding pattern of September 2012 is enclosed herewith for your reference for representing my post transaction holding as Annexure C.

viii) Though I reiterate that the trades were carried out without being in possession of UPSI, assuming but not accepting that I was in possession of UPSI of financial results, it is submitted that no undue advantage has been gained by me because the price of the shares increased after my sale and I could have got better price if I sold at a later date. The bhav copy reflects that the price was at the lowest level on the day of my sale and had increased thereafter. The price volume data of BSE for the month of august is given hereunder.

Date	Open	High	Low	Close	No. of Shares	No. of Trades	Total Turnover	Deliverable Quantity	% Deli.
1/08/12	41.45	41.50	39.75	41.05	26,796	92	10,91,939	14,614	54.54
2/08/12	41.95	41.95	40.05	40.50	39,993	67	16,45,774	27,718	69.31
3/08/12	41.00	41.30	32.45	32.45	48,588	290	18,39,873	22,935	47.20
6/08/12	35.50	35.50	26.00	26.00	19,047	87	5,01,118	18,723	98.30
7/08/12	23.45	23.45	23.45	23.45	17,080	32	4,00,526	17,061	99.89
8/08/12	21.15	21.15	21.15	21.15	440	11	9,306	436	99.09
9/08/12	19.05	19.05	19.05	19.05	5,385	9	1,02,584	5,385	100.00
10/08/12	18.10	18.10	18.10	18.10	2,050	5	37,105	2,050	100.00
13/08/12	17.20	18.00	17.20	17.35	2,17,434	195	37,52,839	1,71,456	78.85
14/08/12	17.30	18.20	16.75	18.20	3,778	21	67,424	3,635	96.21
16/08/12	18.95	19.10	18.85	19.10	8,416	24	1,60,308	8,416	100.00
17/08/12	20.00	20.05	19.05	20.00	15,382	39	3,07,066	15,382	100.00
21/08/12	21.00	21.00	21.00	21.00	12,240	19	2,57,040	12,240	100.00
22/08/12	22.05	22.05	21.05	22.05	15,075	36	3,31,563	14,223	94.35
23/08/12	23.05	23.15	23.05	23.15	13,464	38	3,11,566	12,436	92.36
24/08/12	24.30	24.30	23.90	24.30	19,890	40	4,81,167	16,116	81.03
27/08/12	24.30	25.50	23.10	25.00	14,461	85	3,45,982	10,394	71.88
28/08/12	25.00	25.90	24.30	24.50	2,567	19	63,056	2,537	98.83
29/08/12	25.50	25.50	23.50	23.50	3,315	19	78,439	3,020	91.10
30/08/12	24.25	24.25	22.50	22.95	6,143	21	1,42,078	5,842	95.10
31/08/12	23.00	23.90	23.00	23.60	229	5	5,404	229	100.00

- ix) Further it may also be noted that though SEBI alleges that UPSI came into existence on August 3, 2012 and was made public on August 14, 2012 (which I dispute), the sale was done only on 1 day i.e. August 13, 2012 and if I was interested in carrying out insider trading I would have traded and sold shares daily and in much larger quantities, which is not the case. This shows that the sale was done by the broker without my knowledge and I have not derived any benefit out of it as price was higher both before and after the sale as seen from the bhav copy.
- x) I also most humbly draw your kind attention to the fact that I have been under severe financial difficulty after the financial crises in my Company. So much so that I today stay in a rented house at "Flat No. 1502, 15th Floor; Rasraj Height, Rokadia Lane, Borivali-West, Mumbai-400092" as my own house situated at 907-908, Raj Madhur, I.C. Colony Layout, Devidas Lane, Borivali (West), Mumbai - 400 103 was been taken over by SBI for non- repayment of loans availed by Tricom. I reiterate that my extremely difficult financial position makes me completely incapacitate to bare any further burden of penalty and my case be viewed with kind and merciful sight. A copy of the said Auction notice and rent agreement is attached as Annexure D & E respectively. It is therefore prayed that a lenient view may be taken in this matter.
- xi) I am already victim of the circumstances and have lost my home, my shares and my wealth accumulated over years and have not received any financial benefit at all.
- xii) I submit that I have not gained anything out of the trades nor have caused any loss to other investors because of the sale. Further this is a one off case that happened inadvertently due to the aforesaid reasons and I am not a habitual insider trader.
- xiii) I, therefore humbly pray that considering the totality of circumstances and the admissions on my part, the present proceedings be disposed off against me without any action.

B. Reply of Noticee No. 2 / Chetana Kothari:-

- i) I request reference to the personal hearing dated February 01, 2018 wherein I was permitted to make additional submission. This submission is in continuation to my earlier submission made vide letter dated August 01, 2017. I am wife of Mr. Chetan Kothari who was the Promoter and Managing Director of Tricom Fruit Products Limited ("TFPL or the said Company") being the Noticee No. 2 to the captioned notice submit as under:-
- ii) Tricom Fruit Products Ltd was a fruit processing company that processes and exports a variety of fruits in the form of puree, puree concentrate and frozen clear juice concentrate. It is important to note that due to financial loss the Company's property, assets taken over by the Edelweiss Asset Reconstruction Company Limited (EARC). Copy of the possession letter of (EARC) attached as Annexure A.
- iii) I state that I was a housewife at that point in time and was completely oblivious of the specific results of the company or its day to day operations. Though I had a knowledge that the company was in difficult situation, I was never abreast with the results, notices, resolutions etc. of the company.
- iv) I further state that at the relevant time the Company was under financial stress. As submitted in the earlier letter and the documents annexed thereto I had a debit balance in the trading account maintained with the brokers. The declining financial status of the company had put me under tremendous stress and mental duress.
- v) SEBI has conducted an investigation in the scrip of TFPL for the period between August 12, 2012 to August 16, 2012 and have issued the captioned SCN alleging the violation of the provisions of Regulation 3(i) of SEBI (Prohibition of Insider Trading) Regulations, 1992 ("PIT Regulations") r/w regulation 12(2) of SEBI (PIT) Regulations, 2015 against me for the following transaction:

Date of Transaction	No. of Shares	Type of Transaction
13-Aug-12	55879	Sell

- vi) *The transaction under question pertains to sale of shares by the brokers who sold these shares without my knowledge to recover the debit balance. At the time of sale I was completely unaware of the transaction, but since it was to recover the debit balance, I did not raise any dispute thereafter as I understand that the brokers have a primary lien on shares of their clients and can sell the same to recover the outstanding. Copies of ledgers reflecting that the sale was for recovery of debit balance are already furnished to your good self.*
- vii) *Further the delivery of these shares was never given from my demat account and the shares were delivered from earlier retained shares in the demat account of the brokers as there was a debit balance. The shares were delivered to the Exchanges from the "client beneficiary account" maintained by the Brokers, where they are authorised to retain such shares if the clients have a debit balance. Copy of the Demat statements of August month is enclosed herewith as Annexure B representing that shares were not delivered from my Demat account.*
- viii) *I say that there was no ill intention to carry out insider trading using the alleged UPSI which is evident beyond doubt from the fact that I was holding stake of 10000 shares in TFPL on 30th September, 2017 which is a date later to the alleged insider trades executed by me. If I had intentions to earn from insider trading, I would have sold these shares also. Copy of the shareholding pattern of September 2012 is enclosed herewith for your reference for representing my post transaction holding as Annexure C.*
- ix) *Though I reiterate that the trades were carried out without being in possession of UPSI, assuming but not accepting that I was in possession of UPSI of financial results, it is submitted that no undue advantage has been gained by me because the price of the shares increased after my sale and I could have got better price if I sold at a later date. The bhav copy reflects that the price was at the lowest level on the day of my sale and had increased thereafter. The price volume data of BSE for the month of august is given hereunder.*

Date	Open	High	Low	Close	No. of Shares	No. of Trades	Total Turnover	Deliverable Quantity	% Deli.
1/08/12	41.45	41.50	39.75	41.05	26,796	92	10,91,939	14,614	54.54
2/08/12	41.95	41.95	40.05	40.50	39,993	67	16,45,774	27,718	69.31
3/08/12	41.00	41.30	32.45	32.45	48,588	290	18,39,873	22,935	47.20
6/08/12	35.50	35.50	26.00	26.00	19,047	87	5,01,118	18,723	98.30
7/08/12	23.45	23.45	23.45	23.45	17,080	32	4,00,526	17,061	99.89
8/08/12	21.15	21.15	21.15	21.15	440	11	9,306	436	99.09
9/08/12	19.05	19.05	19.05	19.05	5,385	9	1,02,584	5,385	100.00
10/08/12	18.10	18.10	18.10	18.10	2,050	5	37,105	2,050	100.00
13/08/12	17.20	18.00	17.20	17.35	2,17,434	195	37,52,839	1,71,456	78.85
14/08/12	17.30	18.20	16.75	18.20	3,778	21	67,424	3,635	96.21
16/08/12	18.95	19.10	18.85	19.10	8,416	24	1,60,308	8,416	100.00
17/08/12	20.00	20.05	19.05	20.00	15,382	39	3,07,066	15,382	100.00
21/08/12	21.00	21.00	21.00	21.00	12,240	19	2,57,040	12,240	100.00

22/08/12	22.05	22.05	21.05	22.05	15,075	36	3,31,563	14,223	94.35
23/08/12	23.05	23.15	23.05	23.15	13,464	38	3,11,566	12,436	92.36
24/08/12	24.30	24.30	23.90	24.30	19,890	40	4,81,167	16,116	81.03
27/08/12	24.30	25.50	23.10	25.00	14,461	85	3,45,982	10,394	71.88
28/08/12	25.00	25.90	24.30	24.50	2,567	19	63,056	2,537	98.83
29/08/12	25.50	25.50	23.50	23.50	3,315	19	78,439	3,020	91.10
30/08/12	24.25	24.25	22.50	22.95	6,143	21	1,42,078	5,842	95.10
31/08/12	23.00	23.90	23.00	23.60	229	5	5,404	229	100.00

- x) Further it may also be noted that though SEBI alleges that UPSI came into existence on August 3, 2012 and was made public on August 14, 2012 (which I dispute), the sale was done only on 1 day i.e. August 13, 2012 and if I was interested in carrying out insider trading I would have traded and sold shares daily and in much larger quantities, which is not the case. This shows that the sale was done by the broker without my knowledge and I have not derived any benefit out of it as price was higher both before and after the sale as seen from the bhav copy.
- xi) I also most humbly draw your kind attention to the fact that due to financial distress, I have been under severe financial difficulty after the financial crises in my husband's Company. So much so that I, along with my husband, today stay in a rented house at "Flat No. 1502, 15th Floor, Rasraj Height, Rokadia Lane, Borivali-West, Mumbai-400092" as my own house situated at 907-908, Raj Madhur, I.C. Colony Layout, Devidas Lane, Borivali(West), Mumbai - 400 103 was been taken over by SBI for non-repayment of loans availed by Tricom. I reiterate that my extremely difficult financial position makes me completely incapacitate to bare any further burden of penalty and my case be viewed with kind and merciful sight. A copy of the said Auction notice and rent agreement is attached as Annexure D & E respectively. It is therefore prayed that a lenient view may be taken in this matter.
- xii) I am already victim of the circumstances and have lost my home, my shares and my wealth accumulated over years and have not received any financial benefit at all.
- xiii) I submit that I have not gained anything out of the trades nor have caused any loss to other investors because of the sale. Further this is a one off case that happened inadvertently due to the aforesaid reasons and I am not a habitual insider trader.
- xiv) I, therefore humbly pray that considering the totality of circumstances and the admissions on my part, the present proceedings be disposed off against me without any action.

21. After taking into account the allegations, replies / additional submissions of the Noticees and material available on records, I hereby, proceed to decide the case on merit.

CONSIDERATION OF ISSUES AND FINDINGS:-

22. I have carefully perused the written submissions of the Noticees and the documents available on record. The issues that arise for consideration in the present case are :

- a. Whether the Noticees are “insider” of Tricom Fruit Products Limited in terms of PIT Regulations?
- b. If yes, then, whether trading by ‘insider’ during unpublished price sensitive information (UPSI) period as alleged in the SCN, is in violation of regulations 3(i) of the PIT Regulations?
- c. If yes, then, whether the Noticees are liable for monetary penalty under section 15G of SEBI Act?
- d. Whether Noticee No. 1 had traded during window closure period as alleged in the SCN, is in violation of clauses 3.2-2 & 3.2-5 of Model Code of Conduct contained in Schedule I of Part A under regulation 12(1) of PIT Regulations, 1992 r/w regulation 12(2) of SEBI (PIT) Regulations, 2015?
- e. If yes, then, whether the Noticee No. 1 is liable for monetary penalty under section 15HB of SEBI Act?
- f. What would be the monetary penalty that can be imposed upon the Noticee No. 1 & 2 under section 15G of SEBI Act and Noticee No. 1 under Section 15HB of SEBI Act, taking into consideration the factors stipulated in section 15J of the SEBI Act?

ISSUE No. 1 and 2

Whether the Noticees are “insider” of Tricom Fruit Products Limited in terms of PIT Regulations? AND

If yes, then, whether trading by ‘insider’ during unpublished price sensitive information (UPSI) period as alleged in the SCN, is in violation of regulations 3(i) of the PIT Regulations?

23. Here, it would be relevant to refer the definition of ‘insider’ as stipulated under regulation 2 (e) of the PIT Regulations as under-

2(e) “insider” means any person who,

- (i) *“is or was connected with the company or is deemed to have been connected with the company and who is reasonably expected to have access to unpublished price sensitive information in respect of securities of a company, or*
- (ii) *has received or has had access to such unpublished price sensitive information.*

24. In order to examine whether a person is or was ‘connected’ or ‘deemed to be connected’ with the company, the following definition under the PIT Regulations is taken into consideration.

Reg. 2 (c) “connected person” means any person who,-

- i) *is a director, as defined in clause (13) of section 2 of the Companies Act, 1956 (1 of 1956), of a company, or is deemed to be a director of that company by virtue of sub-clause (10) of section 307 of that Act; or*
- ii) *occupies the position as an officer or an employee of the company or holds a position involving a professional or business relationship between himself and the company whether temporary or permanent and who may reasonably be expected to have an access to unpublished price sensitive information in relation to that company:*

Explanation :—For the purpose of clause (c), the words “connected person” shall mean any person who is a connected person six months prior to an act of insider trading;

Reg. 2(h) “person is deemed to be a connected person”, if such person—
viii) relatives of the connected person; or

Reg. 2(i) “relative” means a person, as defined in section 6 of the Companies Act, 1956 (1 of 1956);

Section 6 of Companies Act 1956, a person shall be deemed to be a relative of another if, and only if,

(a)

(b) they are husband and wife;

25. It is an undisputed fact that the Noticee No. 1 is the Promoter and Managing Director of the company and the Noticee No. 2 is the wife of Noticee No. 1. It is undisputed that the Notice of Board meeting regarding declaration / discussion of financial results of the company for the quarter ending June 2012 was circulated to Directors on August 3, 2012 and same was discussed on August 14, 2012. It is also undisputed that the said meeting was attended by the Noticee No. 1 (Promoter and Managing Director). I also note that company vide letter dated July 10, 2015 (which was provided to the Noticees as Annexure – 2 of the SCN) submitted that Noticee No. 1 was the person involved in the finalization of Financial Results for the quarter ending June 30, 2012 and Noticee No. 1 was also the member of Audit committee and persons who had accessed to the financial results for quarter ending June 30, 2012 prior to official announcement, which was made public on August 14, 2012. I also note from the minutes of Board meeting held on August 14, 2012, Noticee No. 1 was present in the meeting.

26. From bare perusal of regulations 2(c), 2(i) and 2(h) of the PIT Regulations, I am of the opinion that the Noticees are the 'connected person' / 'person deemed to be connected person' with the company. Certainly, by virtue of being the 'connected person' / 'person deemed to be connected person' with the company, the Noticees are reasonably expected to have access to UPSI and falls within the definition 'insider' within the meaning of PIT Regulations. Moreover, the concept of 'reasonably expected to have access to UPSI' is not applied to Director, because, the Director is part of the company's board and hence responsible for all the deeds/ acts of the company during the period when he is a Director.

27. Here, it is relevant to mention that the Hon'ble SAT in case of *SRSR Holdings Private Limited & Ors. vs. SEBI (decided on August 11, 2017)* at para 11 held that - *"It is relevant to note that the concept of 'reasonably expected to have access to UPSI' is not applied to Director/deemed Director, because, unlike other connected persons, Director/ deemed Director*

constitute part of the company's board and hence responsible for all the deeds/ acts of the company during the period when they were Director/ deemed Director'

28. Since, it is established that the Noticees are the 'insider' within the meaning of PIT Regulations, therefore, another core issue whether their trading during the UPSI period, is in violation of regulation 3(i) of the PIT Regulations, is being examined as under.
29. The SCN alleged one major instance which was PSI in nature i.e. 1) quarterly results for the period ending June 30, 2012.
30. It has already been established that the Noticee No. 1 and 2 are the 'insider'. It is established that quarterly results for the period ending June 30, 2012, which was PSI in nature and the said information was communicated to the Noticee No. 1 on August 3, 2012 and ultimately such PSI was announced/disclosed to the Stock Exchange only on August 14, 2012. Since the said information / quarterly results was a PSI and such PSI remained unpublished till August 14, 2012 and therefore, it became UPSI from 3rd – 14th August 2012. Noticee came to know about such UPSI on August 3, 2012 (upon receipt of Notice of Board meeting regarding declaration / discussion of financial results of the company for the quarter ending June 2012) and Noticee No. 1 had traded / sold 15,400 shares of the company on August 13, 2012 and Noticee No. 2 wife of Noticee No. 1 had traded / sold 55,879 shares of the company on August 13, 2012.
31. In respect to the allegation, the Noticee No. 1 contended that actual facts and figures of the financial results for the quarter ended June 2012 were not finalized until the board meeting dated 14th August, 2012 at 07:30pm and the recommendation of the said financial results by the Audit committee was not received until 14th August, 2012 at 08:00 am. and therefore, the same is not PSI before August 14, 2012. The notice dated 3rd August, 2012 sent to all the directors on 3rd August, 2012 did not contain the details of the financial results for the quarter ended June 2012 in any manner what-to-ever, mere indication in the said notice for declaring / discussing the said financial results of the company at the board meeting which was to be held on 14th August, 2012 cannot

be considered as UPSI. Therefore it cannot be said that the UPSI came into existence on 3rd August, 2012. Noticee No. 2 contended that she was not the director of the company and neither was the said notice was received by her and was not privy to the facts and figures of the said financial results before they were made public on August 14, 2012 and nor is it shown in the said SCN that how the alleged UPSI came into existence before 14th August, 2012. Therefore in the absence of the UPSI itself it cannot be alleged that being the wife of one of the director of TFPL viz. Mr Chetan Kothari / Noticee No. 1 was in possession of any alleged UPSI. I do not accept the said contention of the Noticees, as Noticee No. 1 being the Promoter and Managing Director of the company and the person involved in the finalization of Financial Results for the quarter ending June 30, 2012 and was also the member of Audit committee and persons who had accessed to the financial results for quarter ending June 30, 2012 prior to official announcement, which was made public on August 14, 2012. Also Noticee No. 1 being the Promoter and Managing Director is part of the company's board and hence responsible for all the deeds/ acts of the company during the period when he is a Director. Further, Noticee No. 2 being the wife of Noticee No. 1 is deemed to be connected person to the company and reasonably expected to have access to UPSI and falls within the definition 'insider' within the meaning of PIT Regulations.

32. As regards to plea that the Noticees had submitted that the sale transactions on August 13, 2012 were executed by their brokers before the alleged UPSI came into existence i.e. on August 14, 2012. The said sale were executed in order to recover their outstanding dues on the brokers own volition. Noticees also contended that brokers have sold these shares without their knowledge to recover the debit balance. At the time of sale the Noticees were completely unaware of the transactions and did not raise any dispute as the brokers can sell the same to recover the outstanding. During the adjudication proceedings, Brokers of the said Noticees through whom the transactions were done on August 13, 2012 were asked whether the said shares were sold upon instruction of the Noticees in normal course of trading. In this regard, Brokers have confirmed vide email dated February 16, 2018 that the said transactions done on August

13, 2012 were executed upon the instruction of the Noticees and the brokers have also confirmed that there were outstanding dues from the Noticees to the brokers as on August 12, 2012. In view of the same, Noticees contention cannot be accepted that the brokers have executed the Noticees shares on August 13, 2012 in order to recover their outstanding dues without their knowledge.

33. As it has been observed above that the Noticee No. 1 being the Promoter and Managing Director of the company and the person involved in the finalization of Financial Results for the quarter ending June 30, 2012 and was also the member of Audit committee and persons who had accessed to the financial results for quarter ending June 30, 2012 prior to official announcement, which was made public on August 14, 2012. Further, Noticee No. 2 being the wife of Noticee No. 1 is deemed to be connected person to the company and reasonably expected to have access to UPSI and falls within the definition 'insider' within the meaning of PIT Regulations, therefore, being aware / in possession of said UPSI, they have traded in the shares of the company on August 13, 2012.
34. From the above, it is clear that the Noticees while in possession of UPSI had traded in the scrip against the provision of regulation 3 of PIT Regulations which debars an insider to trade in the scrip when in possession of UPSI.
35. It would be pertinent to mention that legislative intention has been made clear to define the "insider" and if it is established that a person is "insider" and had dealt in the scrip "when in possession" of UPSI, then, such trading done by him would be against the regulatory framework / in violation of regulation 3 (i) of the PIT Regulations.
36. Noticees have also submitted that there was no ill intention to carry out insider trading using the alleged UPSI. If it had intention to earn from insider trading it would have sold huge quantity of shares. Assuming but not accepting that they were in possession of UPSI of financial results, it is submitted that no undue advantage has been gained by us because the price of the shares increased after our sale and we could have got better

price if we sold at a later date. Moreover, as observed above, trading by any insider during UPSI period, is itself against the legislative / regulatory framework and therefore aforesaid submissions of the Noticees are not acceptable.

37. Here, it is not out of place to mention that once the person is found to be “insider” within the meaning of PIT Regulations, then, the onus to disprove that he is not an “insider” and not in ‘possession’ of UPSI, lies on the said person only. In the instant case, the Noticees had failed to disprove the same.

38. I am of the opinion that basic premise that underlines the integrity of securities market is that persons connected with such market conform to the standards of transparency, good governance and ethical behaviour prescribed in securities laws. The Insider Trading Regulations have put in place a framework for prohibition of insider trading in securities and the prohibitions provided in the PIT Regulations ensure a level-playing field in the securities market and safeguard the interest of investors and integrity of securities market. I am of the view that the object and spirit of the Insider Trading Regulations would get defeated if the violators of the said Regulations are not dealt as per the spirit of PIT Regulations.

39. In light of detailed observations, it is concluded that the Noticee No. 1 being the being the Promoter and Managing Director of the company and Noticee No. 2 being the wife of Noticee No. 1 (being ‘insiders’) had traded in the company “when in possession” of aforesaid UPSI and the Noticees had violated regulation 3(i) of PIT Regulations.

ISSUE NO. 3

If yes, then, whether the Noticees are liable for monetary penalty under section 15G of SEBI Act?

40. Since, the violation of regulation 3 (i) of the PIT Regulations against the Noticees have been established and keeping in mind the violations against the stipulated regulatory framework, I am therefore of the view that penalty needs to be imposed upon the

Noticees under section 15 G of the SEBI Act. Section 15 G of the SEBI Act reads as under;

Penalty for insider trading.

15G. *If any insider who,—*

- (i) either on his own behalf or on behalf of any other person, deals in securities of a body corporate listed on any stock exchange on the basis of any unpublished price-sensitive information; or*
- (ii) communicates any unpublished price-sensitive information to any person, with or without his request for such information except as required in the ordinary course of business or under any law; or*
- (iii) counsels, or procures for any other person to deal in any securities of any body corporate on the basis of unpublished price-sensitive information,*

shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher.

41. Though, no plea is taken by the Noticees, but, it would also be relevant to mention that section 15G (Chapter VIA of SEBI Act) was incorporated vide SEBI Amendment Act in the year of 1995 and remained as it is except change in quantum of penalty in said section / Chapter in subsequent Amendments. The intention to amend the PIT regulation in 2002 was to bring the concept of trading done 'while in possession' of UPSI and not 'on the basis' of UPSI. Also, the same was held by Hon'ble SAT in case of SRSR Holding case (supra). Moreover, the legislative intent of keeping the phrase "while in possession" can be clearly seen in the New PIT Regulation 2015. Further, I cannot ignore to mention that section 12 A under chapter VA of the SEBI Act was inserted by virtue of SEBI (Amendment) Act, 2002 w.e.f. October 29, 2002 and after that amendment itself, the legislative intent to bring the concept of trading done 'while in possession' of UPSI was brought into legislation under clause 12 A (e) of SEBI Act. It is not the position that the word "on the basis of" in section 15G was incorporated subsequent to 2002 PIT Regulations Amendment / SEBI Act Amendment in 2002. It would be appropriate to mention that since the violation of insider trading is established, then, such section (viz. 15G of the SEBI Act) which is only remedial in nature, would be attracted for the commission of insider trading violation.

ISSUE NO. 4

Whether Noticee No. 1 had traded during window closure period as alleged in the SCN, is in violation of clauses 3.2-2 & 3.2-5 of Model Code of Conduct contained in Schedule I of Part A under regulation 12(1) of PIT Regulations, 1992 r/w regulation 12(2) of SEBI (PIT) Regulations, 2015?

42. Regulation 12(1) of PIT Regulations deals with the code of internal procedures and conduct for listed companies and other entities which include intermediaries, self-regulatory organisations, recognised stock exchanges and clearing house or corporation, public financial institutions, professional firms such as auditors, accountancy firms, law firms, analysts, consultants, etc, assisting or advising listed companies. The regulations require, inter alia, listed companies to frame a code of internal procedures and conduct as near thereto the Model Code specified in Schedule I of these Regulations.

43. Clause 3.2-2 of Code of Conduct specified under Part A of Schedule I of the PIT Regulations states that, the employees/directors shall not trade in the company's securities when the trading window is closed. Clause 3.2-5 of Code of Conduct specified under Part A of Schedule I of the PIT Regulations states that all the directors/officers/designated employees of the company shall conduct all their dealings in the securities of the company only in a valid trading window and shall not deal in any transaction involving the purchase or sale of the company's securities during the periods when the trading window is closed which is explained under clause 3.2-3 of the Code of Conduct specified under Part A of Schedule I of the PIT Regulations or during any other period as may be specified by the company from time to time.

44. It is observed that the Noticee No. 1 has traded on August 13, 2012 i.e. during the window closure period (i.e. during August 12, 2012 to August 16, 2012) for declaration of financial results on August 14, 2012. Noticee No. 1 sold 15,400 shares on August 13, 2012. The company should have had adequate mechanism in place for timely

communication of information regarding trading window closure to all its directors/officers and designated employees. I am therefore of the view that the Noticee No. 1 (being the Promoter and Managing Director of the company) by selling the shares of the company during the window closure period has violated clauses 3.2-2 & 3.2-5 of Model Code of Conduct contained in Schedule I of Part A under regulation 12(1) of PIT Regulations, 1992 r/w regulation 12(2) of SEBI (PIT) Regulations, 2015.

ISSUE NO. 5

If yes, then, whether the Noticee No. 1 is liable for monetary penalty under section 15HB of SEBI Act?

45. As the violation of clauses 3.2-2 & 3.2-5 of Model Code of Conduct contained in Schedule I of Part A under regulation 12(1) of PIT Regulations, 1992 r/w regulation 12(2) of SEBI (PIT) Regulations, 2015 has been established, I hold that the Noticee No. 1 is liable for monetary penalty under section 15HB of SEBI Act, which reads as under:-

Penalty for contravention where no separate penalty has been provided.

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

ISSUE NO. 6

What would be the monetary penalty that can be imposed upon the Noticee No. 1 & 2 under section 15G of SEBI Act and Noticee No. 1 under Section 15HB of SEBI Act, taking into consideration the factors stipulated in section 15J of the SEBI Act?

46. I cannot lose sight from the following well-known judgment(s) of Hon'ble Supreme Court of India in case of ***The Chairman, SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC)*** wherein it was held- *"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”.

47. While determining the quantum of penalty under section 15G and 15HB, 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.”*

48. The available records neither reveals specify disproportionate gains/ unfair advantage made by the Noticees nor the loss caused to the investors due to such violations / insider trading. Also no past actions / repetitive nature of default has been shown in the investigation report. I note that Noticee No. 1 being the promoter and managing director of the company had traded during the window closure period while in possession of UPSI and Noticee No. 2 being the wife of Noticee No. 1 is deemed to be connected person to the company and reasonably expected to have access to UPSI and falls within the definition ‘insider’ within the meaning of PIT Regulations, therefore, being aware / in possession of said UPSI, she had traded. Therefore, I am of the opinion that basic premise that underlines the integrity of securities market is that persons connected with such market conform to the standards of transparency, good governance and ethical behaviour prescribed in securities laws. The Insider Trading Regulations have put in place a framework for prohibition of insider trading in securities and the prohibitions provided in the PIT Regulations ensure a level-playing field in the securities market and safeguard the interest of investors and integrity of securities market. I am of the view that the object and spirit of the Insider Trading Regulations would get defeated if the

violators of the said Regulations are not dealt as per the spirit of PIT Regulations. Considering the facts and circumstance of the case, I am of the view that a justifiable penalty needs to be imposed upon the Noticees to meet the ends of justice

ORDER

49. After taking into consideration all the aforesaid facts and circumstances of the case, and in exercise of the power conferred upon me under section 15 I of the SEBI Act and rule 5 of the Adjudication Rules, I, hereby impose a penalty upon the Noticees as shown in the table below;

Noticee No.	Name of the Noticee	Violations	Penalty Amount
1	Chetan S Kothari	Under Section 15G of the SEBI Act for violation of regulation 3(i) of the PIT Regulations.	₹15,00,000/-(Rupees Fifteen Lakh only)
		Under Section 15HB of the SEBI Act for violation of clauses 3.2-2 & 3.2-5 of Model Code of Conduct contained in Schedule I of Part A under regulation 12(1) of PIT Regulations, 1992 r/w regulation 12(2) of SEBI (PIT) Regulations, 2015	₹8,00,000/-(Rupees Eight Lakh only)
		Total	₹23,00,000/-(Rupees Twenty Three Lakh only)
2	Chetana Kothari	Under Section 15G of the SEBI Act for violation of regulation 3(i) of the PIT Regulations.	₹15,00,000/-(Rupees Fifteen Lakh only)
		Total	₹15,00,000/-(Rupees Fifteen Lakh only)

50. I am of the view, that the said penalty would commensurate with the violations committed by the Noticees.

51. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of “SEBI – Penalties Remittable to Government of India”, payable at Mumbai, or through e-payment facility into Bank Account the details of which are given below;

Account No. for remittance of penalties levied by Adjudication Officer	
Bank Name	State Bank of India
Branch	Bandra-Kurla Complex
RTGS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No.	31465271959

52. The Noticees shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the “Enforcement Department (DRA-III) of SEBI”. The Format for forwarding details / confirmations of e-payments shall be made in the following tabulated form as provided in SEBI Circular No. SEBI/HO/GSD/T&A/CIR/P/2017/42 dated May 16, 2017 and details of such payment shall be intimated at e-mail ID - tad@sebi.gov.in

Date	Department of SEBI	Name of Intermediary/ Other Entities	Type of Intermediary	SEBI Registration Number (if any)	PAN	Amount (in Rs.)	Purpose of Payment (including the period for which payment was made e.g. quarterly, annually)	Bank name and Account number from which payment is remitted	UTR No

53. In terms of rule 6 of the Adjudication Rules, copies of this order are sent to the Noticees and also to the SEBI.

DATE: FEBRUARY 22, 2018

PLACE: MUMBAI

RACHNA ANAND

ADJUDICATING OFFICER