

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
ADJUDICATION ORDER NO. EAD-7/BD /NR/2020-21/7794-95

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) RULES, 1995.

In respect of:

1. Shreejesh Harindranath (PAN: BGSPS5226D) D-62, Bindapur DDA Flats Pocket 3, Dwarka New Delhi – 110059.	2. Sandeep A C (PAN: BHOPS6405D) Flat No. D-903 Ashok Nagar Apartments Road No. 19, Handewadi Road, Hadpsar, Pune – 411028.
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In the matter of SpiceJet Ltd.,

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") conducted an investigation in the scrip of SpiceJet Ltd., (*hereinafter referred to as the "Company"*) to ascertain any possible violation of the provisions of the SEBI Act and SEBI (Prohibition of Insider Trading) Regulations, 2015 (*hereinafter referred to as "PIT Regulations"*) during the period January 6, 2016 and February 8, 2016 (*hereinafter referred to as "Investigation Period" / "IP"*), by certain entities. The Investigation was also conducted to ascertain whether requisite compliances with respect to SEBI (PIT) Regulations, 2015 had been observed by SpiceJet and its Officials involved for preparation of quarterly results for the quarter ended December 2015
2. It was observed that SpiceJet on January 22, 2016 at 03:27 p.m. announced financial results for the quarter ended December 2015 wherein the company reported net profit of ₹ 238.39 crore as compared to the profit of ₹23.77 crore for the previous quarter September 2015 and net loss of ₹ 275.02 crore for the same quarter previous year i.e. December 2014. The increase in the net profit

was around 902.90% as compared to the net profit for the previous quarter ended September 2015.

3. The chronological events related to financial results for the quarter ended December 31, 2015 are tabulated as below:

Sl. No.	Date	Nature of discussion with stakeholders (phone / meetings/ approvals etc.)
1	6-Jan-16	Finance and Accounts Department received the provisional details from respective user departments
2	8-Jan-16	Provisional details considered in books of accounts by finance and Accounts Department
3	11-Jan-16	Draft financials results were prepared by Finance & Accounts Department and shared with Statutory Auditors
4	19-Jan-16 to 21-Jan-16	Statutory Auditors shared various revised version of draft financial results with Finance & Accounts Department and final version was shared on January 21, 2016.
5	21-Jan-16	Final version of financial results was shared with members of Board.
6	22-Jan-16 03:27 pm	Public Announcement gets updated on the websites of BSE

4. The definition of ‘unpublished price sensitive information’ as prescribed under Regulation 2(1)(n) of SEBI (PIT) Regulations, 2015 is as follows:

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

- i. *financial results*
- ii. *dividends*
- iii. *change in capital structure*
- iv. *mergers, de-mergers, acquisitions, delistings, disposals and expansion of business and such other transactions*
- v. *changes in key managerial personnel; and*
- vi. *material events in accordance with the listing agreement*

5. From the chronology of events as tabulated in para 3 above, information relating to financial results was a Price Sensitive Information (PSI), which came into existence on January 6, 2016, when the Finance and Accounts Department started receiving provisional details from respective user departments. The Company informed BSE Limited (hereinafter referred to as “BSE”) of the PSI i.e.,

financial results on January 22, 2016 at 03:27 PM. Therefore, the period from January 6 to 22, 2016 is considered as the period of UPSI (*unpublished price sensitive information*).

6. In terms of Regulation 2(1)(g) of SEBI (PIT) Regulations, 2015, “*insider*” means any person who is:

- i. A connected person, or
- ii. in possession of or having access to unpublished price sensitive information

7. The Company vide its letter dated October 04, 2018 and M/s S.R. Batliboi & Associates LLP, the Company’s statutory auditor vide email dated November 03, 2018, provided the list of following persons who were involved in the discussions and were aware of the financial results for the quarter ended December, 2015 till the date of public announcement. As the said financial results were PSI and hence the following persons were in possession of the PSI, prior to the public announcement and thus, were “*insiders*” as per Regulation 2(1) (g) of SEBI (PIT) Regulations, 2015.

Organization	Name of Director/Officer/Employees/Other Persons	
SpiceJet Limited	Ajay Singh	Chandan Sand
	Shiwani Singh	Jitendra Kushwah
	K R Sasiprabhu	Sushil Gupta
	Kiran Koteswar	Shreejesh Harindranath
	Vipin Gupta	Megha Chadha
	Sunil Maurya	
M/s S. R. Batliboi & Associates LLP	Vinay Gunasekhar	Prasanna Srinivasan
	Jeswant Vimalchand	Mrithyunjay N
	Aravind Krishnan	Aniruddh Sankaran
	Sunil Bhumralkar	

8. Upon examination of trading details of the above persons, it was observed that Shreejesh Harindranath (*hereinafter referred to as “Noticee 1”*), General Manager (GM), Financial Planning Analysis and Treasury, SpiceJet Ltd., had traded in the scrip of SpiceJet during the UPSI period i.e., January 6, 2016 and January 22, 2016.

9. It is observed that the Noticee 1 being an “insider” as stated under Regulation 2 (1) (g) of the SEBI (PIT) Regulations, 2015, bought 3,100 shares during January 6, 2016 and January 14, 2016 i.e., the period during which he was in possession of UPSI. Therefore, it is alleged that the Noticee 1 by trading in the scrip of SpiceJet while in possession of UPSI, had violated the provisions of Regulation 4 (1) of SEBI (PIT) Regulations, 2015 and Section 12 A (d) and 12 A (e) of SEBI Act, 1992.
10. It is observed that the Noticee 1 had not obtained pre-clearance for the trade executed by him on January 25, 2016, the value of which was above ₹ 5,00,000. Therefore, it is alleged that the Noticee 1 by not obtaining pre-clearance of trades during the investigation period had violated the provisions of Clause 6 of minimum standard of code of conduct prescribed under Schedule B read with Regulation 9 (1) of SEBI (PIT) Regulations, 2015.
11. It is observed that the Noticee 1, who was a designated person, had carried out contra trades i.e., buy and sell during November 1, 2015 to April 30, 2016 and earned a profit of ₹1.76 lakhs. Therefore, it is alleged that the Noticee1 by executing contra trades during the period November 1, 2015 and April 30, 2016, had violated the provisions of Clause 10 of minimum standard of code of conduct prescribed under Schedule B read with Regulation 9 (1) of SEBI (PIT) Regulations, 2015.
12. It is observed that the Noticee 1 being a designated person bought 3,100 shares while in possession of UPSI and sold 13,550 shares of SpiceJet during post announcement period i.e. January 25, 2016 to February 08, 2016, the cumulative value of such trades was in excess of ten lakh rupees. However, it is observed that the Noticee 1 failed to make any disclosure in this regard to the Company. Therefore, it is alleged that the Noticee 1 had violated the provisions of Regulation 7 (2) (a) of SEBI (PIT) Regulations, 2015.
13. It was observed that Sandeep A C (*hereinafter referred to as “Noticee 2”*), being a real brother of the Noticee 1 i.e., Shreejesh Harindranath was a connected person as defined under Regulation 2 (1) (d) (ii) (a) of SEBI (PIT) Regulations, 2015 and is considered to be an ‘insider’ in accordance with Regulation 2 (1) (g)

of SEBI (PIT) Regulations, 2015. It was observed that the Noticee 2 had bought 800 shares of SpiceJet on January 22, 2016 i.e., just before the announcement of UPSI and sold the same shares on January 25, 2016 i.e., post announcement of financial results. Therefore, it is alleged that the Noticee 2, by procuring UPSI from his brother i.e., the Noticee 1 had traded (buy) in the scrip of SpiceJet and his selling of shares post announcement also corroborates the same fact. Thus, it is alleged that the Noticee 2 was in possession of UPSI which was communicated to him by his brother i.e., Noticee 1. In view of the above, it is alleged that the Noticee 2 had violated the provisions of Regulation 3 (2) and 4(1) of SEBI (PIT) Regulations, 2015 and provisions of Section 12A(d) and 12A(e) of SEBI Act, 1992. Further, it is also alleged that the Noticee 1 while in possession of UPSI besides trading in the scrip of SpiceJet, had disclosed the UPSI to his brother i.e., the Noticee 2, who bought shares during the UPSI period and sold post announcement of financial results. Therefore, it is alleged that the Noticee 1 had violated the provisions of Regulation 3 (1) of SEBI (PIT) Regulations, 2015 read with Section 12A(e) of SEBI Act, 1992.

APPOINTMENT OF ADJUDICATION OFFICER

14. Based on the findings of the investigation, SEBI initiated Adjudication proceedings against the Noticees and appointed the undersigned as the Adjudicating Officer vide Order dated March 5, 2019 (*communicated vide Order dated March 28, 2019*) under Section 19 of SEBI Act read with Sub-section (1) of Section 15-I of the SEBI Act, 1992 and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as “**SEBI Adjudication Rules**”) to inquire into and adjudge under Sections 15G(i), 15 G(ii), 15HB and 15 A(b) of SEBI Act for the alleged violation of the provisions of SEBI (PIT) Regulations by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

15. A common Show Cause Notice (SCN) bearing ref. no., EAD-7/BJD/NJMR/25850/2019 dated September 30, 2019 was issued to the Noticees, under Rule 4(1) of the SEBI Adjudication Rules to show cause as to

why an inquiry should not be held and penalty be not imposed under Sections 15G(i), 15 G(ii), 15HB and 15 A(b) of the SEBI Act, for the violations alleged to have been committed by them.

16. Pursuant to receipt of a request from the Noticee 2 on October 15, 2019, an opportunity for carrying out inspection of documents was provided. I note that the Noticee 2 through his Authorized Representative carried out inspection of documents on November 6, 2019. I note that subsequent to filing of applications by the Noticees for settlement of the proceedings under SEBI (Settlement Proceedings) Regulations, 2018, the instant proceedings were kept in abeyance. Pursuant to rejection of settlement applications by the Competent Authority on March 6, 2020, the instant proceedings have been revived. Accordingly, vide email dated March 11, 2020 the Noticees were given an opportunity to file their replies to the charges alleged in the SCN by March 24, 2020.
17. I note that the Noticees 1 and 2 vide emails dated March 13 and 12, 2020 respectively filed their replies, which are summarized hereunder:

Reply of Noticee 1

- (a) *I would like to humbly submit that I had purchased shares during 06.01.2016 to 14.01.2016 only due to ignorance and oversight and with no malafide intention. It did not occur to me that I should not have purchased the shares while I was handling the financial results. I would also like to submit which I sold the shares which I already held only after the financial results had been published and was in public domain on January 22, 2016. Hence the sale of shares was not done while in possession of unpublished price sensitive information.*
- (b) *It is alleged that I had not taken pre-clearance for the transaction done on January 25, 2016 as it crossed the threshold limit of Rs.5,00,000 for obtaining the pre-clearance. I would like to humbly submit that I was not keeping tab on the value of the purchases and sales and hence did not seek pre-clearance and this was purely by oversight and was not with any malafide intention.*
- (c) *It is alleged that the net gains made by me due to my trades was Rs.1.76 lacs. I would like to submit that the moment it was pointed out by my company secretary that these trades were in violation of the model code of conduct, I repaid the profits made by me to the company which in turn*

forwarded it to the SEBI Investor Protection and Education Fund (IPEF). A copy of the correspondence in this regard is enclosed as Annexure 1.

- (d) It is alleged that I had indulged in contra trades and by doing so, I had violated Clause 10 of the Minimum standard of Code of Conduct prescribed by the SEBI (PIT) Regulations, 2015. I would like to submit that I was not aware of the same and the trades were executed only out of sheer ignorance and not with any malafide intention.*
- (e) It is alleged that I had not made disclosures for the trades done by me in the quarter as the value of the trades exceeded Rs.10,00,000 in the calendar quarter. I would like to submit that I was not aware of the same and the disclosures were not made only out of sheer ignorance.*
- (f) It is alleged in paragraph 22 that I had communicated price sensitive information to my brother on the basis of which he had purchased the shares of Spice Jet Limited on January 22, 2016 and sold the same on January 25, 2016. I deny this allegation and I had not communicated any information to my brother. He had purchased the shares on his own volition and there was no communication whatsoever from my end to my brother.*
- (g) All the above non-compliances were only due to oversight and sheer ignorance and not due to any malafide intention. I would also like to submit that as soon as I was informed of the non-compliances by my company secretary I had made an application for settlement voluntarily and the application has been rejected only because the settlement amount was too high and I cannot afford to pay such a huge amount. In view of the above submissions, I request you to kindly take a lenient view and drop all further proceedings.*

Reply of Noticee 2

- (a) Consequent upon carrying out inspection by my Authorised Representative, certain documents were called for by me, which have not been provided to me.*
- (b) I submit that my trading in the shares of SpiceJet was 800 shares only as mentioned in the SCN. I submit that neither did I have access to UPSI nor did I trade when in possession of any UPSI. I live in Pune and my brother is based in NCR. I traded on my own volition and did not have any information about the alleged publication of financial results of SpiceJet or any other corporate announcement.*

18. In the interest of natural justice and in terms of Rule 4 (3) of SEBI Adjudication Rules, it was decided to accord an opportunity of personal hearing to the Noticees. However, in view of Covid-19 pandemic, the Noticees were given an opportunity of hearing through WhatsApp video call on April 9, 2020, which was communicated to the Noticees vide email dated April 7, 2020. The Authorized Representative of the Noticee 2 vide email April 7, 2020 expressed his inability to attend the hearing as he was out-stationed and also in view of his inability to access the relevant documents. Due to technical reasons, the hearing in respect of the Noticee 1 could not be carried out. Therefore, the Noticees were once again provided with an opportunity of hearing through WhatsApp vide call on May 19, 2020, which was communicated vide emails dated May 6, 2020 and May 11, 2020. I note that on the scheduled date of hearing i.e., May 19, 2020 the Noticees appeared before me through WhatsApp video call along with their authorized representatives viz., Ms. Shailashri Bhaskar, Practising Company Secretary (for Noticee 1) and Mr. P R Ramesh, Advocate (for Noticee 2). The Noticee 1 and 2 reiterated the submissions made by them vide emails dated March 13, 2020 and March 12, 2020 respectively. Further, the Noticee 2 also made oral submissions on various case laws which he would like to rely upon and state the same in the additional submissions, to be furnished by May 26, 2020.

19. The Noticee 2 through his Authorised Representative filed additional submissions vide email dated May 22, 2020, which are summarized hereunder:

(a) It is submitted that the proceedings initiated by the SCN are in gross violation of the principles of natural justice as relevant material (complete copy of the investigation report, proof that Noticee procured UPSI and proof that Noticee 1 communicated UPSI to Noticee 2) in the formulation of the charges contained in the SCN have not been provided to the Noticee, thus precluding him from filing an effective reply thereto. Such violation of the principles of natural justice warrants the immediate withdrawal of the SCN.

(b) The failure on the part of SEBI to provide all materials/ documents/evidence relied upon in the SCN is clearly bad in law and is contrary to the settled principles of natural justice. It is submitted that the documents referred to and relied upon for the issuance of the SCN are absolutely essential, and without

the same, it is impossible for the Noticee to put up an appropriate /complete defence in the matter.

- (c) In this regard, the Noticee would like to place reliance on the various judgments of Hon'ble Supreme Court viz., Union of India v. E. Bashyan, (1998) 2 SCC 196, Chandrama Tewari Vs. Union of India (UOI) AIR 1988 SC 117, Moni Shankar v. Union of India, (2008) 3 SCC 484, and Hon'ble Securities Appellate Tribunal (SAT) in the matter of Price Waterhouse v SEBI, Appeal No. 8 of 2011.*
- (d) The Noticee is a self-employed software professional based out of Pune. During the investigation period, the Noticee was working as a technical architect in a software company based in Pune. The Noticee has his own source of income and used to trade in shares, online, in small quantities through ICICI Direct as and when he desired, based on reports he comes across in media and his own understanding of the markets. The Noticee has been trading since 2014. The Noticee recalls that the purchase of shares of SpiceJet was also based on reports in the press, about the company. Attached at Exhibit 1 is a report in financial express dated 23.11.2015 on the airline industry which had benefited from low fuel prices and spoke about the performance and expansion plan of SpiceJet. There was also a report in the financial express on 20.1.2016 (Exhibit 2) about the positive points of SpiceJet.*
- (e) Even before the transaction on 22.1.2016 the Noticee had purchased shares of SpiceJet after the press report. Even before the purchase of 800 shares on 22.1.2016, the Noticee was already holding 3850 shares of SpiceJet and some of these were purchased at a high price of Rs. 84.65 compared to the purchase price of around Rs. 67 to 70 on 22.1. 2016. The weighted average price of 3850 shares before 22.1.2016 was Rs. 76.79 and the price had come down to around Rs. 70 levels by 22.1.2016. The purchase of shares on 22.1.2016 reduced the average cost. The impugned notice alleges that the Noticee purchased the 800 shares on 22.1.2016 (at a total cost of Rs. 55525) as he received UPSI from his brother. It may be noted that the Noticee was already holding 3850 SpiceJet shares at a higher average cost and he purchased these shares based on press reports. Also it is alleged in the impugned notice that the same 800 shares were sold on 25.1.2016. Since the Noticee was already holding 3850 shares this allegation is incorrect. Even assuming the same 800 shares were sold (at a total price of 62040), , the profit made was only Rs. 6516. The Noticee continued to hold the balance shares after 25.2.1026 and he sold then same in May 2016.*
- (f) It is submitted that the Noticee is not a "connected person" as he was not associated with SpiceJet in any capacity and there is no such allegation as*

well. It is submitted that the Noticee is also not a 'deemed to be connected person', as he is not an 'immediate relative' as defined in the Regulations. The Noticee is neither dependent financially on his brother nor he consults him in taking decisions relating to trading in securities. Therefore the onus would be on the Board to establish that the Noticee was in possession of UPSI, which has not been done at all. Neither direct nor has circumstantial evidence been brought on record to support the serious charges of Insider Trading levelled in the impugned notice.

- (g) The allegations in the impugned notice against the Noticee is based on the preponderance of probability, that being the real brother of Mr. Shreejesh he purchased 800 shares on 22.1.2016 before announcement of UPSI to stock exchanges, only because he would have received the UPSI from his brother. There is not an iota of evidence shown to whether at all such communication of UPSI was made and received; the allegation is based purely on surmise. No direct or circumstantial evidence such as call records, or funding arrangement has been shown and the probability is merely an allegation which does not stand the judicial tests pronounced in various cases.*
- (h) In this regard, the Noticee would like place reliance on the ratios laid out in various judgments of Hon'ble Supreme Court (Chintalapati Srinivasa Raju & others v SEBI , Kishore Ajmera v. SEBI), Hon'ble SAT (Manoj Gaur and Ors. V. SEBI, Appeal no. 64 of 2012, Samir C Arora vs SEBI , Dilip S Pendse vs SEBI, Factorial Master Fund v SEBI, and Adjudication Order passed by the Ld. Adjudicating Officer in the matter of Reliance Petro Investments Ltd., in support of the submissions made above.*
- (i) As is clear from the aforesaid judgements, an allegation of violation of Regulation 3 (2) and 4(1) of PIT Regulations 2015 and Section 12A of the SEBI Act, 1992 cannot be made without showing evidence, direct, indirect or circumstantial and the standards of probability have to be higher to justify a penalty for a serious charge of Insider Trading. While the impugned notice has not shown the evidence, the Noticee, though the burden of proof is on SEBI, has amply demonstrated that reasons for purchase of shares on 22.1.2016 and therefore submits that he was not possession of UPSI when he purchased the shares on 22.1.2016. The charges made in the impugned Notice are 'not proved' and in the alternative this is a fit case for grant of benefit of doubt in favour of the Noticee, as held in the Factorial matter cited above.*

CONSIDERATION OF ISSUES

20. I have taken into consideration the facts and material available on record. The summary of alleged violations in respect of the Noticees and the corresponding violation of respective Regulations are furnished hereunder:

Sl. No	Name of the Noticee	Nature of findings in brief	Violations observed
1	Shreejesh Harindranath	Traded in the scrip of SpiceJet while in possession of UPSI	Regulation 4(1) of SEBI (PIT) Regulations, 2015 and Section 12A(d) & 12 A (e) of SEBI Act, 1992.
		Communicated UPSI to his brother Sandeep, based on which Sandeep traded in the scrip of SpiceJet.	Regulation 3 (1) of SEBI (PIT) Regulations, 2015 read with Section 12 A (e) of SEBI Act, 1992.
		Being employee, failed to make disclosure w.r.t. acquisition of share crossing ten lakh rupees in a quarter to the company.	Regulation 7(2)(a) of SEBI (PIT) Regulations 2015.
		Being designated person, entered into opposite transaction within 6 months of the prior transaction	Clause 10 of Minimum Standard of Code of Conduct contained in Schedule B r/w Regulation 9(1) of SEBI (PIT) Regulations, 2015.
		Being employee, traded in the scrip without receiving pre-clearance from the company on crossing the threshold value of Rs 5 lakh.	Clause 6 of Minimum Standard of Code of Conduct contained in Schedule B r/w Regulation 9(1) of SEBI (PIT) Regulations, 2015.
2	Sandeep A C	Procured information from his brother Shreejesh and traded in SpiceJet on the basis of UPSI.	Regulation 3 (2) of SEBI (PIT) Regulations, 2015 and Section 12A(d) & 12A(e) of SEBI Act, 1992.
			Regulation 4 (1) of SEBI (PIT) Regulations, 2015 and Section 12A(d) & 12A(e) of SEBI Act, 1992

21. After perusal of the material available on record, I have the following issues for consideration, viz.,

- I. *Whether the Noticees have violated the provisions of SEBI (PIT) Regulations, 2015 and Section 12 A (d) and 12 A (e) of SEBI Act, 1992?*

II. Does the violation, if any, attract monetary penalty under Sections 15G(i), 15G(ii), 15HB and 15 A (b) of SEBI Act.?

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

ISSUE-I: Whether the Noticee has violated the provisions of SEBI (PIT) Regulations, 2015 and Section 12 A (d) and 12 A (e) of SEBI Act, 1992?

22. Before moving forward, it is pertinent to refer to the provisions SEBI (PIT) Regulations, 2015 and Section 12 A (d) and 12 A (e) of SEBI Act, 1992 alleged to have been violated by the Noticees, which reads as under:

Regulation 4 (1) of SEBI (PIT) Regulations, 2015

No insider shall trade in securities that are listed or proposed to be listed on a stock exchange when in possession of unpublished price sensitive information.

Section 12 A (d) of SEBI Act

No person shall directly or indirectly engage in insider trading

Section 12 A (e) of SEBI Act

No person shall directly or indirectly deal in securities while in possession of material or non-public information or communicate such material or non-public information to any other person, in a manner which is in contravention of the provisions of this Act or the rules or the regulations made thereunder

Regulation 3 (1) of SEBI (PIT) Regulations, 2015

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

Regulation 3 (2) of SEBI (PIT) Regulations, 2015

No person shall procure from or cause the communication by any insider of unpublished price sensitive information, relating to a company or securities listed or proposed to be listed, except in furtherance of legitimate purposes, performance of duties or discharge of legal obligations.

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

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

Regulation 9 (1) of SEBI (PIT) Regulations, 2015

The board of directors of every listed company and the board of directors or head(s) of the organisation of every intermediary shall ensure that the chief executive officer or managing director] shall formulate a code of conduct with their approval to regulate, monitor and report trading by its designated persons and immediate relatives of designated persons] towards achieving compliance with these regulations, adopting the minimum standards set out in Schedule B (in case of a listed company) and Schedule C (in case of an intermediary)] to these regulations, without diluting the provisions of these regulations in any manner.

Clause 6 – Minimum Standards for Code of Conduct for Listed Companies to Regulate, Monitor and Report Trading by Designated Persons

When the trading window is open, trading by designated persons shall be subject to preclearance by the compliance officer, if the value of the proposed trades is above such thresholds as the board of directors may stipulate

Clause 10 – Minimum Standards for Code of Conduct for Listed Companies to Regulate, Monitor and Report Trading by Designated Persons

The code of conduct shall specify the period, which in any event shall not be less than six months, within which a designated person who is permitted to trade shall not execute a contra trade. The compliance officer may be empowered to grant relaxation from strict application of such restriction for reasons to be recorded in writing provided that such relaxation does not violate these regulations. Should a contra trade be executed, inadvertently or otherwise, in violation of such a restriction, the profits from such trade shall be liable to be disgorged for remittance to the Board for credit to the Investor Protection and Education Fund administered by the Board under the Act.

23. In order to examine charges as alleged, I consider it pertinent to ascertain following
- a. Whether the Noticees were insiders?
 - b. Whether the Noticees were in possession of UPSI?
 - c. Whether the Noticees dealt on the basis of UPIS or not?
24. I find it pertinent to examine the information connected with the charge of instant proceedings whether if the same constituted unpublished price sensitive information (UPSI). In this regard, I note that the Regulation 2(1)(n) of the SEBI (PIT) Regulations, 2015 defines "unpublished price sensitive information", which reads as follows:

“Definitions

2(1) *"(n) " unpublished price sensitive information " means any information, relating to a company or its securities, directly or indirectly , that is not generally available which upon becoming generally available, is likely to materially affect the price of the securities and shall, ordinarily including but not restricted to, information relating to the following: -*

- (i) financial results;*
- (ii)”*

25. Therefore, as specifically stated under the aforesaid provision 2 (1) (n) of SEBI (PIT) Regulations, 2015 declaration of financial results by the Company is a “unpublished price sensitive information” which I note is of the nature that is not

generally available and upon becoming generally available, is likely to materially affect the price of the securities. Further, from the chronological events relating to financial results for the quarter ended December 31, 2015, I note that on January 6, 2016, Finance and Accounts Department (F & A Department) received the provisional details from respective user departments. Consequent upon approval of financial results of the Company by the Board of Directors on January 22, 2016, a public announcement on financial results were disseminated on the website of BSE. Accordingly, I note that the period of UPSI was from January 6, 2016 to January 22, 2016.

26. Therefore, as noted from the above, that fact that during the UPSI period, the Noticee 1 admittedly being an insider purchased 3,100 shares of the Company from January 06, 2016 to January 14, 2016 after the UPSI coming into existence warrants a suspicion over the said trades carried out by him. In this regard, I proceed further to examine the facts and record brought before me to ascertain if the Noticee was in possession of UPSI when he carried out the aforesaid trades.
27. I note that the Noticee 1 i.e., Shreejesh Harindranath was working as GM, Financial Planning Analysis and Treasury, SpiceJet and was reporting to the Chief Financial Officer of SpiceJet. Further, it is not in dispute that the Noticee 1 had bought 3,100 shares of SpiceJet from January 06, 2016 to January 14, 2016 i.e., during the period of existence of UPSI. As per the chronology of events related to financial results for the quarter ended December 2015 as provided by the company vide letter dated October 04, 2018, I note that Finance and Accounts Department received the provisional details from respective user departments from January 6, 2016 and that draft financial results were prepared by the Finance and Accounts Department on January 11, 2016. Therefore, it is concluded that Finance Department was handling the information received from various user departments since January 06, 2016 and Mr. Shreejesh being a GM, Financial Planning Analysis and Treasury was aware about it. Further, I note from the information provided by the Company vide letter dated October 4, 2018 and the confirmation provided by the Statutory Auditor of the Company vide email dated November 3, 2018 to the Investigating Authority, that the Noticee 1 was involved in the discussions and were aware of the financial results

for the quarter ended December, 2015 till the date of public announcement. From the same, I conclude that the Noticee was an insider when he carried out the aforesaid purchase of shares, in terms of the provisions of Regulation 2 (1) (g) of SEBI (PIT) Regulations, 2015. The Noticee 1 in his submissions had admitted that he purchased the shares of SpiceJet during January 6, 2016 and January 14, 2016 i.e., during the period of existence of UPSI, due to ignorance and oversight with no malafide intention.

28. I note that the Noticee 2 i.e., Sandeep A C was real brother of the Noticee 1. It is not in dispute that the Noticee 2 had bought 800 shares of SpiceJet on January 22, 2016 between 02:06 PM and 02:20 PM just before the announcement of the financial results at 03:27 PM (during the period of existence of UPSI). In order to examine whether the Noticee 2 was an insider and traded in the shares of SpiceJet while in possession of UPSI, I would like to refer to the relevant provisions of SEBI (PIT) Regulations, which reads as under:

Regulation 2(1) (d) of SEBI (PIT) Regulations

"Connected Person" means:

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

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

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

Regulation 2(1) (f) of SEBI (PIT) Regulations

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

29. I note from the plain reading of the aforesaid regulatory provisions that the Noticee 2 being a sibling of the Noticee 1 prima facie found to be connected person. However, in order to establish that the Noticee 2 being a connected person had traded while in possession of UPSI, the evidence of communication/receipt of UPSI needs to be brought out. I note from the records that there is no direct evidence of communication of UPSI by Noticee 1 to Noticee 2. However, given the gravity of the charge, I am of the view that even in the absence of any direct evidence, circumstantial evidence cannot be ignored. Therefore, I find it pertinent to examine the trading pattern of the Noticees, in order to examine the charge of any possible communication of UPSI.

30. I note from the findings of the investigation and also from submissions of the Noticee 2, the Noticee 2 started buying shares of SpiceJet from December 16, 2015. The details of shares bought from December 16, 2015 till the date of publication of financial results and subsequent sale of shares are furnished hereunder:

Date	Buy	Sell
16-12-2015	400	0
23-12-2015	600	0
29-12-2015	1200	0
01-01-2016	1400	0
04-01-2016	250	0
22-01-2016	800	0
25-01-2016	0	800

31. I note from the above table that the Noticee 2 bought 3,850 shares of SpiceJet from December 16, 2015 till the UPSI came into existence. On perusal of the trade log, I find that the Noticee 1 was buying the shares of SpiceJet since November 13, 2015 and continued buying till January 13, 2016. Upon analysing the trading date of the Noticee 1 & 2, it is observed that the Noticee 2 had bought the shares on the same days when the Noticee 1 had bought. The details

of the trades carried out by the Noticees 1 & 2 on such dates are furnished hereunder:

Date	No., of shares bought by Noticee 1	No., of shares bought by Noticee 2
16-12-2015	550	400
23-12-2015	1150	600
29-12-2015	1550	1200
01-01-2016	1000	1400
04-01-2016	550	250

32. From the above table, I note that Noticee 2 had bought the shares on same days when the Noticee 1 had bought. I am of the view that Noticee 1 is an insider and the Noticee 2 being a connected entity in the capacity of sibling such pattern of trading cannot be considered as mere coincidence especially when the Noticee 1 had traded on 5 out of 6 trading days when Noticee 2 had traded. From the aforesaid facts and circumstances, I am of the opinion that both the Noticees had traded in aid and advice of each other, particularly given the fact that the Noticee 2 did not hold shares of SpiceJet earlier. Therefore, it can be reasonably construed that there was an implied communication / advice between the Noticees.

33. The Noticee 2 in his submissions contended that neither he is dependent financially on his brother nor he consults him in taking decisions relating to trading in securities and accordingly cannot be termed as a connected person. To justify the rationale for trading in the shares of SpiceJet during the period of existence of UPSI, the Noticee submitted that it was based on some news reports of airline industry benefitting from low fuel prices and some positive points of SpiceJet. I note from the news clippings furnished by the Noticee 2 that one news report dated November 25, 2015, which inter-alia reported that due to sharp drop in Jet Fuel prices, the aviation sector staged a smart recovery in the past one year with shares of SpiceJet soaring over 300 per cent in a year. The scrip hit its new 52-week high of ₹72.50 on Tuesday. In another news clipping furnished by the Noticee 2 dated January 20, 2016, I note that it reported operational performance of SpiceJet besides other Airlines, but nothing specific about the financial performance of the Company.

34. The reliance placed by the Noticee 2 on the news report dated November 25, 2015 for buying 800 shares on the date of publication of financial results is a farfetched argument, as in normal course of investment, any positive news about the Company's performance, if relied upon, would trigger an investment decision within reasonable period of time unlike 2 months in the instant case.
35. I note from the financial results of the Company for the quarter ended December 2015 that the Company reported net profit of ₹ 238.39 crore as compared to the profit of ₹ 23.77 crore for the previous quarter September 2015 and net loss of ₹275.02 crore for the same quarter previous year i.e., December 2014. The increase in the net profit was around 902.90% as compared to the net profit for the previous quarter ended September 2015. It can be seen from the financial figure that there has been substantial jump in the net profit of the Company for the quarter ended December 2015 as compared to the previous quarter.
36. It is obvious that on account of the positive performance of the company during that period, one can reasonably expect that the price of the shares is bound to increase when the results are published. I note that the Noticee 2 on January 22, 2016 just before announcement of financial results bought 800 shares. Going by the past trading pattern of the Noticee 2 as brought out in pre-paragraph in 30, 31 & 32 above, the circumstantial evidence indicates that the Noticee 1 had consistently displayed exchange of aid and advice to the Noticee 2. From the same, I conclude that there is reasonable certainty that the basis of the buy transaction of 800 shares by Noticee 2 was with pursuant to communication of UPSI by Noticee 1.
37. Further, the investment in shares by a person who is not a regular trader, would hold the investment for a long term rather than selling the shares on the next trading day as observed in the instant case. From the trading pattern of the Noticee 2 buying 800 shares on January 22, 2016 and immediately selling on the next trading date January 25, 2016 clearly demonstrates that they were aimed at taking advantage of the knowledge of UPSI rather a pure investment decision.
38. From the aforesaid facts of the case and from the circumstantial evidence, the preponderance of probability indicates that the Noticee 2 was in receipt of of the

unpublished price sensitive information regarding the financial performance of the Company from his brother i.e., Noticee 1 and on the basis of which the Noticee 2 bought the shares, before the information became public. Thus, it is established that the Noticee 2 found to be a connected person, who was in possession of UPSI procured from his brother i.e., Noticee 1. Therefore, it is imperative that anyone in possession of or having access to unpublished price sensitive information should be considered an “insider” regardless of how one came in possession of or had access to such information.

39. It is not in dispute that the Noticee 2 bought the shares on the day of announcement i.e. January 22, 2016 and sold the same on the next trading day i.e. January 25, 2016. The timing of buying on January 22, 2016 (just before the announcement) and selling on January 25, 2016 cannot be a mere co-incidence. Therefore, it is concluded that Noticee 2 had traded in the scrip of SpiceJet and bought 800 shares on January 22, 2016 while in possession of UPSI and his selling of 800 shares post announcement also corroborates the same fact.
40. The Noticee 2 in his reply has stated that the trades done during the investigation period were neither based on UPSI, nor does the nature of trade done indicate that they were remotely connected with PSI. In this regard, I find it pertinent to note the order of Hon'ble SAT in the matter of Rajiv B. Gandhi and Ors. vs. SEBI (Appeal No. 50 of 2007 decided on May 9, 2008) wherein it was alleged that Mr. Rajiv B. Gandhi was the company secretary and Chief Financial Officer of Wockhardt Limited and had access to the price sensitive information pertaining to the financial position of the company and that the other two appellants were his wife and sister and they were all insiders within the meaning of regulation 2(3) read with 2(c) of the SEBI (PIT) Regulations, 1992. The Hon'ble SAT in this case observed the following:

“We are of the considered opinion that if an insider trades or deals in securities of a listed company, it would be presumed that he traded on the basis of the unpublished price sensitive information in his possession unless he establishes to the contrary. Facts necessary to establish the contrary being especially within the knowledge of the insider, the burden of proving those

facts is upon him. The presumption that arises is rebuttable and the onus would be on the insider to show that he did not trade on the basis of the unpublished price sensitive information and that he traded on some other basis. He shall have to furnish some reasonable or plausible explanation of the basis on which he traded. If he can do that, the onus shall stand discharged or else the charge shall stand established. Let us illustrate to explain what we mean. If an insider who sold the shares were to plead that he wanted to raise funds to meet an emergency in his family say, marriage of his daughter or bypass surgery of a close relation and could establish that fact, it would be reasonable to hold that even though he was in possession of unpublished price sensitive information, the motive of the trade was to meet the emergency. He would not be guilty of the charge of insider trading”

41. I find, as discussed in the earlier Paragraphs, that the Noticee 2 was an “insider” having access to UPSI under regulation 2 (1) (g) of the SEBI (PIT) Regulations. Therefore, it is concluded that he traded in the shares while in possession of the unpublished price sensitive information. Consequently, it becomes necessary to decide whether the Noticee has submitted adequate material to refute the said presumption. I note from the submissions made by the Noticee 2 that there is no explanation provided by him for executing the trades while in possession of UPSI.

42. Further, I deem it appropriate to refer to the observations of the Hon’ble SAT in the case of Shri E. Sudhir Reddy vs. SEBI [Appeal no. 138 of 2011 decided on December 16, 2011], which reads as follows:

“A shareholder becomes an owner of the company to the extent of the value of shares held by him. He is therefore, entitled to his share in the profits earned by the company. Therefore, performance of a company is of primary importance to the investors as well as to the general public who might be interested in investing in the company. The shareholders and general public get information about the company either through the annual report or during the annual general meeting. However, persons in the company or otherwise concerned with the affairs of the company are in possession of such information before it is actually made public.

The directors of the company or for that matter even professionals like Chartered Accountants and Advocates advising the company on its business related activities are privy to the performance of the company and come in possession of information which is not in public domain. Knowledge of such unpublished price sensitive information in the hands of persons connected to the company puts them in an advantageous position over the ordinary shareholders and the general public. Such information can be used to make gains by buying shares anticipating rise in the price of the scrip or it can also be used to protect themselves against losses by selling the shares before the price falls. Such trading by the insider is not based on level playing field and is detrimental to the interest of the ordinary shareholders of the company and general public. It is with a view to curb such practices that section 12A of the SEBI Act makes provisions for prohibiting insider trading and the Board also framed the Insider Trading Regulations to curb such practice.”

43. The instances cited above clearly indicates that in his official capacity the Noticee¹ had access to price sensitive information pertaining to the financial position and earnings of the company and on the basis of the said information, he had bought 3,100 shares, besides communicating the said information to his brother, on which basis the Noticee 2 had bought 800 shares, while in possession of UPSI. Further, in consonance with the ratios laid down by the Hon'ble SAT in the aforementioned two cases, I am not inclined to take a different view. Accordingly, in view of the findings as mentioned in previous paragraphs, I conclude that the Noticees while in possession of UPSI had traded in the scrip of SpiceJet and violated the provisions of Regulation 4 (1) of SEBI (PIT) Regulations and Section 12 A (d) and 12 A(e) of SEBI Act.
44. It is a regulatory requirement that no insider shall communicate, provide, or allow access to any unpublished price sensitive information, relating to a company. In the instant case, it is established that the Noticee 1 had communicated UPSI to Noticee 2, which is in violation of the provisions of Regulation 3 (1) of SEBI (PIT) Regulations read with Section 12 A (e) of SEBI Act, 1992.

45. Further, it is also equally an important requirement under SEBI (PIT) Regulations that no person shall procure from or cause the communication by any insider of unpublished price sensitive information, relating to a company. It is established that the Noticee 2 had procured UPSI relating to the Company from his brother i.e., Noticee 1, which is in violation of the provisions of Regulation 3 (2) of SEBI (PIT) Regulations and Section 12 A (d) & 12 A (e) of SEBI Act
46. The Noticee 2 in his submissions contended that he had not been provided with certain documents viz., investigation report, and proof of communication & receipt of UPSI. In this connection, I note that along with the SCN, the following documents were provided to the Noticee:

- (a) Copy of Order communicating appointment of Adjudicating Officer;
- (b) Copy of Company's letter dated March 04, 2016 submitted to BSE;
- (c) Copy of Company's letter dated October 04, 2018 addressed to SEBI;
- (d) Trade log for the November 2, 2015 to April 29, 2016 in CD;

47. In this connection, I would like to refer to the observations of the Hon'ble SAT in the matter of Mayrose Capfin Private Limited Vs SEBI (decided on 30.03.2012) wherein SAT observed that: "*.....the principles of natural justice require that the inquiry officer should make available such document and material to the delinquent on which reliance is being placed in the inquiry. It is not necessary for the inquiry officer to make available all the material that might have been collected during the course of investigation but has not been relied upon for proving charge against the delinquent. No prejudice can, therefore, be said to have been caused to the appellant on this count....*"
48. The Hon'ble Supreme Court in the matter of Chandrama Tewari Vs. Union of India, Through General Manager, Eastern Railways, (1988) 1 SCR 1102, held that "*it is not necessary that each and every document must be supplied to the delinquent facing charges. Only material and relevant documents are necessary to be supplied to him. If a document, even though mentioned in the Memo of charges, is not relevant to the charges, or if it is not referred to or relied upon by the enquiry officer or the punishing authority in holding the charges, no exception can be taken to the validity of the proceedings or the order passed on the ground of non- supply of the copy of the order*".

49. In this regard, I note that Hon'ble SAT, in its order dated February 12, 2020, in the matter of Shruti Vora vs. SEBI had made the following observations:

“Reliance was also made of a decision of the Supreme Court in Union of India and Others vs E. Bashyan (1988) 2 SCC 196 which has no bearing to the controversy involved in the present context, in as much as, the said decision relates to a disciplinary proceedings wherein the Supreme Court observed that the inquiry report was required to be made available to the delinquent. An inquiry report is totally distinct and different from an investigation report. The inquiry report considers all the materials in the inquiry proceedings which form the basis of the final order and therefore the said report is required to be made available to the delinquent. In the instant case, the show cause notice relies upon certain documents which have been made available. Thus the investigation report is not required to be supplied”.

“The learned counsel has also placed reliance upon a minority view of this Tribunal in Price Waterhouse vs Securities and Exchange Board of India decided by this Tribunal in Appeal No. 8 of 2011 on June 1, 2011 wherein it was observed that fairness demands that the entire material collected during the course of investigation should be made available for inspection to the person whose conduct was in question and that said material should also be supplied. In our opinion, the said minority view is directly against the decision of the Supreme Court in Natwar Singh case (supra)”.

“A bare reading of the provisions of the Act and the Rules as referred to above do not provide supply of documents upon which no reliance has been placed by the AO, nor even the principles of natural justice require supply of such documents which has not been relied upon by the AO. We are of the opinion that we cannot compel the AO to deviate from the prescribed procedure and supply of such documents which is not warranted in law. In our view, on a reading of the Act and the Rules we find that there is no duty cast upon the AO to disclose or provide all the documents in his possession especially when such documents are not being relied upon.”

50. In view of the above, since all the documents which were relevant and relied upon in the instant proceedings have been provided to the Noticee along with the SCN, besides providing an opportunity for carrying out inspection of documents, I am of the opinion that principles of natural justice have been duly complied with in the instant proceedings and no prejudice has been caused to the Noticee 2. Further, the contentions raised by the Noticee 2 with regard to communication of UPSI by Noticee 1 and receipt of UPSI by Noticee 2, the findings mentioned in the pre-paragraphs addresses the concerns of the Noticee 2.

51. As per the Code of Conduct ('CoC') dated May 28, 2015, adopted by the company to prevent insider trading ('CoC - PIT'), pre-clearance of trade needs to be obtained for all trades above ₹ 5,00,000. It is observed that the Noticee 1 on January 25, 2016 sold 7,100 shares, the value of which was above ₹ 5,00,000, for which no pre-clearance was obtained by him from the Compliance Officer of the Company. The Noticee in his reply admitted that he did not keep a tab on the value of the transaction and hence did not seek pre-clearance, which was purely by oversight and without any malafide intention. Since, the Noticee admittedly failed to obtain pre-clearance of trade, which is also confirmed by the Company vide letter dated October 4, 2018, I find that the Noticee had violated the provisions of Clause 6 of minimum standard of code of conduct prescribed under Schedule B read with Regulation 9 (1) of SEBI (PIT) Regulations, 2015.

52. Further, in terms of Clause 10 of minimum standard of code of conduct prescribed in Schedule B read with Regulation 9 (1) of SEBI (PIT) Regulations, 2015, a designated person 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 transactions. However, it is observed that the Noticee 1, who was a designated person, had carried out contra trades i.e., buy and sell during November 1, 2015 to April 30, 2016, the details of which are furnished hereunder:

Quantity	Buy Date	Sell Date	Buy Trade Value (A)	Sell Trade Value (B)	Gain made (C =B-A)
200	13.11.2015	20.11.2015	9520	12306.66	2786.66
200	16.11.2015	20.11.2015	9570	12306.66	2736.66

200	17.11.2015	20.11.2015	9580	12306.66	2726.66
300	18.11.2015	20.11.2015	15780	18459.99	2679.99
600	27.11.2015	25.01.2016	39795	46454.34	6659.34
100	09.12.2015	25.01.2016	6580	7742.39	1162.39
100	10.12.2015	25.01.2016	6730	7742.39	1012.39
145	11.12.2015	25.01.2016	9478.75	11226.47	1747.72
600	15.12.2015	25.01.2016	38910	46454.34	7544.34
550	16.12.2015	25.01.2016	36795	42583.15	5788.15
650	18.12.2015	25.01.2016	43847.5	50325.54	6478.04
1950	21.12.2015	25.01.2016	133370	150976.61	17606.61
2405	22.12.2015	25.01.2016	165255.875	186204.58	20948.70
195	22.12.2015	27.01.2016	13399.125	17325.75	3926.63
1150	23.12.2015	27.01.2016	79910	102177.50	22267.50
650	24.12.2015	27.01.2016	45260	57752.50	12492.50
5	28.12.2015	27.01.2016	356.5441176	444.25	87.71
500	28.12.2015	28.01.2016	35654.41176	46000.00	10345.59
200	28.12.2015	29.01.2016	14261.76471	17420.00	3158.24
145	28.12.2015	01.02.2016	10339.77941	13256.09	2916.31
1550	29.12.2015	01.02.2016	114192.5	141703.07	27510.57
200	30.12.2015	01.02.2016	14490	18284.27	3794.27
650	31.12.2015	01.02.2016	48512.5	59423.87	10911.37
1000	01.01.2016	01.02.2016	82710	91421.33	8711.33
205	04.01.2016	01.02.2016	16707.5	18741.37	2033.87
345	04.01.2016	26.04.2016	28117.51	25944.00	-2173.51
100	05.01.2016	26.04.2016	8220	7520.00	-700.00
200	06.01.2016	26.04.2016	16425	15040.00	-1385.00
600	07.01.2016	26.04.2016	48125	45120.00	-3005.00
200	08.01.2016	26.04.2016	16440	15040.00	-1400.00
555	13.01.2016	26.04.2016	43145.7	41736.00	-1409.70
1200	13.01.2016	27.04.2016	93288	91330.00	-1958.00
				Total Gain	1,76,002.3

53. I note from the above table that the Noticee 1 by executing contra trades during the period November 1, 2015 and April 30, 2016 earned profit of ₹ 1.76 lakhs. The Noticee 1 in his submissions stated that consequent upon being pointed out by the Company Secretary of the Company of the violation of the model code of conduct by executing contra trades, he had remitted an amount of ₹ 1.76 lakhs being the profit earned by him to SEBI Investor Education and Protection Fund. While I agree with the submissions made by the Noticee, I cannot ignore the fact that the Noticee is required to abide by code of conduct prescribed for prevention of insider trading and any deviation from the established regulatory practices cannot be considered leniently. Therefore, I am not inclined to take into

consideration the submissions made by the Noticee and conclude that the Noticee by executing contra trades had violated the provisions of Clause 10 of minimum standard of code of conduct prescribed under Schedule B read with Regulation 9 (1) of SEBI (PIT) Regulations, 2015.

54. I note that for orderly conduct of securities market, it is of utmost importance that the Key Managerial Personnel of all listed companies including the Board of directors should at all times strictly adhere to the statutory code on Insider Trading and any failures to adhere with any of the provisions of SEBI (PIT) regulations cannot be viewed leniently. This is necessary to ensure a sense of fair play amongst all the market participants and that there is no asymmetry of information. In the instant case, I find that the Noticee 1 had failed to abide by the code of conduct prescribed for prevention of insider trading, by not obtaining pre-clearance of shares and by taking opposite position within 6 months from the earlier transaction.
55. Further, it is observed that the Noticee 1 during the quarter January to March 2016 had traded in the scrip of SpiceJet, the cumulative value of which was above ₹ 10 lakhs. The details of the trades executed by the Noticee are furnished hereunder:

Date	Shares bought	Shares Sold
06.01.2016	200	Nil
07.01.2016	600	Nil
08.01.2016	200	Nil
13.01.2016	2000	Nil
14.01.2016	100	Nil
25.01.2016	Nil	7100
27.01.2016	Nil	2000
28.01.2016	Nil	500
29.01.2016	Nil	200
01.02.2016	Nil	3750

56. In terms of Regulation 7(2) (a) of SEBI (PIT) Regulations, every promoter, member of the promoter group, designated person and director of every company shall disclose the company the number of securities acquired or disposed within two trading days of such transactions, if the value of the securities traded, whether in one transaction or a series of transactions over any

calendar quarter, aggregates to a traded value in excess of ten lakhs rupees or such other value as may be specified. In the instant case, the Noticee 1 being designated person bought 3,100 shares and sold 13,550 shares during the period January 6, 2016 and February 1, 2016. However, it is observed that the Noticee failed to disclose the aforesaid transactions to the Company, which is an admitted fact and which is confirmed by the Company vide letter dated October 4, 2018. Therefore, I find that the Noticee had violated the provisions of Regulation 7 (2) (a) of SEBI (PIT) Regulations.

ISSUE-II: Does the violation, if any, attract monetary penalty under Sections 15G(i), 15G(ii), 15A(b) and 15HB of SEBI Act.?

57. I am of the view that Insider trading is a serious violation and can cause severe damage to public confidence in the securities market. An act of insider trading, therefore, has to be viewed strictly irrespective of its ultimate outcome for the person indulging in the same. In the facts and circumstances of the present case discussed in the foregoing paragraphs, it becomes imperative that appropriate action in accordance with law is warranted against the Noticees who indulged in insider trading. Since, it is established that the Noticees 1 & 2 while in possession of UPSI had traded in the scrip of SpiceJet, which is in violation of the provisions of Regulation 4 (1) of SEBI (PIT) Regulations, 2015 and Section 12 A (d) and 12 A (e) of SEBI Act, the Noticees are liable for monetary penalty under Section 15 G (i) of the SEBI Act, the contents of which are reproduced hereunder:

Section 15 G (i) of SEBI Act

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, shall be liable to a penalty which shall not be less than ten lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher.

58. Further, it is also established that the Noticee 1 had communicated UPSI to Noticee 2, which is in violation of the provisions of Regulation 3 (1) of SEBI (PIT) Regulations, 2015 read with Section 12 A (e) of SEBI Act, 1992, the Noticee 1 is liable for monetary penalty Section 15 G (ii) of the SEBI Act, the contents of which are reproduced hereunder:

Section 15 G (ii) of SEBI Act

If any insider who—

(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, shall be liable to a penalty which shall not be less than ten lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher.

59. It is established that the Noticee 2 had procured UPSI from his brother i.e., Noticee 1, which is in violation of the provisions of Regulation 3 (2) of SEBI (PIT) Regulations, 2015 and Section 12 A (d) and 12 A (e) of SEBI Act, the Noticee 2 is liable for monetary penalty under Section 15HB of the SEBI Act, the contents of which are reproduced hereunder:

Section 15HB of SEBI Act

Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.

60. The Noticee 1 by not obtaining pre-clearance of trades and by entering into contra trades, failed to abide by the Code of Conduct prescribed by the Company for prevention of Insider Trading, which is in violation of the provisions of Clause 6 & 10 of Minimum Standard of Code of Conduct contained in Schedule B read with Regulation 9 (1) of SEBI (PIT) Regulations, for which the Noticee 1 is liable for monetary penalty under Section 15HB of the SEBI Act.

61. It is further established that the Noticee 1 failed to make the requisite disclosures under Regulation 7 (2) (a) of SEBI (PIT) Regulations, for which the Noticee 1 is liable for monetary penalty under Section 15 A (b) of the SEBI Act, the contents of which are reproduced hereunder:

Section 15 A (b) of SEBI Act

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

(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations or who furnishes or files false, incorrect or incomplete information, return, report, books or other documents, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.

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

62. While determining the quantum of monetary penalty under Sections 15G(i), 15G(ii), 15HB and 15 A (b) of SEBI Act, I have considered the factors stipulated in Section 15-J of SEBI Act, which reads as under:

Section 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.*

63. The material made available on record has not quantified the amount of disproportionate gain or unfair advantage made by the Noticees and the loss

suffered by the investors as a result of the Noticees' default. There is also no material made available on record to assess the amount of loss caused to investors or the amount of disproportionate gain or unfair advantage made by the Noticees as a result of default.

64. 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. SEBI (PIT) Regulations have put in place a framework for prohibition of insider trading in securities and the prohibitions provided in the SEBI (PIT) Regulations ensure a level-playing field in the securities market and safeguard the interest of investors and integrity of securities market. Moreover, as observed above, trading by any insider during UPSI period is itself against the legislative / regulatory framework. I am of the view that the object and spirit of the SEBI (PIT) Regulations would get defeated if the violators of the said Regulations are not dealt as per the spirit of SEBI (PIT) Regulations. Therefore, I am not inclined to view the lapse on the part of the Noticees leniently and consider it necessary to impose monetary penalty on the Noticees.

ORDER

65. Having considered all the facts and circumstances of the case, I, in exercise of the powers conferred upon me under Section 15I of the SEBI Act read with Rule 5 of the SEBI Adjudication Rules, hereby impose a penalty on the Noticees as under:

Noticee No.	Name of the Noticee	Penalty amount in ₹ and words	Imposition of penalty under
1	Shreejesh Harindranath	10,00,000 (Rupees Ten lakhs only)	Section 15 G (i) of SEBI Act
		10,00,000 (Rupees Ten lakhs only)	Section 15 G (ii) of SEBI Act
		2,00,000 (Rupees Two lakhs only)	Section 15HB of SEBI Act
		1,00,000 (Rupees One lakh only)	Section 15 A (b) of SEBI Act
2	Sandeep A C	10,00,000 (Rupees Ten lakhs only)	Section 15 G (i) of SEBI Act
		2,00,000 (Rupees Two lakhs only)	Section 15HB of SEBI Act

66. The said penalty imposed on the Noticees, as mentioned above, shall commensurate with the violation committed and acts as a deterrent factor for the Noticees and others in protecting the interest of investors.

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

ENFORCEMENT → Orders → Orders of AO → PAY NOW

68. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Division Chief, Enforcement Department-1, DRA-3, SEBI, in the format as given in table below

Case Name	
Name of Payee	
Date of payment	
Amount Paid	
Transaction No	
Bank Details in which payment is made	
Payment is made for	Penalty

69. 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, 1992 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

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

Date: 29 May 2020

Place: Mumbai

B J DILIP

Adjudicating Officer