

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/SR/PP/2020-21/7597/5]

UNDER SECTION 15-I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995 AND UNDER SECTION 23-I OF THE SECURITIES CONTRACTS (REGULATION) ACT, 1956 READ WITH RULE 5 OF THE SECURITIES CONTRACTS (REGULATIONS) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 2005

In respect of

Arvind Babulal Goyal

(Address: *Anmol Prestige, 2302,*

Opposite Patel Petrol Pump, S V Road, Goregaon West,

Mumbai- 400062)

(PAN: ACIPG0193J)

In the matter of Incap Financial Services Limited

BACKGROUND THE CASE IN BRIEF

1. Securities and Exchange Board of India (in short SEBI) received a complaint from India Infoline Limited alleging that an individual (Prem Agarwal) had circulated a message through short messaging service regarding trading in the scrip of Incap Financial Services Limited (hereinafter referred to as "**Incap**"/ "the **Company**") on January 11, 2011, stating: "BSE call buy INCFS (530887) at CMP TRGT 35/50 within a week news (splited), going to declare dividend within week so hurry up don't miss profit www.indiainfoline.com".

2. On the basis of the aforementioned complaint, a department of SEBI (in short **OD**) appointed Investigating Authority (in short **IA**) and undertook an investigation in the matter for a period from December 1, 2010 to February 23, 2011 (hereinafter referred to as **Investigation period / IP**) to ascertain whether there was any violation of Securities and Exchange Board of India Act, 1992 (in short **SEBI Act**), the Securities Contracts (Regulation) Act, 1956 (in short **SCRA**), the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 (in short **PFUTP Regulations**), the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (in short **SAST Regulations**) and the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 (in short **PIT Regulations 1992**) read with (r/w) the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 (in short **PIT Regulations 2015**). The shares of Incap were listed at Bombay Stock Exchange Limited during IP. IA observed non-compliances with regard to SEBI Act, SCRA, PFUTP Regulations, SAST Regulations and PIT Regulations by Arvind Babulal Goyal (in short **Noticee**) and others.
3. In view of the said investigation and observations by IA regarding Noticee, OD initiated adjudication proceedings against the Noticee to inquire into and adjudge under sections 15A(b), 15H, 15HA and 15HB of the SEBI Act and section 23H of the SCRA the alleged violations of provisions of regulations 7(1), 7(1A), 10 and 11(1) of SAST Regulations, Regulation 12(1) and 13(4) of PIT Regulations 1992 to read with Regulation 12(2) of the PIT Regulations 2015 and clause 1.2 and 4.2 model code of conduct for prevention of insider trading for listed companies given in schedule 1 part A r/w regulation 12(1) and 12(3) of PIT Regulations 1992 read with Regulation 12(2) of PIT Regulations 2015, sections 12A(a), (b), (c) of the SEBI Act, regulations 3(a),

(b), (c) & (d) and regulation 4(1), 4(2)(a) & (g) of PFUTP Regulations and section 16 of the SCRA r/w SEBI Notification G.S.R.219(E) dated March 2, 2000, sections 13 & 18 r/w section 2(i) of SCRA.

APPOINTMENT OF ADJUDICATING OFFICER

4. SEBI appointed Shri Nagendraa Parakh as the Adjudicating Officer (in short **AO**) and his appointment was communicated vide communique dated April 27, 2016 under section 15-I of the SEBI Act r/w rule 3 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (in short **AO Rules, 1995**) and also section 23-I of SCRA r/w rule 3 of Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005 (in short **AO Rules, 2005**) to inquire into and adjudge under section 15A(b), 15H, 15HA and 15HB of the SEBI Act the alleged violations of provisions of regulations 7(1), 7(1A), 10 and 11(1) of SAST Regulations, Regulation 12(1) and 13(4) of PIT Regulations 1992 to read with Regulation 12(2) of the PIT regulations 2015 and clause 1.2 and 4.2 model code of conduct for prevention of insider trading for listed companies given in schedule 1 part A read with regulation 12(1) and 12(3) of PIT Regulations 1992 read with Regulation 12(2) of PIT Regulations 2015, sections 12A(a), (b), (c) of the SEBI Act, regulations 3(a), (b), (c) & (d) and regulation 4(1), 4(2)(a) & (g) of PFUTP Regulations and section 16 of the SCRA r/w SEBI Notification G.S.R.219(E) dated March 2, 2000, sections 13 & 18 r/w section 2(i) of SCRA by the Noticee. Subsequently, the matter was transferred and Ms. Sangeeta Rathod (undersigned) was appointed an AO in this matter. The appointment of undersigned as AO was communicated vide order dated July 10, 2017.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

5. Show cause notice EAD/AO-NP/VVK/14001/3/2016 dated May 13, 2016 (hereinafter referred to as **SCN**) was issued by previous AO to the Noticee under rule 4 of the AO Rules, 1995 and rule 4 of AO Rules, 2005 advising to show cause as to why an inquiry should not be held against him and why penalty under sections 15A(b), 15H, 15HA and 15HB of SEBI Act and section 23H of SCRA be not imposed on him for the violations alleged and specified in the said SCN. The Investigation Report of the IA which had description of alleged violations by the Noticee was sent to the Noticee as part of the SCN, and following was also alleged in the SCN:

i) Noticee has triggered an open offer obligations on 30th September, 2010 under Regulation 10 and on 16th October, 2010 under Regulation 11(1) of the SEBI SAST Regulations. It is alleged that the combined shareholding of Dharmendra Bhojak, Abhay Javlekar, and Noticee being PACs, crossed 15% of issued capital of Incap on 30th September, 2010 and further 5% twice, once on 16th October, 2010 and once along with Pooja Goyal and Ramesh Dwarkades Daga on 6th December, 2010, of shares of Incap, which allegedly attracted the provision of regulation 10 & 11(1) of the SAST Regulations, 1997, however, no open offer was given under the SAST Regulations, 1997. Therefore, Noticee being PAC, have failed to comply with the provisions of regulations 10 & 11(1) of the SAST Regulations, 1997. Further, it is alleged that Noticee has failed to make disclosure for change in shareholding as PAC as required under regulation 7(1) & 7(1A) of SAST Regulations, 1997. It is also alleged that Noticee has failed to file disclosures with the company under regulation 12(1) and 13(4) of SEBI PIT Regulations, 1992 for change in shareholding. It is also alleged that you entered into opposite transactions i.e. sell or buy number of shares during six months following the prior transaction, thereby acted in violation of clause 1.2 and 4.2 model code of conduct for prevention of insider trading for listed companies given in schedule 1 part A read with regulation 12(1) and 12(3) of PIT Regulations 1992 read with Regulation 12(2) of SEBI regulations 2015. It is also alleged that Noticee being compliance officer of Incap failed to implement Model Code of Conduct as required under regulation 12(1) of SEBI regulations 1992 read with regulation 12(2) of PIT Regulations 2015. Further, in this regard you failed to provide information on behalf of company with respect to non implementation of code of conduct.

ii) Noticee has indulged in unfair trade practice by using the accounts of other suspected entities for reversal, synchronised trades and self-trades resulting in creation of artificial volume, thereby prima facie, acted in violation of section 12A(a), (b), (c) of SEBI Act r/w Regulation 3(a), (b), (c) & (d) and Regulation 4(1), 4(2)(a) & (g) of PFUTP Regulations, 2003.

iii) Noticee has acquired 170000 shares in off market which was not in conformity with the provisions of Section 2(i) of SCRA, therefore, prima facie, acted in violation of Section 16 of SCRA read with SEBI Notification G.S.R. 219 (E) dated March 2, 2000 and Section 13 and 18 of SCRA read with Section 2(i) of SCRA.

iv) Details of violations are given below

| <i>Alleged violation of provisions of law</i> | <i>Charging Sections under Act</i> |
|---|--|
| <i>Regulation 7(1) & 7(1A) of SEBI SAST regulations, 1997 Regulation 10 & 11(1) of SEBI SAST Regulations, 1997</i> | <i>Sec.15A(b) of SEBI Act, 1992 Sec.15H of SEBI Act,1992</i> |
| <i>Section12A(a), (b), (c) of SEBI Act r/w Regulation 3(a), (b), (c) & (d) and Reg.4(1), 4(2)(a) & (g) of SEBI (PFUTP) Regulations, 2003</i> | <i>Sec.15HA of SEBI Act, 1992</i> |
| <i>Section 16 of SCR Act, 1956 read with SEBI Notification G.S.R.219(E) dated March 2, 2000, Section 13 and Section 18 of SCR Act, 1956 read with Section 2(i) of SCR Act, 1956</i> | <i>Sec.23H of SCR Act, 1956</i> |
| <i>Regulation 12(1) & 13(4) of PIT Regulation, 1992 read with Regulation 12(2) of the PIT Regulation, 2015</i> | <i>Sec. 15A(b) of SEBI Act, 1992</i> |
| <i>clause 1.2 and 4.2 model code of conduct for prevention of insider trading for listed companies given in schedule 1 part A read with regulation 12(1) and 12(3) of PIT Regulations 1992 read with Regulation 12(2) of PIT Regulations 2015</i> | <i>Sec.15HB of SEBI Act, 1992</i> |

6. The SCN was sent to the Noticee through the speed post acknowledgment due (SPAD). Proof of service of the SCN upon the Noticee is available on record. Vide letter dated June 09, 2016 and June 14, 2016, Noticee interalia denied the allegations alleged in the SCN, requested for certain documents and further three weeks thereafter for reply. Vide letter dated June 17, 2016, Noticee was advised to contact respective department of SEBI latest by July 04, 2016 for the inspection of documents and the documents sought by Noticee vide letter dated July 11, 2016 intimated the change in correspondence address and accordingly the new address. "Anmol Prestige, 2302 Opposite Patel Petrol Pump SV Road Goregaon West Mumbai 400062" brought on record.

7. Vide email dated July 27, 2016 once again Noticee was intimated a fresh date for inspection and Noticee was advised to complete the inspection of documents on or before August 18, 2016. Vide letter dated August 24, 2016 Noticee was advised to file reply to the SCN by September 07, 2016 as the Noticee had failed to avail the inspection of documents.
8. Vide hearing Notice dated October 18, 2016, Noticee was advised to file reply to the SCN on or before November 03, 2016 and an opportunity of hearing was granted and hearing was scheduled on November 09, 2016. Vide second hearing notice dated December 13, 2016, it was intimated to the Noticee that the hearing notice dated October 18, 2016 for the hearing scheduled on November 09, 2016 is returned undelivered with comment "left" from both the addresses available on record. Thus, another opportunity of hearing was granted and the hearing was scheduled on January 11, 2017. Noticee has neither filed reply nor avail the opportunity of hearing. Vide letter dated March 30, 2017 Noticee was intimated that his/her reply is not received further an opportunity of hearing is granted and hearing is scheduled on April 12, 2017.
9. Vide letter dated April 08, 2017, Noticee stated that he has not received the earlier communications and regret the inconvenience. Further the submissions made are summarised hereunder-

1. I am in receipt of hearing notice interalia mentioned that earlier correspondence was returned undelivered from my new address I apologize for the inconvenience caused to you however I submit that I have not received any of the letters referred by your good self in this connection. I am trying to find out the cause if any at my end and rectify the same. I am unable to draft an appropriate reply since I could not avail inspection of documents as granted by your good self

2. I would kindly request good self to grant me a new date for inspection of documents on the basis of which SCN has been issued I also request you to grant me two weeks time after inspection of documents to submit reply.

3. I further request to postpone the date of hearing which is scheduled to be held on April 12 2017 and grant me one last opportunity in the interest of Justice.

10. Subsequent to appointment of undersigned vide letter dated November 28, 2017 Noticee was informed about the change of AO and the communique of order of appointment of AO was attached with the letter. Further, another opportunity of hearing was granted and hearing was scheduled on December 12, 2017. Vide letter dated December 11, 2017, Noticee has apologised the late reply and failure to attend the hearing scheduled on December 12, 2017. Further, requested for a fresh date of hearing excluding 25th to 31st of December. Vide letter dated January 09, 2018, Noticee was informed that final opportunity of hearing has been provided and hearing is scheduled on January 23, 2018 thereafter matter will be proceeded on the basis of material available on record. Noticee attended the hearing on January 23, 2018 requested time till February 15, 2018 for additional submissions. Noticee vide letter dated August 22, 2018 made submissions as summarised hereunder-

1. I deny that I have violated any of the provisions of SEBI Act, PFUTP Regulations, PIT Regulations and code of conduct specified there in SAST Regulations, SCRA and other provisions of act rules regulations as alleged.

2. I have vide my letter dated June 14 2016 sought inspection of documents which have not been provided to me. However, I am in the the process of drafting suitable reply and would be filing the same in due course.

3. In view of the judgement passed by Hon'ble High Court of Delhi in the case of Amit Jain vs SEBI (W.P.(C)8394/2014), and where in Hon'ble Court has held that the formation of opinion by the WTM is necessary prerequisite for the board to exercise its jurisdiction in view of the above I would request you to provide a copy of the office note where in the WTM of SEBI has independently formed an opinion that there are grounds for adjudging under chapter VI A of SEBI Act so as to ensure that the appointment of the adjudicating officer in the matter has been followed.

4. I request you to provide me above mentioned documents in addition to the documents sought vide letter dated June 14, 2016, I may also be granted inspection of the originals of the office note whereby the opinion been formed. No

order maybe passed without granting me an opportunity to file my reply and granting me personal hearing.

11. Vide letter dated August 29, 2018, Noticee has interalia submitted that-

1. During September 2010, Mr Jayesh Solanki employee of Incap who looked after the Mumbai office of the company approached me to look after compliance of Incap and took my documents by cheating and appointed me as the director on Board of Incap Financial Services Limited. In November, 2010 when I became aware of my appointment as the director of Incap, I tendered my resignation. I therefore submit that I had already resigned from the company even before the beginning of the investigation period i.e. 1st December 2010.

2. Trading account in my name in Yoke securities was opened at the instance of Mr Jayesh Solanki. Also to facilitate trading I deposited signed blank cheque book and delivery instruction slips to him in good faith. I had deposited blank cheques and delivery instruction slip with Yoke Securities for the purpose of convenience of transactions. However, he betrayed my trust and misused them. Many trades are executed in my account with Yoke Securities without my knowledge. I have faced grave hardship because of them. My money was siphoned off and I am left completely cheated cornered and devastated.

3. After I opened my account with Yoke Securities on instance of the Jayesh Solanki, Abhay Javlekar showed interest in opening the trading account with Yoke Securities as well. I therefore introduced him with Jayesh Solanki, who had inturn introduced him to Yoke Securities. Apparently there were many trades executed in Abhay's trading account as well without his permission, similar to me, which resulted in loss to his account, and for which he partly accused me. He demanded the said money from me because I had indirectly introduced him to Yoke Securities which resulted in loss to him.

4. I have also inform SEBI in my statement that I have opened my wife, Miss Pooja Goyal's trading account with Yoke Securities through Mr Jayesh Solanki and also that I introduced Mr. Abhay Javlekar to Mr Jayesh Solanki.

Further, a very different colour has been given to my above submission by SEBI in this SCN. My statement have been turned and twisted and presented in a false manner in the investigation report at para number 21 A.i. of the investigation report states that and in my submission made to SEBI, I have accepted that I was operating the trading account or Abhay Javlekar and all the trading and Abhay's account was done by me. I state that this is completely false.

The investigation report has tried to mislead the authority by misquoting the facts. I was once again reiterate that I have not traded in the scrip on anyone else's account. The statement has been misinterpreted and given colour to draw wrong conclusion.

5. With regards to the table of connections relationship between suspected entity is given at para 11 of IR, an attempt has been made to draw connection between me, Abhay Javlekar, Dharmendra and Ramesh Daga on the basis of my cell number and email ID. In this regard I would like to state that I have not given my email id or cell number in their KYC voluntary the handwriting in the KYC documents of Yoke Securities are not mine, and I am not aware of the reason why Abhay Javlekar give my email id in his KYC. I would like to also point out that the cell number given in his KYC is 9324932949, as opposed to 9322229797 as stated in the SCN. This number, 93249322949 is infact Abhay Javlekar's number. This is yet again one more false accusation levied in the SCN that the number provided in a Abhay's KYC belongs to me, which is contradictory to the evidence on record.

The fact that my email ID was provided in Abhay Javlekar's KYC does not prove anything against me, and the telephone number provided was in fact Abhay's own number. The handwriting on the KYC form of Abhay Javlekar does not belong to me. I have not done any trading, or placed any order on behalf of Abhay Javlekar. No call recording, copy of any email, or any other documentary proof has been provided by Yoke Securities in this relation that may prove otherwise.

I submit that anyone can fill in the KYC and enter any email id mobile number they desire, as no proof is to be attached with it for the same. However the same holds no meaning if the said email ID or number is never used for placing orders. SEBI has also alleged that my email ID that is agoyal143@yahoo.com was used to place orders as well as confirm them for Mr. Dharmendra Bhojak which is untrue.

12. Vide letter dated February 05, 2020, Noticee was informed that his replies dated April 04, 2017, August 22, 2018 and August 29, 2018 are on record. Further, Noticee was advised to file additional submissions, if any, latest by February 24, 2020 and an opportunity of hearing is granted on February 27, 2020. Vide letter dated February 24, 2020, authorised representative of the Noticee submitted the letter of authorisation and stated that they have recently come on record and sought inspection of documents further sought extension of four to six weeks from date of inspection being granted.

13. Authorised representative (AR) appeared for hearing on February 27, 2020 reiterated the submissions detailed in replies dated April 04, 2017, August 22, 2018, April 29,

2018 and mentioned about the request of inspection. Further, AR sought time for additional submissions. Acceding to the request for additional submissions, time till March 09, 2020 was granted. Vide letter dated March 09, 2020 Noticee requested extension of time till March 18, 2020 for additional submissions. Vide letter dated March 16, 2020 Noticee filed additional submissions as summarised hereunder-

1. As per the SEBI's Investigation Report, the Board of Directors of Incap comprised of the Noticee as the Executive Director and Compliance Officer. The said observation is incorrect and contrary to the record.

SEBI has merely relied upon the Company's master data as available on the official website of MCA which does not appear to have been updated since long. In any case, the said data does not show the Noticee as 'Executive Director' of Incap, as alleged. A copy of the screenshot taken from MCA's website provided by the Noticee.

While it is emphatically denied that the Noticee has acted as a power of attorney holder on behalf of Abhay Javlekar, it is submitted that assuming without admitting that the Noticee has acted as POA Holder, even then Abhay Javlekar will continue to remain liable as the principal for the alleged trades which aspect has been completed ignored by SEBI.

Allegations relating to synchronized, reversal or self-trades

2. The Noticee has not done trading in any other Noticees' account except his wife, Pooja Goyal and hence, is not answerable in respect any alleged synchronized, reversal or self-trades undertaken in their accounts. As regards the alleged synchronized or reversal trades in respect of the Noticee, it is submitted that the same are miniscule as compared to the trading undertaken during the relevant period. It is submitted that the Noticee is alleged of entering into only 6 synchronized trades with quantity of 15,268 shares having Sum of LTP% Diff 0.32% and Sum of LTP Diff. (INR) 0.1. Likewise, there are allegedly only 6 reversal trades with quantity of 3,000 shares. There are no self-trades undertaken in the account of the Noticee. It is submitted that the aforesaid trades by themselves do not attract the provisions of PFUTP Regulations. It is submitted that no empirical data or statistics have been provided in the Investigation Report

to show that the Noticees had executed synchronized trade, self-trade or reversal of trade in his own trading account and nothing has been provided to show that the Noticee has traded from the trading account of Abhay Javlekar. Therefore, the finding of SEBI about the violations of the aforesaid provisions committed by the Noticee trading from the account of Abhay Javlekar is unjustified and without any cogent reason.

No violation of making open offer under Takeover Regulations 1992

3. It is submitted that save and except in the case of Mrs. Pooja Goyal, who is married to the Noticee, the Noticee is not related to and has not acted in concert with any of the other noticees. In light of the facts and submissions made hereinabove, the Noticee reiterates that the SCN has wrongly alleged Abhay Javlekar as person acting in concert with the Noticee and thereby, triggering the threshold limits provided under the Takeover Regulations 1997. The threshold limit of 5% was triggered exclusively by Abhay Javlekar with whom the Noticee was not acting in concert. There was no common objective or the intention between the Noticee and Abhay Javlekar for the purposes of acquiring substantial shares or voting rights of Incap and no such intention has been made out by SEBI under the SCN. It is further submitted that mere knowledge or acquaintance with another person cannot satisfy the test to establish whether two persons are acting in concert or not.

No violation of the Code of Conduct under PIT Regulations

*4. As per Clause 4.2 of the Model Code of Conduct for prevention of Insider Trading for Listed Companies given in Part A of Schedule I to PIT Regulations 1992 ("**said Model Code**"), all directors/officers/designated employees who buy or sell any number of shares of the company shall not enter into an opposite transaction i.e. sell or buy any number of shares during the next six months following the prior transaction. All directors/ officers/ designated employees shall also not take positions in derivative transactions in the shares of the company at any time. The Noticee is alleged to have entered into opposite transactions during investigation period on 9 occasions in the month of December 2010 and twice in the month of January 2011, aggregating to 11 times. It is pertinent to note that the Investigation Report has not taken into consideration certain critical facts before making the said allegation. Firstly, the Noticee had ceased to be the director of Incap by operation of law under the provisions of Section 260 of the*

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Companies Act, 1956 w.e.f. September 30, 2010. Secondly, the Noticee had vide his letter dated November 28, 2010 addressed to Incap, raised the issue of his appointment as director without his knowledge and consent and to put all doubts to rest, tendered his unconditional resignation as director of Incap. The said resignation letter dated November 28, 2010 bears the acknowledgment of Incap as received on December 3, 2010. Further, although the Noticee had agreed to take care of the compliance part of Incap but the Noticee had in fact never joined the company Incap and never acted in that capacity during any period of time. It is also pertinent to mention that the investigation conducted by SEBI has also not produced any documentary evidence to show that the Noticee had ever acted as Incap's officer to look after its compliance. It is, therefore, submitted that the provisions of Clauses 1.2 and 4.2 of the said Model Code are not attracted as during the period December 2010 and January 2011 as the Noticee was neither a director, nor an officer nor a designated employee of Incap and thus, there is no violation thereof read with Regulation 12(1) and 12(3) of PIT Regulations 1992 read with Regulation 12(2) of PIT Regulations 2015.

No violation on account of non-disclosures

5. a) *The Noticee is alleged to have not made disclosure under Regulation 13(4) of the PIT Regulations 1992 for the following two transactions:*

| Sr. No. | Date | Gr Sell Value | Value in Rs. |
|----------------|-------------|----------------------|---------------------|
| 1 | 01/12/2010 | 25,000 | 7,87,537.25 |
| 2 | 04/01/2011 | 52,000 | 13,28,600 |

The requirement to make disclosure under Regulation 13(4) of PIT Regulations 1992 for the aforesaid transactions was not attracted qua the Noticee as the Noticee was neither a director nor officer of Incap on the date of transactions.

b) As submitted above, Abhay Javlekar cannot be construed to be a person acting in concert with the Noticee or Mrs. Pooja Goyal. Consequently, the Noticee alongwith Mrs. Pooja Goyal has at no point of time crossed the threshold limits provided under Regulation 7(1) or 7(1A) of the Takeover

Regulations 1997 and have thus, not violated any disclosure requirements thereunder.

No violation of SCR Act, 1956

6. It is submitted that the Noticee has acquired the said 170000 shares lawfully through off-market route and has paid the purchase consideration thereof within the period prescribed under law. The Noticee craves leave to refer and rely upon the proof of payment of consideration to the respective seller as and when called upon by the regulator.

7. The Noticee has not done trading in any other Noticees' account except his wife, Pooja Goyal and hence, is not answerable in respect any alleged synchronized, reversal or self-trades undertaken in their accounts. As regards the alleged synchronized or reversal trades in respect of the Noticee, it is submitted that the same are miniscule as compared to the trading undertaken during the relevant period.

8. The SCN has not alleged any loss being caused to the investors on account of the Noticees' trading. The Noticee has been undertaking its business activities for reasonable time and has a good regulatory track record.

14. After taking into account, the allegations levelled in the SCN, replies received and material available on record, I hereby proceed to decide the case on merit.

CONSIDERATION OF ISSUES, EVIDENCES AND FINDINGS

15. I have carefully perused the charges levelled against the Noticee in the SCN and the material available on record. In the instant matter, the following issues arise for consideration and determination:-

Issue (a): Whether the Noticee has violated the provisions of regulations 7(1), 7(1A), 10 and 11(1) of SAST Regulations, regulation 13(4) of PIT Regulations 1992, clause 1.2 and 4.2 model code of conduct for prevention of insider trading for listed companies given in schedule 1 part A read with regulation 12(1) and 12(3) of PIT Regulations 1992, section 12A(a), (b), (c) of SEBI Act , regulations 3(a), (b), (c) & (d) and 4(1), 4(2)(a) & (g) of PFUTP Regulations and

section 16 of SCRA r/w Notification G.S.R.219(E) dated March 2, 2000, and sections 13 & 18 of SCRA r/w section 2(i) of SCRA?

Issue (b): If yes to issue a then, do the violations by Noticee attract monetary penalty under sections 15A(b), 15H, 15HA & 15HB of SEBI Act and section 23H of SCRA for the alleged violations by the Noticee?

Issue (c): If yes to issue b then, what is the quantum of monetary penalty to be imposed upon the Noticee, taking into consideration the factors mentioned in section 15J of the SEBI Act r/w rule 5(2) of the AO Rules, 1995 and section 23J of the SCRA r/w rule 5(2) of the AO Rules, 2005?

16. Before proceeding further, I refer to the relevant provisions:-

SAST Regulations

Disclosures of Shareholding and Control in a Listed Company

Acquisition of 5% and more shares of a company

7.(1) Any acquirer, who acquires shares or voting rights which (taken together with shares or voting rights, if any, held by him) would entitle him to more than five per cent or ten per cent or fourteen percent or fifty four per cent or seventy four per cent shares or voting rights in a company, in any manner whatsoever, shall disclose at every stage the aggregate of his shareholding or voting rights in that company to the company and to the stock exchanges where shares of the target company are listed.

(1A) Any acquirer who has acquired shares or voting rights of a company under sub-regulation (1) of regulation 11, shall disclose purchase or sale aggregating two percent. or more of the share capital of the target company to the target company, and the stock exchanges where shares of the target company are listed within two days of such purchase or sale along with the aggregate shareholding after such acquisition or sale.

Acquisition of fifteen or more of the shares or voting rights of any company.

10. No acquirer shall acquire shares or voting rights which (taken together with shares or voting rights, if any, held by him or by persons acting in concert with him), entitle such acquirer to exercise fifteen percent or more of the voting rights in a company, unless such acquirer makes a public announcement to acquire shares of such company in accordance with the Regulations.

Consolidation of holdings

11. (1) No acquirer who, together with persons acting in concert with him, has acquired, in accordance with the provisions of law, 15 per cent or more but less than fifty five per cent. (55%) of the shares or voting rights in a company, shall acquire, either by himself or through or with persons acting in concert with him, additional shares or voting rights entitling him to exercise more than 5% of the voting rights, in any financial year ending

on 31st March, unless such acquirer makes a public announcement to acquire shares in accordance with the Regulations.

(2)

PIT Regulations, 1992

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

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

(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).*

SCHEDULE I [Under regulation 12(1)] PART A

MODEL CODE OF CONDUCT FOR PREVENTION OF 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.*

4.0 Other restrictions

4.2 *All directors/ officers/ designated employees who buy or sell any number of shares of the company shall not enter into an opposite transaction i.e. sell or buy any number of shares during the next six months following the prior transaction. All directors/ officers/ designated employees shall also not take positions in derivative transactions in the shares of the company at any time.*

13. *Disclosure of interest or holding by directors and officers and substantial shareholders in a listed companies -*

Continual Disclosure.

(4) *Any person who is a director or officer of a listed company, shall disclose to the company and the stock exchange where the securities are listed in Form D, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings of such person and his dependents (as defined by the company) from the last disclosure made under sub-regulation (2) or under this sub-regulation, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.*

SEBI Act

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

12A. *No person shall directly or indirectly—*

- (a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;*
- (b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;*
- (c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;*

PFUTP Regulations

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

- (a) buy, sell or otherwise deal in securities in a fraudulent manner;*
- (b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;*
- (c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;*
- (d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.*

4. Prohibition of manipulative, fraudulent and unfair trade practices

- (1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.*
- (2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:—*
 - (a) indulging in an act which creates false or misleading appearance of trading in the securities market;*
 - (g) entering into a transaction in securities without intention of performing it or without intention of change of ownership of such security;*

SCRA

Definitions.

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

- (i) “spot delivery contract” means a contract which provides for,—*
 - (a) actual delivery of securities and the payment of a price therefore either on the same day as the date of the contract or on the next day, the actual period taken for the despatch of the securities or the remittance of money therefore through the post being excluded from the computation of the period aforesaid if the parties to the contract do not reside in the same town or locality;*
 - (b) transfer of the securities by the depository from the account of a beneficial owner to the account of another beneficial owner when such securities are dealt with by a depository;*

Contracts in notified areas illegal in certain circumstances.

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

Provided that any contract entered into between members of two or more recognized stock exchanges in such State or States or area, shall—

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

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

Power to prohibit contracts in certain cases.

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

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

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

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

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

17. On perusal of the material available on record and giving regard to the facts and circumstances of the case, I hereby record my findings as under.

Issue (a): Whether the Noticee has violated the provisions of regulations 7(1), 7(1A), 10 and 11(1) of SAST Regulations, regulation 13(4) of PIT Regulations 1992, clause 1.2 and 4.2 model code of conduct for prevention of insider trading

for listed companies given in schedule 1 part A read with regulation 12(1) and 12(3) of PIT Regulations 1992, section 12A(a), (b), (c) of SEBI Act, regulation 3(a), (b), (c) & (d) and 4(1), 4(2)(a) & (g) of PFUTP Regulations and section 16 of SCRA r/w Notification G.S.R.219(E) dated March 2, 2000, and sections 13 & 18 of SCRA r/w section 2(i) of SCRA?

Open offer violations

a) As per SCN, an allegation against the Noticee is that the Noticee was person acting-in-concert (PAC) with other entities and that Noticee being PAC allegedly triggered open offer obligations on September 30th, 2010 under regulation 10 of SAST Regulations and on October 16th, 2010 & December 06th, 2010 under regulation 11(1) of the SAST Regulations, however, no open offer was made under the SAST Regulations. Therefore, Noticee being PAC, has allegedly failed to comply with the provisions of regulations 10 and 11(1) of the SAST Regulations. As regards, the said allegation, Noticee has contended that, *"After I opened my account with Yoke Securities on instance of the Jayesh Solanki, Abhay Javlekar showed interest in opening the trading account with Yoke Securities as well. I therefore introduced him with Jayesh Solanki, who had inturn introduced him to Yoke Securities. Apparently there were many trades executed in Abhay's trading account as well without his permission, similar to me, which resulted in loss to his account, and for which he partly accused me. I have also inform SEBI in my statement that I have opened my wife, Miss Pooja Goyal's trading account with Yoke Securities through Mr Jayesh Solanki and also that I introduced Mr. Abhay Javlekar to Mr Jayesh Solanki. My statement have been turned and presented that, I have accepted that I was operating the trading account of Abhay Javlekar and all the trading in Abhay's account was done by*

me. I once again reiterate that I have not traded in the scrip on anyone else's account. With regards to the table of connections relationship, an attempt has been made to draw connection between me, Abhay Javlekar, Dharmendra and Ramesh Daga on the basis of my cell number and email ID. In this regard I would like to state that I have not given my email id or cell number in their KYC voluntary the handwriting in the KYC documents of Yoke Securities are not mine, and I am not aware of the reason why Abhay Javlekar give my email id in his KYC. I would like to also point out that the cell number given in his KYC is 9324932949, as opposed to 9322229797 as stated in the SCN. This number, 93249322949 is infact Abhay Javlekar's number. This is yet again one more false accusation levied in the SCN that the number provided in a Abhay's KYC belongs to me, which is contradictory to the evidence on record. I submit that anyone can fill in the KYC and enter any email id mobile number they desire, as no proof is to be attached with it for the same. However the same holds no meaning if the said email ID or number is never used for placing orders. SEBI has also alleged that my email ID that is agoyal143@yahoo.com was used to place orders as well as confirm them for Mr. Dharmendra Bhojak which is untrue".

Upon perusal of the material on record, i.e. Investigation Report (in short IR) and other material I note that there is details of connection between Noticee and others who were alleged to be PAC in the table reproduced below:

| Sr. no. | Name | Observations |
|---------|----------------|---|
| 1 | Abhay Javlekar | As per kyc, agoyal143@yahoo.com was mail id for confirmation of contract notes with yoke securities, religare securities limited. This id also belonged to Arvind Goyal. |

| Sr. no. | Name | Observations |
|---------|-------------------|---|
| 2 | Arvind Goyal | Off-market transfers with chandrakanta satish mandowara, dharmendra bhojak, chandra shekhar sunil, manjulaben patel, dharmesh visariya, ramesh daga. |
| 3 | Dharmendra Bhojak | Acknowledged knowing arvind goyal, pooja goyal, ramesh daga and chandrakanta satish mandowara. |
| 4 | Pooja Goyal | Spouse of arvind goyal (director). as per kyc cell no 9322229797 and e-mail id for confirmation of contract notes belonged to arvind goyal. |
| 5 | Ramesh Daga | Off-market transfers with abhay javlekar, dhaval shah, dharmesh visariya and ishwari dharmesh visariya. same e-mail as that of arvind goyal at kyc of guinness securities i.e. csbhatt111@zapak.com. acknowledged knowing arvind goyal. |

b) It is an admitted position that Noticee had opened Miss Pooja Goyal's trading account with Yoke Securities through Mr Jayesh Solanki and Noticee was trading in Pooja Goyal's account. He also admitted that he introduced Mr. Abhay Javlekar to Mr Jayesh Solanki. Further it is admitted that he had provided Yoke Securities with DIS and signed cheques for the convenience of transactions. Also, Abhay Javlekar's KYC with Yoke Securities, has e-mail id of Noticee i.e. agoyal143@yahoo.com. From the contentions of the Noticee and other material on record, it can be seen that the said entities were PACs as alleged for disclosure violations under SAST Regulations.

c) It is further noted from the IR that the combined shareholding of Noticee, Abhay Javlekar and Dharmendra Bhojak had crossed 15% on September 30, 2010 and a further 5% twice i.e. on October 10, 2010 (Noticee, Abhay Javlekar and Dharmendra Bhojak) and December 6, 2010 (Noticee, Abhay Javlekar and Dharmendra Bhojak along with Pooja Goyal and Ramesh Dwarkadas Daga).

Following are details regarding shares acquired:

| DATES ON WHICH ACQUISITION OCCURRED | | | | | |
|-------------------------------------|------------|-------|--------|---------------|--------------------|
| FIRST HOLDER NAME | DATE | DEBIT | CREDIT | TOTAL HOLDING | % OF SHARE CAPITAL |
| ARVIND GOYAL | 30.09.2010 | 0 | 170000 | 170000 | 4.46 |
| DHARMENDRA BHOJAK | 30.09.2010 | 0 | 175000 | 345000 | 9.05 |
| | 30.09.2010 | 0 | 175000 | 520000 | 13.63 |
| ABHAY JAVLEKAR | 30.09.2010 | 0 | 150000 | 670000 | 17.57 |
| ABHAY JAVLEKAR | 5.10.2010 | 0 | 71800 | 741800 | 19.45 |
| | 12.10.2010 | 0 | 98400 | 840200 | 22.03 |
| | 16.10.2010 | 0 | 93700 | 933900 | 24.49 |
| DHARMENDRA BHOJAK | 1.12.2010 | 0 | 5448 | 939348 | 24.63 |
| ABHAY JAVLEKAR | 2.12.2010 | 0 | 17257 | 956605 | 25.08 |
| ABHAY JAVLEKAR | 3.12.2010 | 0 | 2728 | 959333 | 25.15 |
| ARVIND GOYAL | 3.12.2010 | 0 | 500 | 959833 | 25.17 |
| DHARMENDRA BHOJAK | 3.12.2010 | 0 | 10817 | 970650 | 25.45 |
| POOJA GOYAL | 3.12.2010 | 0 | 100 | 970750 | 25.45 |
| RAMESH DAGA | 3.12.2010 | 0 | 7500 | 978250 | 25.65 |
| ABHAY JAVLEKAR | 6.12.2010 | 0 | 223215 | 1201465 | 31.50 |

d) I refer to definition of PAC - as per regulation 2(1)(e) of the SAST Regulations , 'persons acting in concert' inter alia comprises: *"(1) persons who, for a common objective or purpose of substantial acquisition of shares or voting rights or gaining control over the target company, pursuant to an agreement or understanding (formal or informal), directly or indirectly co-operate by acquiring or agreeing to acquire shares or voting rights in the target company or control over the target company. (2) Without prejudice to the generality of this definition, the following persons will be deemed to be persons acting in concert with other persons in the same category, unless the contrary is established..."*

I note from IR that Noticee was instrumental in opening trading account of Pooja Goyal and Abhay Javlekar to facilitate trading by Noticee.

e) These actions by Pooja Goyal and Abhay Javlekar ensured the ownership and custody of the funds/securities in such account with him while at the same time ensuring the concealment of the real owner of such funds/securities in the records of the Depositories, etc. since the same continued to vest with name-lending account holder i.e. Noticee. I note that thus Noticee was 'person acting in concert' in terms of Regulation 2(1)(e)(1) of the SAST Regulations 1997 for acquiring shares in Incap and had the obligation of making open offer. For the aforementioned change in shareholding which attracted Regulations 10 and 11(1) of the SAST Regulations 1997, the Noticee as 'persons acting in concert' had failed to make an Open Offer thereby violating the said Regulations.

f) Regulation 10 of the SAST Regulations 1997, states that no acquirer shall acquire shares or voting rights which (taken together with shares or voting rights, if any, held by him or by 'persons acting in concert' with him), entitle such acquirer to exercise 15% or more of the voting rights in a company, unless such acquirer makes a public announcement to acquire shares of such company in accordance with the Regulation. Under Regulation 11(1) of the SAST Regulations 1997, any person, who together with 'persons acting in concert', already owns 15% or more shareholding in a company but less than 55%, must make a public announcement if he intends to acquire additional shareholding of more than 5% in a company with post acquisition shareholding or voting rights not exceeding 55% in any financial year ending on March 31 unless such acquirer makes a public announcement to acquire shares in accordance with the Regulations. Record shows that the acquisitions made by Noticee along with 'persons acting in concert' with him (as reproduced below) was over the threshold limits specified under Regulation 10 (as on October 16, 2010 – Noticee along with Abhay Javlekar) and

Regulation 11(1) (as on December 6, 2010 – Noticee along with Abhay Javlekar and Pooja Goyal) of the SAST Regulations.

| DATES ON WHICH ACQUISITION OCCURRED | | | | | |
|---|------------|-------|---------|---------------|--------------------|
| FIRST HOLDER NAME | DATE | DEBIT | CREDIT | TOTAL HOLDING | % OF SHARE CAPITAL |
| ARVIND GOYAL | 30.09.2010 | 0 | #170000 | 170000 | 4.46 |
| ABHAY JAVLEKAR | 30.09.2010 | 0 | #150000 | 320000 | 8.40 |
| ABHAY JAVLEKAR | 5.10.2010 | 0 | 71800 | 391800 | 10.28 |
| | 12.10.2010 | 0 | 98400 | 490200 | 12.86 |
| | 16.10.2010 | 0 | 93700 | 583900 | 15.32 |
| ABHAY JAVLEKAR | 2.12.2010 | 0 | 17257 | 601157 | 15.77 |
| ABHAY JAVLEKAR | 3.12.2010 | 0 | 2728 | 603885 | 15.84 |
| ARVIND GOYAL | 3.12.2010 | 0 | 500 | 604385 | 15.86 |
| POOJA GOYAL | 3.12.2010 | 0 | 100 | 604485 | 15.86 |
| ABHAY JAVLEKAR | 6.12.2010 | 0 | 223215 | 827700 | 21.71 |
| #SHARES WERE ACQUIRED THROUGH OFF-MARKET TRANSFERS WITH SHAREHOLDERS OF THE COMPANY WHO HELD SHARES IN PHYSICAL FORM. THESE SHARES WERE CONVERTED FROM PHYSICAL TO DEMAT AND THEN SOLD OFF-MARKET TO ARVIND GOYAL AND ABHAY JAVLEKAR. | | | | | |

Noticee has not provided any evidentiary proof to suggest otherwise, hence material on record demonstrates that Noticee and was ‘one of the persons acting in concert’ under regulation 2(1)(e) of the SAST Regulations and that allegation against the Noticee for violation of provisions of regulations 10 and 11(1) of the SAST Regulations, stand established.

Disclosure violations

g) Further, it is alleged in the SCN that Noticee has failed to make disclosure for change in shareholding as PAC as required under regulation 7(1) and 7(1A) of SAST

Regulations. Following table shows the transactions for which disclosure under SAST Regulations were required to be made by Noticee being PAC:

| Entity | Date | % holding of share Capital | Disclosures required under SAST Regulation but not complied |
|---|------------|----------------------------|---|
| Abhay Javlekar, Arvind Babulal Goyal & Dharmendra Harilal Bhojak | 30/09/2010 | 17.57 | SAST 7(1) |
| | 12/10/2010 | 22.03 | SAST 7(1A) |
| | 16/10/2010 | 24.49 | SAST 7(1A) |
| Abhay Javlekar, Arvind Babulal Goyal , Dharmendra Harilal Bhojak, Pooja Goyal & Ramesh Dwarkadas Daga | 09/12/2010 | 27.82 | SAST 7(1A) |
| | 09/12/2010 | 24.67 | SAST 7(1A) |
| | 14/12/2010 | 26.93 | SAST 7(1A) |
| | 21/12/2010 | 29.17 | SAST 7(1A) |
| | 27/12/2010 | 32.88 | SAST 7(1A) |
| | 03/01/2011 | 30.46 | SAST 7(1A) |
| | 04/01/2011 | 25.69 | SAST 7(1A) |
| | 05/01/2011 | 20.50 | SAST 7(1A) |
| | 06/01/2011 | 16.81 | SAST 7(1A) |
| | 07/01/2011 | 19.40 | SAST 7(1A) |
| | 12/01/2011 | 13.50 | SAST 7(1A) |

h) Further, it is also alleged in the SCN that Noticee has failed to make disclosure for change in shareholding required under regulation 13(4) of PIT Regulations for change in shareholding. As per regulation 13(4) of PIT Regulations, *any officer or director shall disclose to company and stock exchange change in shareholding where it exceeds Rs 5 lakhs in value, or 25,000 shares or 1% of total shareholding or voting rights whichever is lower.* It was observed that no disclosures were filed with exchange by Noticee as required under regulation 13(4) of PIT Regulations, as the change in his holdings exceeded 5,00,000 in value and 25,000 shares during the investigation period.

| Client | Date | Gr Buy Vol | Gr Sell Vol | Value in Rs. | Regulation Triggered (PIT) | Disclosures given (Yes/No) |
|----------------------|------------|------------|-------------|--------------|----------------------------|----------------------------|
| Arvind Babulal Goyal | 01/12/2010 | 0 | 25,000 | 7,87,537.25 | Yes/13(4) | No |
| | 04/01/2011 | 0 | 52,000 | 13,28,600 | Yes/13(4) | No |

i) The Noticee has not submitted any evidentiary proof of having made any disclosures under the SAST or PIT regulations to counter the allegations made in the SCN whereas record shows that the Noticee has not made relevant disclosures. Thus, I find that allegations levelled against the Noticee regarding failure to make disclosures under regulations 7(1) and 7(1A) of the SAST Regulations and regulation 13(4) of the PIT Regulations is established.

Model Code of Conduct violations

j) As regards, the alleged violations of the model code of conduct the Noticee has contended that *SEBI has merely relied upon the Company's master data as available on the official website of MCA which does not appear to have been updated since long. In any case, the said data does not show the Noticee as 'Executive Director' of Incap, as alleged. A copy of the screenshot taken from MCA's website is annexed hereto.* Said evidence produced by Noticee was perused and I note that under the Directors/ signatory details Noticee was one of the Director with DIN 03146099 with a begin date as September 09, 2010. Further, I note from the investigation report that the Noticee has failed to implement the Model Code of Conduct as required under Regulation 12(1) of PIT Regulations, 1992 and failed to provide information with respect to non-implementation of the code of conduct. Further, from Noticee's reply, I note that he has submitted his handwritten letter dated November 28, 2010 addressed to Incap and bearing a stamp of Incap, date of receipt as December 03, 2010 with the subject "*resignation from company*". In the said letter it is interalia

mentioned that *"it came to my knowledge that I have been appointed Director in the company which is been done without my consent, I was told to see the compliances only.....treat this letter as my resignation from today"*. It is also written in the letter that *"if you wish further to avail my services please contact me and fix the remuneration"*. Further, from the copy of resolution available on record, I note that the resolution was passed by Board of Directors of Incap approving the appointment of the Noticee as Additional Director with effect from September 29, 2010 until the conclusion of next AGM of the company. The IP commenced on December 01, 2010 and the resignation letter stamp is December 03, 2010. Further IP ends on February 23, 2011 and there is no material on record that the resignation of Noticee was accepted and thereby RoC filing made by the Company before IP ended. It is observed that, the Noticee was required to abide by Model Code of Conduct as required under clause 1.2 of model code of conduct for prevention of insider trading for listed companies given in schedule 1 part A read with regulation 12(1) and 12(3) of PIT Regulations, 1992.

k) Further as per clause 4.2 of Model Code of conduct given under Schedule I Part A read with Regulation 12(1) and 12(3) of PIT Regulations 1992, *All directors/ officers/ designated employees who buy or sell any number of shares of the company shall not enter into an opposite transaction i.e. sell or buy any number of shares during the next six months following the prior transaction. All directors/ officers/ designated employees shall also not take positions in derivative transactions in the shares of the company at any time.* In this regard, is observed that Noticee (Director of the company) has entered into opposite transactions during the investigation period as detailed hereunder thus Noticee has violated clause 4.2 of Model Code of conduct given under Schedule I Part A read with Regulation 12(1) of PIT Regulations 1992.

| Client | Date | Gr Buy Vol | Gr Sell Vol | Net Trd Vol |
|----------------------|------------|------------|-------------|-------------|
| Arvind Babulal Goyal | 01/12/2010 | 0 | 25,000 | -25,000 |
| | 02/12/2010 | 0 | 4199 | -4,199 |
| | 03/12/2010 | 500 | 0 | 500 |
| | 09/12/2010 | 0 | 14,231 | -14,231 |
| | 10/12/2010 | 0 | 11,500 | -11,500 |
| | 13/12/2010 | 7,593 | 0 | 7,593 |
| | 14/12/2010 | 100 | 0 | 100 |
| | 15/12/2010 | 1,1,100 | 0 | 1,1,100 |
| | 20/12/2010 | 3,000 | 3,000 | 0 |
| | 03/01/2011 | 0 | 2,100 | -2,100 |
| | 04/01/2011 | 0 | 52,000 | -52,000 |

PFUTP violations

l) The SCN alleges that Noticee has alleged to have created artificial volume in the scrip of Incap in violation of the provisions of sections 12A(a), (b), (c) of SEBI Act r/w regulations 3(a), (b), (c) & (d) and 4(1), 4(2) (a) & (g) of PFUTP Regulations through self-trades, synchronised trades and reversal trades. In this regards, Noticee has contended as follows: *"The Noticee has not done trading in any other Noticee's account except his wife, Pooja Goyal and hence, is not answerable in respect any alleged synchronized, reversal or self-trades undertaken in their accounts. As regards the alleged synchronized or reversal trades in respect of the Noticee, it is submitted that the same are miniscule as compared to the trading undertaken during the relevant period. It is submitted that the Noticee is alleged of entering into only 6 synchronized trades with quantity of 15,268 shares having Sum of LTP% Diff 0.32% and Sum of LTP Diff. (INR) 0.1. Likewise, there are allegedly only 6 reversal trades with quantity of 3,000 shares. There are no self-trades undertaken in the account of the Noticee. It is submitted that the aforesaid trades by themselves do not attract the provisions of PFUTP Regulations"*.

m) With regard to the self-trade as alleged in SCN, I observe that no evidence on record showing that Noticee executed self-trade and hence the allegation of self trades does not established.

n) As regards synchronised trades, upon perusal of material available on record I find that the Noticee has executed synchronized trades (where the buy and sell order quantity and rate were identical and orders for these transactions were placed within time gap of one minute) in the scrip of Incap during the investigation period by the Noticee. Details as available in record is given below:

| DETAILS OF SYNCHRONIZED TRADES FROM 2.12.2010 TO 4.01.2011 | | | | | | | |
|--|------------------|------------|---------------|--------------------|------------------------|---------------------------------------|---|
| BUY CLIENT NAME | SELL CLIENT NAME | SYNC. QTY. | NO. OF TRADES | SUM OF LTP % DIFF. | SUM OF LTP DIFF. (INR) | % OF CLIENT SYNC. VOL. TO MARKET VOL. | % OF CLIENT SYNC. VOL. TO CLIENT'S TOTAL VOL. |
| ABHAY JAVLEKAR | ARVIND GOYAL | 9531 | 1 | 0 | 0 | 0.187 | 1.027 |
| ABHAY JAVLEKAR | POOJA GOYAL | 1000 | 1 | -1.02 | -0.3 | 0.02 | 0.108 |
| ARVIND GOYAL | ABHAY JAVLEKAR | 5737 | 5 | 0.32 | 0.1 | 0.113 | 25.735 |
| POOJA GOYAL | ABHAY JAVLEKAR | 5000 | 2 | 2.04 | 0.55 | 0.098 | 3.716 |

o) As regards allegation of reveal trades, from the material on record it is also noted that Noticee has entered into reversal trades, details of such reversal trades by Noticee are given below:

| TABLE XII: DETAILS OF REVERSAL TRADES | | | | | |
|---------------------------------------|----------------|---|--------------------------|------------------------|--------------------------------|
| CLIENT NAME | CLIENT NAME | % OF REVERSAL QUANTITY TO MARKET VOLUME | SUM OF REVERSAL QUANTITY | NO. OF REVERSAL TRADES | NO. OF DAYS OF REVERSAL TRADES |
| ARVIND GOYAL | ABHAY JAVLEKAR | 0.06 | 3,000 | 6 | 1 |
| ABHAY JAVLEKAR | POOJA GOYAL | 0.49 | 25,000 | 15 | 3 |

p) From the material available on record and the details of synchronised trades and reversal of trades as detailed in the above paras, allegation of the violation of provisions of sections 12A(a), (b), (c) of SEBI Act, regulations 3(a), (b), (c) & (d) and 4(1), 4(2) (a) & (g) of PFUTP Regulations as given in the SCN thus stand established.

SCRA violations

q) It is alleged that Noticee has acquired 1,70,000 shares in off market transactions. In this regard, the Noticee has contended that he *has made payment for the said transaction and rely upon the proof of payment of consideration to the respective seller as and when called upon by the regulator*. However, Noticee has failed to submit the documentary proof of the payment made or receipt of consideration by counterparty. As per material on record there is no evidence of any consideration paid for the said transactions and that the admitted position of the Noticee of having entered into off market transactions, the alleged violation of provisions of section 16 of SCRA r/w Notification G.S.R.219(E) dated March 2, 2000, sections 13 & 18 of SCRA r/w section 2(i) of SCRA, thus stand established.

Issue (b): If yes to issue (a) then, do the violations by Noticee attract monetary penalty under sections 15A(b), 15H, 15HA & 15HB of SEBI Act and section 23H of SCRA for the alleged violations by the Noticee?

18. In light of the analysis regarding various allegations in terms of material available on record, it has been established that Noticee has violated provisions of regulations 7(1), 7(1A), 10 and 11(1) of SAST Regulations, regulation 13(4) of PIT Regulations 1992, clause 1.2 and 4.2 model code of conduct for prevention of insider trading for listed companies given in schedule 1 part A read with regulations 12(1) and 12(3) of PIT Regulations 1992, sections 12A(a), (b), (c) of SEBI Act, regulations 3(a), (b), (c)

& (d) and 4(1), 4(2)(a) & (g) of PFUTP Regulations and section 16 of SCRA r/w Notification G.S.R.219(E) dated March 2, 2000, and sections 13 & 18 of SCRA r/w section 2(i) of SCRA. Therefore, after taking into account the aforesaid entire facts / circumstance of the case, and material available on record, I am of the view that the above said violations attracts imposition of monetary penalty under sections 15A(b), 15H, 15HA, 15HB of SEBI Act and section 23H of SCRA. The relevant provisions in this regard is as under-

SEBI Act

Penalty for failure to furnish information, return, etc.

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

(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less;

Penalty for non-disclosure of acquisition of shares and takeovers.

15H. *If any person, who is required under this Act or any rules or regulations made thereunder, fails to,—*

(i) disclose the aggregate of his shareholding in the body corporate before he acquires any shares of that body corporate; or

(ii) make a public announcement to acquire shares at a minimum price; or

(iii)

(iv)

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

Penalty for fraudulent and unfair trade practices.

15HA. *If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty twenty-five crore rupees or three times the amount of profits made out of such failure, 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 for the regulations made or directions issued by the board there under for which no separate*

penalty has been provided shall be liable to a penalty which may extend to 1 crore rupees

SCRA

Penalty for contravention where no separate penalty has been provided.

23H. *Whoever fails to comply with any provision of this Act, the rules or articles or bye-laws or the regulations of the recognised stock exchange or directions issued by the Securities and Exchange Board of India for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.*

Issue (c) - If yes to issue (b) then what would be the quantum of monetary penalty that can be imposed upon the Noticee taking into consideration the factors mentioned in section 15J of SEBI Act and section 23J of the SCRA r/w rule 5(2) of the AO Rules, 1995 and AO Rules, 2005?

19. While determining the quantum of penalty under section 15J of SEBI Act and section 23J of SCRA, it is important to consider the factors stipulated in the said sections which reads as under:-

While adjudging quantum of penalty, 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.”*

20. I observe, that the material available on record with regard to the disproportionate gain, I would like to draw reference to SEBI order no. WTM/GM/EFD/42/2019-20 dated October 23, 2019 for the transactions made by the Noticee in its account in the scrip of Incap, *interalia* observed that-

“4.26 From the Impounding Order, it is observed that the wrongful gains/loss avoided by Arvind Goyal and Abhay Javlekar (through sale of shares when the price of the scrip of Incap was falling thereby avoiding loss) amounted to Rs. 5,43,88,397.34. As noted from the findings contained in the preceding paragraphs, Arvind Goyal had traded, by means of manipulative and unfair trade practices, in his own account and

Adjudication Order in respect of Arvind Babulal Goyal in the matter of Incap Financial Services Limited

the account of Abhay Javlekar. In view of the aforesaid, I am inclined to direct disgorgement only against Arvind Goyal in respect of the wrongful gains/ loss avoided through his trading account and the trading account of Abhay Javlekar. From the material available on record, I also note that the aforementioned amount has not been deposited in an Escrow Account as directed vide the Impounding Order. Having regard to the same, I am of the opinion that the interest amount computed under the Impounding Order should be extended till the date of this Order.”

21. Therefore taking into consideration the facts/circumstance of the case, I am of the view that the Noticee is liable for a monetary penalty as mentioned below for his failure to comply with the provisions of regulations 7(1) & 7(1A) and regulations 10 & 11(1) of SAST Regulations, regulation 13(4) of PIT Regulations, clause 1.2 and 4.2 of model code of conduct for prevention of insider trading for listed companies given in schedule 1 part A read with regulation 12(1) and 12(3) of PIT Regulations, 1992, sections 12A(a), (b), (c) of SEBI Act, regulations 3(a), (b), (c) & (d) and 4(1), 4(2)(a) & (g) of PFUTP Regulations and section 16 of SCRA r/w SEBI Notification G.S.R.219(E) dated March 2, 2000, sections 13 & 18 of SCRA r/w section 2(i) of SCRA.

| Charging Sections | Penalty (in Rupees) |
|--------------------------------|----------------------------|
| Section 15A(b) of the SEBI Act | 6 lakh |
| Section 15H of the SEBI Act | 8 lakh |
| Section 15HA of the SEBI Act | 3 lakh |
| Section 15HB of the SEBI Act | 1 lakh |
| Section 23H of the SCR Act | 1.7 lakh |

ORDER

22. In exercise of the powers conferred under section 15-I of SEBI Act and section 23-I of the SCRA and rule 5 of the AO Rules 1995 and rule 5 of AO Rules, 2005, I hereby impose a penalty of Rs. 19,70,000/- (Rupees Nineteen Lakh Seventy Thousand Only) under sections 15A(b), 15H, 15HA and 15HB of SEBI Act and section 23H of SCRA. I am of the view that the said penalty is commensurate with the defaults committed by the Noticee.

23. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order by one of following two modes:

- a) By using the web link <https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html>
- b) By way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai

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

- a) Case Name
- b) Name of the 'Payer/Noticee'
- c) Date of Payment
- d) Amount Paid
- e) Transaction No.
- f) Bank Details in which payment is made
- g) Payment is made for (like penalties/disgorgement / recovery/ settlement amount and legal charges along with order details)

25. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

26. Copies of this Adjudication Order are being sent to the Noticee and also to SEBI in terms of rule 6 of AO Rules, 1995 and rule 6 of AO Rules, 2005.

Date: April 30, 2020

Place: Mumbai

SANGEETA RATHOD

ADJUDICATING OFFICER