BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA

ADJUDICATION ORDER No. Order/BD/VS/2020-21/8849

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:

Renish Hareshbhai Bhuva
(PAN: AQRPP7870Q)

In the matter of circulation of unpublished price sensitive information (UPSI) through WhatsApp messages with respect to HDFC Bank Limited

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BACKGROUND

1. During November 2017, there were certain articles published in newspapers / print media referring to the circulation of Unpublished Price Sensitive Information (*hereinafter referred to as* "UPSI") in various private WhatsApp groups about certain companies ahead of their official announcements to the respective Stock Exchanges. Against this backdrop, Securities and Exchange Board of India (*hereinafter referred to as* "SEBI") initiated a preliminary examination in the matter of circulation of UPSI through WhatsApp groups during which search and seizure operation for 26 entities of Market Chatter WhatsApp Group were conducted and approximately 190 devices, records etc., were seized. The WhatsApp chats extracted from the seized devices were examined further and while examining the chats, it was found that in respect of around 12 companies whose earnings data and other financial information got leaked in WhatsApp.

2. Accordingly, SEBI carried out an investigation in the matter of circulation of UPSI through WhatsApp messages with respect to HDFC Bank Ltd. (*hereinafter referred to as* "HDFC"), to ascertain any possible violation of the provisions of the Securities and Exchange Board of

India Act, 1992 (*hereinafter referred to as* "SEBI Act") and SEBI (Prohibition of Insider Trading) Regulations, 2015 (*hereinafter referred to as* " SEBI (PIT) Regulations") during the period January 01, 2016 to January 25, 2016 (*hereinafter referred to as* "Investigation Period").

3. Details of the major corporate announcements made by HDFC on NSE, during IP and their impact on the price of the scrip are given as follows:

(Source: www.nseindia.com)

<table>
<tr><th>Date-Time</th><th>Announcement/News</th><th colspan="6">Price Impact/Shares Traded</th><th>Remarks</th></tr>
<tr><td rowspan="3">25/01/2016 (14:09)</td><td rowspan="3"><u>Audited Financial Results for the Quarter Ended 31-12-2015</u></td><td>Date</td><td>O</td><td>H</td><td>L</td><td>C</td><td>No. of shares traded</td><td rowspan="3">The number of shares of HDFC traded recorded an increase by 1.39 times i.e. 139%</td></tr>
<tr><td>22/01/2016</td><td>1025.7</td><td>1044.25</td><td>1022.05</td><td>1030.3</td><td>1059071</td></tr>
<tr><td>25/01/2016</td><td>1039.95</td><td>1046.7</td><td>1033.05</td><td>1041.15</td><td>2535971</td></tr>
<tr><td rowspan="3">16/12/2015 (14:12)</td><td rowspan="3"><u>Board Meeting on 25/01/2016</u>
HDFC Bank Ltd has informed BSE that the Meeting of the Board of Directors of the Company is scheduled to be held on January 25, 2016, inter alia, to consider and approve the Audited Annual Financial Results of the Company for the quarter ended Dec 31, 2015.
Further, as per the company code of conduct for Prohibition of Insider Trading, the Trading Window for dealing in the securities of the Company will closed from Jan 01, 2016 to January 27, 2016 (both days inclusive).</td><td>Date</td><td>O</td><td>H</td><td>L</td><td>C</td><td>No. of shares traded</td><td rowspan="3">The number of shares of HDFC traded recorded an increase by 0.51 times i.e. 51%.</td></tr>
<tr><td>15/12/2015</td><td>1053</td><td>1062.45</td><td>1045.3</td><td>1059.45</td><td>1139354</td></tr>
<tr><td>16/12/2015</td><td>1063</td><td>1073.35</td><td>1059.35</td><td>1067.3</td><td>1710692</td></tr>
</table>

4. Vide letter dated August 13, 2019, *inter-alia*, HDFC was asked about the detailed chronology of events with respect to announcement of quarterly results on January 25, 2016 for QE December 2015, the details of persons involved in preparation of financial results / having access to financial information at various stages / persons who attended the corresponding Board Meeting, details of trading window closure period etc.

5. HDFC vide letter dated August 31, 2019, *inter alia*, submitted the following:

Chronology of events regarding preparation of accounts during period from 1 January 2016 to 25 January 2016 w. r.t Financial Results for the quarter and year ended 31 December 2015

Sr. No.	Period	Activity
1	1st to 20th Jan 2016	• Financials are prepared based on trial balance including closing entities relating to mark to market of investments, valuation of forex/derivatives, loan provisioning, income/expense accruals, etc. The Financial are stored in separate drive accessible by finance team and the file is password protected. (Composition and contact details of Finance team involved-Schedule-1) • Financials are prepared in line with applicable guidelines / standards. This is also used for regulatory reporting requirement. (Composition and contact details of Finance team involved Schedule-1) • Shared with Function Head –Finance & CFO and Statutory auditors for review on on-going basis. (Contact details of CFO and Statutory auditors- Schedule 2 and Schedule 4 respectively)
3	15th Jan 2016	• Reviewed by Deputy Managing Director on periodic basis (Contact details of DMD attached as Schedule 3)
4	20th Jan 2016	• Shared with Statutory Auditors (Contact details - Schedule 4)
5	21th Jan 2016	• Shared with Finance- Investor Relations for information. (Composition and contact details- Schedule 5)
6	22nd Jan & 25th Jan 2016	• Presented directly at the Audit Committee on 22nd January,2016 in presence on Auditors (Composition and contact details- Schedule 6) • Presented to the Board on 25th January 2016. (Composition and contact details- Schedule 7) • Financial results announced to the Stock Exchanges on 25th January 2016.

Chronology of events regarding finalization of NPA figures during period from 1 January 2016 to 25 January 2016 w.r.t Financial Results for the quarter and year ended 31 December 2015

Sr. No	Period	Activity
1	8th January, 2016	• NPA figures generated by finance team (composition and contact details- Schedule 1) basis the inputs received from various credit teams. • File is stored in separate drive accessible by Finance team and the file is password protected.
2	8th to 12th January, 2016	• Shared with the Credit team (Composition and contact details- Schedule 2) • Purpose- For preparation of Risk Policy and Monitoring Committee meeting (RPMC) note. Subsequently forwarded to Secretarial team (composition and contact details – Schedule 3) for submission to RPMC meeting.
3	11th to 21th January, 2016	• Shared with Retail Operations and Credit Administration Dept. (composition and contact details- Schedule 7). Purpose- reporting of 'Lending to Priority sector', 'Industry-wise NPA' information to be placed before the Board, RBI tranches. • Shared with Finance Team members (composition and contact details- Schedule 8). Purpose- Basel capital adequacy computation & reporting. BDP and segmental reporting as per MIS & regulatory requirement, RBI reporting/ RBI tranche submission. • Shared with Finance – Investor Relations. Purpose- preparing responses to possible queries raised by analysts post declaration of results. (Composition and contact details Schedule 9). • Shared with Statutory auditors for audit purposes.(composition and contact details- Schedule 10)
4	22th January, 2016	• RPMC (composition and contact details – Schedule 4) meeting takes place and considers the business.

5	22th to 25th January, 2016	• Shared with Credit & Market Risk team (composition and contact details- Schedule 5) Purpose-Stress level testing as per regulatory requirement. • Shared with Internal Risk Based Supervision (IRBS) team (composition and contact details- Schedule 6). Purpose- Review and preparation of data for submission to RBI
7	22th January, 2016	• The note on Bank-wide Whole-sale and Retail NPAs is sent to the Board of Directors as part of the Board folders (Composition and contact details Schedule 11). • Financial results, containing the NPA figures presented at the meeting of the Audit Committee of the Board (Composition and contact details-Schedule 12).
8	25th January, 2016	• The Board of Directors reviews the note on NPAs at the Board meeting (along with the financials) • Financial Results are announced to the stock Exchanges, containing details of NPA figures

6. From the chronology provided by HDFC, it was observed that preparation of accounts had started from January 01, 2016. HDFC also provided the list of persons involved in preparation of financial results / having access to financial information at various stages / persons who attended the corresponding Board Meeting vide aforesaid communications.

Regulation 2 (1) (n) of SEBI (Prohibition of Insider Trading) Regulations, 2015 states as under:

"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) …"

7. In the following table, financial figures circulated on WhatsApp pertaining to HDFC were compared with actual figures disclosed subsequently on stock exchange to gauge the deviation between two sets of figures.

Abbreviations format used:

Figure1 in WhatsApp (F1W) Figure1 in Actual (F1A) Figure1 Deviation (F1Dev)

Table 1

Date and time of WhatsApp message	Figures in WhatsApp message	Date and time of disclosure on Exchange	Actual figures disclosed on Exchange	F1W	F1A	F2W	F2A	%ge Deviations observed in Figures	
								F1Dev	F2Dev
25/01/2016 09:51:52	Hearing 7050cr NII and 3350cr PAT	25/01/2016 14:07	PAT 3356.84 cr NII 7068.51 cr	7050	7068.51	3350	3356.84	0.26	0.20

* NII = Interest earned- Interest Expended i.e. (15411.12-8342.61) = 7068.51
* % ge deviation is calculated as per the following methodology:
%ge Deviation = (Figure in WhatsApp message-Actual Figures disclosed on exchange)*100/(Actual figures disclosed on exchange)

From the above table, following are observed in respect of HDFC:

- The financial figures of HDFC were communicated through WhatsApp prior to their announcement on stock exchanges.
- The deviation in financial figures was miniscule, i.e., within a range of 0.20% to 0.26 %.

8. The expected profit figures of December 2015 quarter of HDFC were already available in public domain as news report before the message was forwarded by Noticee. However, NII figures of HDFC mentioned in the said news report were 6911 crores compared to figures of 7050cr NII circulated in the WhatsApp message. NII figures in a Bank are figures which cannot be derived from profit figures available in said news report. In light of the same, the instant circulation of NII figure of HDFC through WhatsApp has been considered as communication of Unpublished Price Sensitive Information (UPSI).

9. It was observed from the chronology of events provided at Para 5, the preparation of draft preliminary financial statements started from January 01, 2016. Trading window was also closed from January 01, 2016. The corporate announcement of audited financial results for the quarter ended Dec 31, 2015 was made to the exchanges (BSE and NSE) by HDFC on January 25, 2016. It is, therefore, observed that the period of UPSI would be January 01, 2016 to January 25, 2016.

In terms of Regulation 2 (1) (g) of SEBI (Prohibition of Insider Trading) 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;

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

10. It was observed from the information submitted by HDFC vide its letter dated August 31, 2019, the persons who were having access to and/or in possession of the UPSI relating to the aforesaid financial results and persons who were in possession of WhatsApp message, namely Renish (Noticee) and Ms. Shruti Vora, are considered as insiders.

11. The timing of the message as per extract chat from Shruti Vora's device was 04:21:52 (incoming message with remote part name as Renish office). However, expert agency, hired for retrieval and backup of the data from the instruments/devices seized, vide email dated March 12, 2018 informed SEBI that their forensic tools generate zero G.M.T. timing by default, so add +5.30 hours as Indian G.M.T in all the reports generated.

12. The details of communication of WhatsApp message related to HDFC, as observed from WhatsApp chat retrieved from Shruti Vora's device, are tabulated below:

Entity from whom Shruti Vora (SV) received the message (Mobile no. of Ms. Shruti Vora: 9820832032)		Date and Time of receipt of message by SV (After adding 5.30 hours)	
Name	Tel. Number	Date	Time
Renish Patel	9867091170	25/01/2016	09:51:52

*Note: Remote party name displayed in messages is Renish Office.

13. It was observed from the WhatsApp chats retrieved from the device of Ms. Shruti Vishal Vora that the financial figures of HDFC (viz; NII) circulated through WhatsApp, on January 25, 2016 at 09:51:52 hours, closely matched with those disclosed subsequently by HDFC on stock exchanges on January 25, 2016 at 14:07:01 hours. Also, the aforesaid message related to HDFC related to NII would fall under UPSI and the Noticee, Renish was in possession of the UPSI. Therefore, It is alleged that Renish Patel is Insider as per Regulation 2(1)(g) PIT 2015. Further, it is alleged that the Noticee, as insider, communicated the UPSI related to NII of HDFC for QE Dec 2015 through WhatsApp message and therefore the Noticee was in violation of Section 12A(d) and 12A(e) of SEBI Act, 1992 and Regulation 3(1) of PIT Regulations, 2015.

APPOINTMENT OF ADJUDICATING OFFICER

14. The undersigned has been appointed as the Adjudicating Officer (*hereinafter referred to as* "AO") vide Order dated January 27, 2020 under Section 19 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 section 15G of the SEBI Act, 1992 for the alleged violations of provisions of section 12A(d) and 12A(e) of SEBI Act, 1992 and Regulation 3(1) of SEBI (PIT) Regulations, 2015, committed by the Noticee.

SHOW CAUSE NOTICE, HEARING AND REPLY

15. A Show Cause Notice dated February 13, 2020 bearing ref No. EAD/BD/BM/6027/2020 (*hereinafter referred to as* 'SCN') was served on the Noticee under Rule 4 of the SEBI Adjudication Rules, calling upon to show cause as to why an inquiry should not be held against him in terms of Rule 4 of the SEBI Adjudication Rules read with Section 15-I of SEBI Act, 1992 and why penalty should not be imposed on him in terms of Section 15G of SEBI Act, 1992 for the aforesaid alleged violations.

16. The Noticee, vide email dated February 28, 2020, *inter alia* requested for copies of documents including investigation report and also sought inspection of documents in the matter. In view of the same, the Noticee was informed, vide email dated February 28, 2020, that the copies of all relevant documents relied upon had already been provided as enclosures to the SCN. Further, the Noticee was granted an opportunity of inspection of documents in the matter. I note from available records that the inspection of documents in the matter was completed by the Noticee. In view of the same, the Noticee was advised, vide email dated March 09, 2020, to file reply on merits latest by March 17, 2020. The Noticee was also granted an opportunity of hearing on March 18, 2020, vide the said email dated March 09, 2020. Subsequently, the Noticee *inter alia* made a request, vide email dated March 12, 2020, for a legible copy of the annexures to the show cause notice (specifically HDFC letter dated August 31, 2019). The same was provided to the Noticee,

vide email dated March 12, 2020. The Noticee subsequently requested to adjourn the hearing scheduled on March 18, 2020.

17. In reply, Noticee vide his letter dated March 18, 2020 made submissions *inter alia* stating as under:

"……

6) The Noticee is a commerce graduate from Mumbai as well as a qualified Chartered Financial Analyst from Institute of Chartered Financial Analysts of India. The Noticee has been working as an analyst in the equity and derivative segment since December 2011. Over the years, the Noticee has gathered expertise in financial modeling, tracking a change in key government policies, changing industry dynamics, analyzing Banking sector/companies based on publicly available information (mainly from quarterly data, annual report, conference cails and media interaction by top management of Banks). Updating financial model (pre and post quarterly results, considering historical trend in key business metrics such as Net Interest Income, Pre-provision Operating Profits, Provisions and Profit After Tax) of any entity is part of the Noticee's routine work as a research associate/analyst.

7) The Noticee has been associated with the securities market since December 2011 (i.e. more than 9 years). It is respectfully submitted that in the Noticee's career as an analyst, the conduct of the Noticee has been exemplary and the Noticee has always been in compliance with all obligations cast on him in terms of the extant regulatory framework applicable to his involvement in the securities market. The Noticee has an unblemished record of compliance with the regulatory requirements and, has not received a show cause notice or been subject to any regulatory proceedings except the one at hand.

8) The Noticee urges SEBI to take into account the fact that the Noticee has always performed his professional duties with utmost honesty, sincerity and discipline. The Noticee completely denies the allegation made against him in the SCN.

9) For the reasons set out below, it is respectfully submitted that the findings and allegations set out in the SCN is unfounded and without any merits. However, before dealing with the SCN on merit, the Noticee places on record the following preliminary objections which are without prejudice to the reply on merits. These preliminary objections go to the root of the matter and as such the SCN is liable to be set aside on each and all of these grounds.

PRELIMINARY OBJECTIONS

10) It is respectfully submitted that the SCN ought to be withdrawn on each or any of these grounds. It is submitted and prayed that these grounds are necessarily required to be decided first as preliminary issues. In the event that the preliminary objections of the Noticee do not lead to the dropping of the proceedings pursuant to the SCN, the Noticee reserves his right to make further submissions and present further material in support of his contentions. The submissions below are without prejudice to the reply on merit and also to each other.

Delay in the proceedings

11) The allegations framed in the SCN relate to the message sent by the Noticee to one Ms. Shruti Vishal Vora on January 25, 2016. The SCN came to be issued only after more than 4 years i.e. in February 2020. The SCN does not provide any explanation to justify the inordinate and unconscionable delay in initiation of proceedings against the Noticee. It is respectfully submitted that the initiation of proceedings by SEBI after such a long delay, severely prejudices the ability of the Noticee to adequately respond to the SCN.

12) The Hon'ble Securities Appellate Tribunal ("SAT") has been consistently setting aside orders of SEBI where there is an unconscionable and unexplained delay in initiating proceedings. On this ground alone, the SCN stands vitiated and is liable to be set aside for violation of the principles of natural justice.

Violation of Principles of Natural Justice

13) The Noticee sought for an opportunity to carry out inspection of such documents relied upon by SEBI for framing charge in the SCN. While the inspection was provided on March 9, 2020 ("Inspection"), SEBI has not taken into account the request of the Noticee for a copy/ relevant extract of the investigation report basis which the present proceedings are being conducted. Copy of the minutes of the Inspection is enclosed here as Annexure A.

14) In this regard, it is humbly submitted that it is settled position in law that the material shared in a proceeding has to include not only the material that will help support the charges but also include the material that would undermine the charges levelled, i.e., all material that is "relevant" (whether to SEBI or to the Noticee or otheriwse) and not just all material "relied upon" by SEBI. Furthermore, a fundamental principle of natural justice that squarely applies in quasi-judicial proceedings, is that an adjudicatory body cannot base its decision on any material unless the person against whom it is sought to be utilized has been apprised of it.

15) As such, the Noticee is entitled to a fair opportunity to defend himself and such an opportunity includes the ability to review all the relevant underlying documents and supporting evidence, access to factual assertions/ data, and all materials relied upon and referred to by SEBI to frame its allegations. The right to examine the investigation report is particularly important since that

typically contains the evidence which has been considered and the underlying rationale for the allegation being made. In quasi-judicial proceedings, the investigation report effectively plays the role of the prosecution as it posits the charge that the Noticee is required to challenge. Consequently, denial of an opportunity, without any reasonable cause to review the same, is neither fair nor just and fundamentally impairs the ability of a person to defend himself.

16) *Therefore, in the absence of a full and complete opportunity to verify and inspect the investigation report, the Noticee's right and ability to defend itself has been gravely prejudiced and impaired, and that alone is sufficient ground for the proceedings under the SCN to be set aside. However, a detailed response is being submitted in the interest of time and in order to expeditiously close this matter. It should be noted that the reply is without prejudice to the above submissions in relation to the inadequacy in the documents provided by SEBI. The Noticee craves leave to submit further submissions, should the investigation report or any other document is made available to the Noticee.*

17) *Notwithstanding and without prejudice to the preliminary objections raised above, a detailed response to the allegations made in the SCN has been set out in the paragraphs below.*

SPECIFIC RESPONSES TO THE ALLEGATIONS

Charge

18) *Based on a review of the SCN, the core allegations made against the Noticee is at paragraph 15 of the SCN viz. set out hereunder:*

"It is observed from the WhatsApp chats retrieved from the device of Ms. Shruti Vishal Vora that the financial figures of HDFC (viz; NII) circulated through WhatsApp, on January 25, 2016 at 09:51:52 hours, closely matched with those disclosed subsequently by HDFC on stock exchanges on January 25, 2016 at 14:07:01 hours. Also, the aforesaid message related to HDFC related NII would fall under UPSI and the Noticee, Renish was in in possession of the UPSI. Therefore, Renish is Insider as per Regulation 2(l)(g) PIT 2015. Further, the Noticee, as insider, has communicated the UPSI related to NII of HDFC for QE Dec 2015 through WhatsApp message and therefore it is alleged that the Noticee has violated Section 12A(d) and 12A(e) of the SEBI Act, 1992 and Regulation 3(1) of PIT Regulations, 2015."

19) *The entire SCN is based on the premise that the Noticee was in possession of unpublished price sensitive information ("UPSI"), and was, therefore, an 'insider' in terms of the PIT Regulations. In terms of Regulation 3(1) of the PIT Regulations, an 'insider' cannot communicate UPSI to any person. The Noticee had sent a text message "Hearing 7050cr nii and 3350cr pat Hdfc bank"*

("Relevant Text") to one Ms. Shruti Vora on January 25, 2016 at 09:51:52 hours i.e. before financial figures released on January 25, 2016 at 14:07:01 hours.

20) The relevant provision is set out below for ease of reference:

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

NOTE: This provision is intended to cast an obligation on all insiders who are essentially persons in possession of unpublished price sensitive information to handle such information with care and to deal with the information with them when transacting their business strictly on a need-to-know basis. It is also intended to lead to organisations developing practices based on need-to-know principles for treatment of information in their possession. "

21) The Noticee has also been charged with Sections 12A(d) and (e) of the SEBI Act, viz. as under:

"No person shall directly or indirectly -

(d) engage in insider trading;

(e) deal in securities while in possession of material or non-public information or communicate such material or non-public information to any other person, in a manner which is in contravention of the provisions of this Act or the rules or the regulations made thereunder "

22) The crux of the submissions below to deal with the findings and allegations in the SCN is as under:

a. The Relevant Text sent by the Noticee to one Ms. Shruti Vora did not contain any UPSI, and, therefore, no violation of Section 12A(e) of the SEBI Act and/or Regulation 3(1) of the PIT Regulations is established. The contents of the Relevant Text were based on publicly available information relating to HDFC Bank Limited ("HDFC Bank").

b. In any event, the Noticee was in no way connected with HDFC Bank and, thus, was not in possession of any UPSI of HDFC Bank. SEBI has failed to adduce any evidence in this regard. Thus, the Noticee was not an 'insider' in terms of the PIT Regulations. Accordingly, the Noticee has not communicated any UPSI through the Relevant Text sent to Ms. Shruti Vora.

c. Insofar as the allegation of engaging in insider trading is concerned (i.e. violation of Section 12A(d) of the SEBI Act) no case has been made out of the Noticee having undertaken any trades in HDFC Bank, both directly or indirectly. Thus, the charge in the SCN fails with respect to Section 12A(d) of the SEBI Act.

No UPSI communicated

23) From the review of the SCN, it is abundantly clear that the allegation pertains to the Noticee having communicated UPSI through the Relevant Text to Ms. Shruti Vora. The SCN concludes the fact that

the contents of the Relevant Text are UPSI based on the definition of UPSI under the PIT Regulations i.e. "...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/".

24) As per the SCN, the expected profit figures of December 2015 quarter of HDFC were already available in public domain (i.e. before the Relevant Text was sent by the Noticee). In terms of paragraph 9 of the SCN, it is alleged that:

"However, NII figures of HDFC Bank mentioned in the said news report were 6911 crores compared to figures of 7050 cr NII circulated in the WhatsApp message. NII figure in a Bank are figures which cannot be derivedfrom profit figures available in the said news report. In light of the same, the instant circulation of NII figure of HDFC through WhatsApp has been considered as communication of Unpublished Price Sensitive Information (UPSI)."

25) It appears that the SCN concludes that the content of the Relevant Text is UPSI since, (i) the deviation in the NII and PAT figures in the Relevant Text from the actual figure reported by HDFC was very small; and (ii) the NII figure cannot be derived from the profit figures reported in the news report. The above conclusion in the SCN is incoherent inasmuch as fallacious.

26) It is respectfully submitted that smaller deviation as compared to figures in public domain cannot be a ground to conclude that the Noticee had access to UPSI. Thus, the finding in the SCN is without any merit. In any event, the contents of the Relevant Text were based on information available in public domain.

27) At the relevant time, the Noticee was working as a Research Associate, which involved analysis of data available in public domain. This included crunching raw data available in public domain, updating financial model, preparing quarterly estimates, updating charts, etc. As part of his day-to-day activities, the Noticee prepared the estimates (viz. contents of the Relevant Text) from analyzing the entity's quarterly trends, the news reports/ polls from Bloomberg, CNBC, other broker estimates, etc. The Noticee craves leave to refer to and rely upon the said news report/ street estimates, as and when produced. The Noticee looked at HDFC Bank's performance in the previous quarters (i.e. past 3rd quarter results and percentage growth), as well estimates circulated in the news reports. Accordingly, the Relevant Text is based on information in public domain and the Noticee's experience and judgement.

28) Based on the historical trend, the Noticee concluded that HDFC Bank's 3rd quarter figures for:

a. NII - had been ranging from 5-6% on Quarter-on-Quarter growth in the last three quarters

b. PAT - generally up by approximately 17% on Quarter-on-Quarter basis in every 3rd quarter

29) Thus, the Relevant Text was based on the historical trend as well street estimates widely available for HDFC Bank. Accordingly, the communication of the NII figure and PAT figure in relation to HDFC Bank to Ms. Shruti Vora was purely an estimate prepared from information available in public domain. The Noticee did not communicate any UPSI. In any event, it is pertinent to note that given that the Relevant Text was sent in January 2016 i.e. more than four years ago, the Noticee does not recall the exact reason for sharing the estimates with one Ms. Shruti Vora. This further strengthens the point that the delay in issuance of the SCN and the Noticee being made to respond to any allegation with respect to the facts that have transpired more than four years ago, causes grave prejudice to the Noticee.

30) In view of the above, it is respectfully submitted that the Relevant Text did not contain any UPSI. Thus, the charge of the Noticee having communicated UPSI to Ms. Shruti Vora is not established. In any event, the other essential element to bring the charge under Section 12A(e) of the SEBI Act and Regulation 3(1) of the PIT Regulations, is that the Noticee ought to have been an 'insider' in terms of the PIT Regulations. It is respectfully submitted that the Noticee is not an 'insider' with respect to HDFC Bank.

Noticee not an 'insider'

31) Before dealing with the assertion that the Noticee was an 'insider', it is important to cast an eye on the definition of the term 'insider' under the PIT Regulations. In terms of Regulation 2(l)(g) of the PIT Regulations, "(g) "insider" means any person who is: i) a connected person; or ii) in possession of or having access to unpublished price sensitive information;

NOTE: Since "generally available information" is defined, it is intended that anyone in possession of or having access to unpublished price sensitive information should be considered an "insider" regardless of how one came in possession of or had access to such information. Various circumstances are provided for such a person to demonstrate that he has not indulged in insider trading. Therefore, this definition is intended to bring within its reach any person who is in receipt of or has access to unpublished price sensitive information. The onus of showing that a certain person was in possession of or had access to unpublished price sensitive information at the time of trading would, therefore, be on the person leveling the charge after which the person who has traded when in possession of or having access to unpublished price sensitive information may demonstrate that he was not in such possession or that he has not traded or he could not access or that his trading when in possession of such information was squarely covered by the exonerating circumstances."

32) From above, it is clear that to be considered as an 'insider', a person should either be a connected person (i.e. connected to HDFC Bank in the present case) or be in possession of or have access to UPSI. It is respectfully submitted that the Noticee is not a 'connected person' in terms of the PIT Regulations. In fact, the SCN also does not hold the Noticee to be a 'connected person'.

33) Paragraph 12 of the SCN states as under:

"It is observed from the information submitted by HDFC vide its letter dated August 31, 2019, the persons who were having access to and/ or in possession of the UPSI relating to the aforesaid financial results and persons who were in possession of WhatsApp message, namely Renish (Noticee) and Ms. Shruti Vora, are considered as insiders (Annexure IV)."

34) Thus, it is clear that SCN has concluded that the Noticee is an insider based on the contents of the letter dated August 31, 2019 from HDFC Bank ("HDFC Letter"). Upon review of the HDFC Letter, it is clear that there is no mention of the Noticee in the list of persons who were having access to and/or in possession of the UPSI relating to the financial results of HDFC Bank. In absence of the Noticee's name forming part of the HDFC Letter, the statement in the SCN i.e. "from the information submitted by HDFC vide its letter dated August 31, 2019, the persons who were having access to and/ or in possession of the UPSI relating to the aforesaid financial results and persons who were in possession of WhatsApp message, namely Renish (Noticee) and Ms. Shruti Vora", is incorrect and baseless. Thus, the SCN wrongly alleges that the Noticee is an 'insider' as per the HDFC Letter, especially, since the contents of the Relevant Text were not UPSI.

35) The PIT Regulations, in fact, puts the onus on SEBI to show that the Noticee was in possession of or had access to UPSI. The SCN has failed to adduce any evidence to show that the Noticee was in possession of the UPSI or had access to UPSI. The allegations is merely based on surmise and conjecture, which cannot sustain the holding of guilt. In fact, suspicions, conjectures and hypothesis cannot take the place of evidence as described in the Indian Evidence Act, 1872 especially, in cases of insider trading.4

36) In this regard, the Hon'ble Supreme Court has held in the case of Nandkishor Prasad v. State of Bihar that:

"The minimum requirement of the rules of natural justice is that the Tribunal should arrive at its conclusion on the basis of some evidence i.e. evidential material which with some degree of definiteness points to the guild of the delinquent in respect of the charge against him. Suspicion cannot be allowed to take place of proof even in domestic enquiries."

37) The Hon'ble SAT in the context of offences relating to insider trading and market manipulation has held that the degree of proof is much higher than offences relating to other securities market violations. The relevant extract of the judgement6 is as under that:

"If Talaulicar wanted to sell a large number of his shares in TFL, he would know how to sell, when to sell and who would be the likely purchasers. There should not have been any occasion for him to seek Pendse's assistance and if such a conclusion is drawn, as has been done by the adjudicating officer, there has to be clear evidence to support such a conclusion which is conspicuous by its absence in this case...Similarly, in his statement during investigations, Talaulicar has stated that it was Pendse who handed over cheques for the aggregate value of Rs. 69 lacs to him for the sale of his family's shares. There is absolutely no corroboration in support of such a statement and a serious allegation like insider trading cannot be established on the basis of such uncorroborated evidence. Talaulicar was not an inexperienced person who would need his hands to be held when he decided to offload his TFL shares in the market. That Pendse counselled and aided in marketing the latter's TFL shares cannot be concluded on the basis of indirect and circumstantial evidence.''''

38) *It is respectfully submitted that, in the present case, the entire allegation against the Noticee is based on circumstances surrounded the sending of the Relevant Text by the Noticee to Ms. Shruti Vora on the day of financial results of HDFC Bank. There is not an iota of concrete evidence to support the theory that the Noticee was in possession of UPSI. In Samir Arora v. SEBI7, the Hon'ble SAT has further held that "where activities like insider trading and fraudulent trade practices are concerned, charges must be proved based on cogent materials and in accordance with law". Further, in Union of India v. Chaturbhai M. Patel & Co.8 the Hon'ble Supreme Court had referred to A.L.N, Narayanan Chettyar v. Official Assignee, wherein it was held that "...However suspicious may be the circumstances, however, strange the coincidences, and however grave the doubts, suspicion alone can never take the place of proof...".*

39) *This principle has been upheld by SEBI as well in the matter of Emami Limited and SEBI has held as under:*

"the charge of insider trading being a serious nature and there needs to be a higher degree ofproof for the preponderance ofprobability having regard to the gravity of the charge. I conclude that the benefit of doubt is to be given to the Noticees in view of my findings and observations made above"

40) *In light of the above cases, it is submitted that it is an established jurisprudence that for proving charges of communication of UPSI under PIT Regulations, the evidence adduced must be compelling which can be inferred by logical process of reasoning from the totality of facts and circumstances surrounding the allegations. As held by the Hon'ble Supreme Court in the case of Hanumat v. State of Madhya Pradesh , that:*

"11 ...In dealing with circumstantial evidence the rules specially applicable to such evidence must be borne in mind. In such cases there is always the danger that conjecture or suspicion may take

the place of legal proof and therefore it is right to recall the warning addressed by Baron Alderson, to the jury in Reg v. Hodge ((1838) 2 Lew. 221), where he said:-

"The mind was apt to take a pleasure in adapting circumstances to one another, and even in straining them a little, if need be, to force them to from parts of one connected whole; and the more ingenious the mind of the individual, the more likely was it, considering such matters to overreach and mislead itself, to supply some little link that is wanting, to take for granted some fact consistent with its previous theories and necessary to render them complete."

12. It is well to remember that in cases where the evidence in of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and pendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused... "

41) Thus, it is clear that the circumstantial evidence relied by a regulator to prove some allegation should lead to only one conclusion. It is respectfully submitted that in order for there to be a conclusion that the Noticee communicated UPSI, each and every ingredient of the allegation must necessarily be established by cogent evidence.

42) In the present case, it is clear that the name of the Noticee is absent in the HDFC Letter. SEBI has not adduced any evidence to show that the Noticee was in possession of UPSI. In fact, as demonstrated in paragraphs above, the Noticee had sent the Relevant Text to Ms. Shruti Vora based on the information in public domain. The entire SCN hinges on the fallacious assumption that the Noticee was in possession of UPSI. Not only has SEBI failed to show that the Noticee was in possession of UPSI, the Noticee has (in the above paragraphs) demonstrated that the contents of the Relevant Text were based on public available information. In the case of Maharashtra State Board of Secondary and Higher Education v. KS Gandhi11 the Hon'ble Supreme Court has held:

"If there are no positive proved facts, oral, documentary or circumstantial from which the inferences can be made the method of inference fails and what is left is mere speculation or conjecture. Therefore, when an inference of proof that a fact in dispute has been held established there must be some material facts or circumstances on record from which such an inference could be drawn. The standard of proof is not proof beyond reasonable doubt "but" the preponderance of probabilities tending to draw an inference that the fact must be more probable. Standard of proof cannot be put in a straight jacket formula. "

43) It is respectfully submitted that in proceedings akin to the present proceedings, the requirement of proof cannot be substituted by surmise and conjecture. In the present case, SEBI has failed to establish that the Noticee is an 'insider'. In fact, the document adduced by SEBI (i.e. HDFC Letter) to support the fact that the Noticee is an 'insider', does not bear the Noticee's name at any place. Further, it has been clearly established that the contents of the Relevant Text were based on publicly available information.

44) In view of the above, it is respectfully submitted that the Noticee is not an 'insider' in terms of the PIT Regulations and, thus, there is no violation of Regulation 3(1) of PIT Regulations and Section 12A(e) of the SEBI Act is not violated.

No insider trading

45) In paragraph 15 of the SCN, it has also been alleged that the Noticee has violated Section 12A(d) of the SEBI Act. From a bare perusal of Section 12A(d) of the SEBI Act, it is abundantly clear that the provision pertains to a person engaging in insider trading. It is respectfully submitted that the SCN does not make a single mention of the fact that the Noticee engaged in insider trading.

46) Regulation 2(1)(1) of the PIT Regulations defines trading as "means and includes subscribing, buying, selling, dealing, or agreeing to subscribe, buy, sell, deal in any securities, and "trade" shall be construed accordingly;". In addition to the Noticee not being an 'insider', the Noticee has also not, whether directly or indirectly, executed any trades in the scrip of HDFC Bank during the relevant period. The Noticee has also submitted his banks statement and demat statements with SEBI, which clearly shows that the Noticee has not traded in the securities market. Thus, the Noticee has not engaged in insider trading as wrongly alleged in the SCN.

47) Therefore, it is respectfully submitted that the allegation of violation of Section 12A(d) of the SEBI Act by the Noticee is entirely fallacious and deserves to be dropped at the outset.

Reputation of the Noticee

48) It is respectfully submitted that the Noticee has neither derived any benefit nor any advantage from the alleged contravention in the SCN. SEBI has not been able to determine if the Noticee was actually in possession of UPSI or that there was actual damage to the securities market by the Relevant Text sent by the Noticee. Any finding by SEBI upholding the allegations made against the Noticee in the present instance would be inconsistent with the relevant provisions of law and regulations and facts and circumstances of the case. This would result in irreversible damage to the reputation, which the Noticee has painstakingly built over many years.

49) It is humbly submitted that in the present case, any adverse order passed against the Noticee would have severe consequences for his reputation and career, and, therefore, it was critical for SEBI to

have adduced higher degree of proof in support of its charge in the SCN. The Hon'ble SAT, while analysing the lack of due diligence on part of a chartered accountant considered the degree of proof required to prove the violation of due diligence, has held, "there must be an enquiry and the finding must be sustained by a higher degree of proof that that required in a civil suit, yet falling short of the proof required to sustain a conviction in a criminal prosecution. There must be convincing preponderance of evidence. This we state because a Lead Manager, if found guilty of lack of due diligence, can suffer penal consequences, which could affect his business.".

50) *The Noticee is a SEBI registered Research Analyst. Any adverse order from SEBI against the Noticee as a consequence of this SCN would result in the Noticee suffering irreparable damage to his reputation and career. This is especially relevant in light of the fact that there is no evidence to support the charge of communication of UPSI or insider trading. It does not stand to reason that the Noticee would jeopardize his entire career by sharing UPSI without attaining any personal gain or benefit. Thus, as a natural consequence, the benefit of doubt should be in favour of the Noticee.*

51) *In view of the submissions above and given the lack of evidence, it is humbly submitted by the Noticee that the SCN be discharged without any negative findings. The Noticee is the only earning member in the family. Any adverse order will create a major financial distress on the Noticee and his family, especially, when the Noticee has not violated any provisions of the SEBI Act and/ or PIT Regulations.*

52) *In any event, the Noticee has not taken the present regulatory proceedings in a nonchalant manner. The Noticee is not guilty of conduct which is contumacious or dishonest or acted in conscious disregard of law.*

53) *Pertinently, the Noticee has not had any situations where the Noticee has been subjected to any internal disciplinary action from any of his employer in the career spanning over a decade. In fact, there are no complaints against the Noticee from any of his clients as well.*

54) *Without prejudice to the aforesaid, it is respectfully submitted that the alleged violation has not resulted in any harm or loss caused to the securities market. No such allegation sits in the SCN as well. There was no wilful disregard of law or intention to violate the provisions of the SEBI Act and/ or PIT Regulations. The Hon'ble Supreme Court has held that a penalty should not be imposed for the sake of it and should be utilized to achieve a specific purpose, rather than as an end in itself. Thus, in the present case, no monetary penalty should be imposed on the Noticee. The relevant extract of the Hon'ble Supreme Court is reproduced hereunder:*

"8. Under the Act penalty may be imposed for failure to register as a dealer - Section 9(1) read with Section 25(l)(a) of the Act. But the liability to pay penalty does not arise merely upon proof of default in registering as a dealer. An order imposing penalty for failure to carry out a statutory

obligation is the result of a quasi - criminal proceeding, and penalty will not ordinarily be imposed unless the party obliged either acted deliberately in defiance of law or was guilty of conduct contumacious or dishonest, or acted in conscious disregard of its obligation. Penalty will not also be imposed merely because it is lawful to do so. Whether penalty should be imposed for failure to perform a statutory obligation is a matter of discretion of the authority to be exercised judicially and on a consideration of all the relevant circumstances. Even if a minimum penalty is prescribed, the authority competent to impose the penalty will be justified in refusing to impose penalty, where there is a technical or venial breach of the provisions of the Act or where the breach flows from a bona fide belief that the offender is not liable to be act in the manner prescribed by the statute. " (emphasis supplied)

CONCLUSION

55) In light of the above, it is evident that the SCN and the allegations made out therein, is without any basis in law or under equitable considerations. It is submitted that the allegations against the Noticee are not sustainable and thus, no monetary penalty can be passed/ issued against the Noticee.

56) The submissions made reaffirm that the Noticee has always acted within the letter and spirit of the applicable laws and regulations. In any event, applying the principles of penalty under Section 15J of the SEBI Act, it is clear that (i) the Noticee has not made any gains or avoided loss, (ii) the SCN does not allege any loss suffered by anyone, and (iii) there is no question of any repetitive nature of any default, whether as alleged or otherwise. Thus, the charges levied vide the SCN be disposed of entirely.

57) In the present facts and circumstances as stated hereinabove, it is respectfully submitted that there has been no violation of the SEBI Act and/ or PIT Regulations as alleged in the SCN. Accordingly, no monetary penalty is imposable upon the Noticee….."

18. Thereafter, vide email dated March 17, 2020, an opportunity of hearing was granted to the Noticee in the matter on March 27, 2020. Further, the Noticee, vide email dated March 25, 2020, sought adjournment of the hearing from March 27, 2020 to April 7, 2020 in light of the curfew imposed in the state. Subsequently, the Noticee again requested to adjourn the hearing in the matter. Thereafter, the Noticee was granted a final opportunity of hearing in the matter, vide email dated August 18, 2020, on August 27, 2020 through a Video Conference Call. It is noted that the Authorized Representatives (ARs) Shri Somasekhar

Sunderasan, Shri Rushin Kapadia and Shri Abishek Venkataraman along with the Noticee appeared for hearing through the Video Call. During the hearing, the ARs reiterated the submissions made vide Noticee's reply dated March 18, 2020, which has been duly taken on record. In furtherance to the hearing, the Noticee filed a supplemental note in respect of the submissions made by the ARs at the time of hearing. In the said supplemental note, the following was *inter alia* submitted:

(i) This short supplemental note is being filed to crystallize the submissions made by the Counsel at the personal hearing hearing held on August 27, 2020, with particular regard to the binding precedent and the law declared in a judgement dated October 15, 2004 by the Hon'ble Securities Appellate Tribunal ("SAT") in the matter of Samir C. Arora v. SEBI1 ("Samir Arora") and its applicability in the present case.

(ii) Samir Arora stands out with an explicit ruling on why the approach in the SCN is untenable for purposes of a final order. The Noticee's case stands on a far superior footing. The submissions in this regard are crisply set out below:

(iii) In Samir Arora, a company, Digital Globalsoft ("DGL"), was merging with Compaq India since Hewlett Packard and Compaq were globally consolidating. Samir Arora, a fund manager of Alliance Capital Mutual Fund, had initially believed that the said merger would be beneficial to DGL. However, his views subsequently changed with analysts researching the stock throwing more light. Samir Arora changed his view and Alliance Capital Mutual Fund sold all its shares of DGL. After he sold the shares, the swap ratio for the merger in India was announced, which was perceived as being detrimental to DGL.

(iv) SEBI charged the sales by Alliance Capital Mutual Fund as being presumably based on knowledge of the swap ratio for the merger, which information was said to be unpublished price sensitive information ("UPSI"). The records showed that SEBI had accepted that the swap ratio was known only to one Mr. Bansi Mehta, the chartered accountant who prepared it and that it was handed over by him in sealed envelope to an independent director, who carried the same to USA, and that the sealed envelope was opened in a board meeting held after Indian markets were closed.

(v) SEBI had ruled that it need not show how, where and when Mr. Arora could have had access to the swap ratio, and the fact that his fund had sold shares would be enough to infer that he was in possession of the said UPSIThis finding in the SEBI order was discussed by the Hon'ble SAT at length in paragraphs 60 and 61 of the judgement (enclosed as Annexure A), to set it aside, holding the following:

a. *SEBI was completely satisfied that the swap ratio was safeguarded by Mr. Bansi Mehta at his end and that the independent director only opened the sealed envelope at the time of the board meeting. Thus, there was no leakage of information at the source where the information was generated or the during the travel of the independent director.*
b. *There was no evidence to show that the UPSI reached Samir Arora in any manner. In fact, Samir Arora was also not a person who was expected to have access to UPSI in respect of DGL.*
c. *In such a case, SEBI ought to have showed, on the basis of some evidence, that the UPSI reached Samir Arora. SEBI failed to discharge this burden.*

(vi) In the interest of brevity, Paragraphs 60 and 61 are not being reproduced, and the attention of the Hon'ble AO is drawn to Paragraphs 56 to 61 of the case.

Applicability of Samir Arora

(vii) Samir Arora renders the SCN untenable for conversion into an order by SEBI. The facts of the Noticee are even superior in material particular, and the ratio squarely applies to the instant case. The submissions in this regard are:

a. *In Samir Arora, trading in DGL scrip actually took place, whereas in the present case there is no whisper of any trading by the Noticee or even by the person who received the speculative and hearsay net interest income ("NII") estimation from the Noticee;*
b. *Just as Mr. Bansi Mehta was a secure source of the swap ratio and it was not leaked, after careful scrutiny, SEBI has not found fault with HDFC Bank for leakage of any financial information much less the NII, which alone is being attributed to the Noticee;*
c. *Merely because a WhatsApp message from the Noticee contained an estimated speculated NII (it is admitted that profit after tax was in the public domain) and such NII took as in the public domain but varied from the speculation of the Noticee, the SCN has proceeded on the footing that the WhatsApp message is UPSI. On the basis that the WhatsApp message had UPSI, the Noticee is accused of being in possession of UPSI, and thereby an insider, and since he is presumed to be an insider, Regulation 3(1), prohibiting insiders from communicating UPSI was violated by him by sending a WhatsApp message with his speculation to his colleague. These allegations are made in the teeth of having no finding that any leakage took place from HDFC Bank or any of its connected persons to the Noticee. In short, SEBI's view is that it is irrelevant where the information came from, and so long as SEBI believes the information to be similar to what eventually was published, the information would become UPSI leading to the Noticee having violated Regulation 3(1).*

d. *This above approach is precisely what was explicitly struck down in Samir Arora, where, SEBI's view was that the swap ratio did not leak from Mr. Bansi Mehta or from the independent director who carried it and opened the seal in the Board Meeting, but that such security of the information was irrelevant and one should assume that Mr. Arora had possession of UPSI only because Alliance Capital Mutual Fund sold all its shares. Since Mr. Arora would be presumed to have the UPSI, he would be presumed to be an insider. Since he would be presumed to be an insider, his sales would have violated the prohibition on an insider trading when in possession of UPSI.*

e. *That the Hon'ble SAT has struck down such a presumptive and conjectural rationale would squarely bind the Learned AO.*

(viii) In view of the above, SEBI is bound by the decision of the Hon'ble SAT in Samir Arora. Any other finding will be in direct disregard to the law laid down by the Hon'ble SAT.

(ix) In any event, Regelation 3(1) of PIT Regulations is not applicable in the present case. Regulation 3(1) would typically cover a scenario where an insider communicates UPSI. In the present case, applying Samir Arora, the Noticee cannot be termed as an 'insider' in the first place.

(x) In view of all the submissions made in this note as well as the submissions made in the reply and the arguments presented at the time of the hearing, it is reiterated that the Noticee ought not to be penalized under these proceedings for alleged violation of PIT Regulations. Should there be any adverse order against the Noticee as a consequence of this SCN, the Noticee would suffer an irreparable damage to his reputation.

(xi) Accordingly, it is humbly prayed that the Hon'ble AO should set aside the SCN in its entirety and not issue any adverse order or finding against the Noticee…"

CONSIDERATION OF ISSUES AND FINDINGS

19. After perusal of the material available on record, the issues that arise for consideration in the present case are as under:

I. Whether the Noticee has violated the provisions of Section 12 A (d) & 12 A (e) of the SEBI Act, 1992 and Regulation 3 (1) of SEBI (PIT) Regulations, 2015?

II. Whether the Noticee is liable for monetary penalty under Section 15G of the SEBI Act, 1992?

III. If so, what quantum of monetary penalty should be imposed on the Noticee?

FINDINGS

20. On perusal of the material available on record and giving regard to the facts and circumstances of the case, I record my findings hereunder:

ISSUE I: Whether the Noticee has violated the provisions of Section 12 A (d) & 12 A (e) of the SEBI Act, 1992 and Regulation 3 (1) of SEBI (PIT) Regulations, 2015?

21. Before proceeding further, I find it pertinent to refer to the relevant provisions of SEBI Act, 1992 and PIT Regulations, 2015 which read as under:

Section 12 A (d) of SEBI Act, 1992

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

22. After due consideration of the submission of the Noticee, I prima facie note that there is no dispute as to the communication of the information through WhatsApp messages by the

Noticee to Shruti Vora as alleged. However it is the primary case of the Noticee that such information was not in the nature of UPSI and was based on the publicly available information. Further, it has been stated that the Noticee was not connected to HDFC in any way and that no case has been made out against the Noticee of having carried out trades in the scrip of HDFC during the relevant period of the instant case. Further, it has been contended that he, as a part and parcel of his job, the Noticee who was working as a Research Associate during the relevant period, he used to carry out analysis of data available in public domain. This included crunching raw data available in public domain, updating financial model, preparing quarterly estimates, updating charts, etc. It has been submitted that as part of his day-to-day activities, the Noticee prepared the estimates (viz. contents of the Relevant Text) from analyzing the entity's quarterly trends, the news reports/ polls from Bloomberg, CNBC, other broker estimates, etc. The Noticee stated that he looked at HDFC Bank's performance in the previous quarters (i.e. past 3rd quarter results and percentage growth), as well estimates circulated in the news reports and accordingly, the Relevant Text was based on information in public domain and the Noticee's experience and judgement. That b*ased on the historical trend, he concluded that HDFC Bank's 3rd quarter figures for:*

c. NII - had been ranging from 5-6% on Quarter-on-Quarter growth in the last three quarters

d. PAT - generally up by approximately 17% on Quarter-on-Quarter basis in every 3rd quarter

23. *In view of the above, the Noticee has contended that the Relevant Text was based on the historical trend as well street estimates widely available for HDFC Bank and that the communication of the NII figure and PAT figure in relation to HDFC Bank to Ms. Shruti Vora was purely an estimate prepared from information available in public domain. The Noticee did not communicate any UPSI. In any event, it is pertinent to note that given that the Relevant Text was sent in January 2016 i.e. more than four years ago, the Noticee does not recall the exact reason for sharing the estimates with one Ms. Shruti Vora.* Such being the case, I deem it relevant to examine the content of the information to ascertain its nature.

24. In this regard, firstly, I peruse the following table wherein the financial figures circulated on WhatsApp pertaining to HDFC bank Limited are compared with actual figures disclosed subsequently on stock exchanges to gauge the deviation between two sets of figures.

Abbreviations format used:

Figure1 in WhatsApp (F1W) Figure1 in Actual (F1A) Figure1 Deviation (F1Dev)

Date and time of WhatsApp message	Figures in WhatsApp message	Date and time of disclosure on Exchange	Actual figures disclosed on Exchange	F1W	F1A	F2W	F2A	%ge Deviations observed in Figures	
								F1Dev	F2Dev
25/01/2016 09:51:52	Hearing 7050cr NII and 3350cr PAT	25/01/2016 14:07	PAT 3356.84 cr NII 7068.51 cr	7050	7068.51	3350	3356.84	0.26	0.20

* NII = Interest earned- Interest Expended i.e. (15411.12-8342.61) = 7068.51

* % ge deviation is calculated as per the following methodology:

%ge Deviation = (Figure in WhatsApp message-Actual Figures disclosed on exchange)*100/(Actual figures disclosed on exchange)

25. As noted in the SCN, the expected profit figures of December 2015 quarter of HDFC were already available in public domain as news report before the message was forwarded by Noticee. However, NII figures of HDFC Bank mentioned in the said news report were 6911 crores compared to figures of 7050cr NII circulated in the WhatsApp message. NII figures in a Bank are figures which cannot be derived from profit figures available in said news report. In light of the same, the instant circulation of NII figure of HDFC through WhatsApp was alleged as a communication of Unpublished Price Sensitive Information (UPSI). While it is evident that the information related to the financial results were sensitive in nature, I note that the financial figure NII, which is independent of expected profits (that were in public domain) matched very closely with that circulated through the WhatsApp messages so much so that there was a negligible difference between them. In addition, I also note that the aforesaid whatsapp message containing such information was sent by the Noticee to Shruti Vora at 9:51 AM on January 25, 2016 whereas HDFC announced its financial results to the stock exchanges on the same at 14:07 PM, the fact which is not in dispute.

26. At this juncture, I find it pertinent to note the peculiarity of facts and circumstances involved in the instant case where the mode of circulation of information has been by way of WhatsApp messages. I note from the record that efforts were made to track back to the source of the message; however severe technological constraints were faced in this regard owing to the end-to-end encryption of WhatsApp messages. It is also noted in this regard that WhatsApp itself communicated to SEBI stating that WhatsApp users are protected

with end-to-end encryption protocol, third parties and WhatsApp cannot read such messages or search for such messages and that WhatsApp does not store information regarding the sender and recipient of a message. Besides, in the instant case, though the whatsapp messages of the Noticee stated "*hearing*" with respect to the information he shared with Shruti Vora, neither the Noticee submitted the source of such information nor the trail of the Noticee's messages could be tracked back (to ascertain possible communication from/to any other entities) despite all the efforts due to aforementioned technological constraints with respect to whatsapp messages. In spite of the fact that the source of leak of information could not traced back, in the circumstances as above, I note that it is reasonably possible that the information that was communicated by the Noticee had already come into existence at the time, the Noticee forwarded the messages to Shruti Vora as is evident from the chronological events leading to the announcement on the later part of the same day.

27. Having noted as above, with respect to the contention of the Noticee that the information constituting the whatsapp messages were the outcome of his estimates from the historic data, I note that the Noticee has not placed before me any evidence based on which he has arrived at his claimed estimates. Given the fact that the information on Whatsapp matched so closely with the subsequently announced results and that Noticee is contending that his message was based on his research from the publicly available documents/estimates, the onus in such case is on the Noticee to demonstrate as to on what specific information in public domain, his specific estimate has been based on. While the Noticee has claimed to have analyzed the entity's quarterly trends, the news reports/ polls from Bloomberg, CNBC, other broker estimates, etc., I am of the opinion that if Noticee had in fact relied upon the same or his forwarded messages had originated the information from such estimates, it should be demonstrable, verifiable trail of well documented and laid down process in consonance with his job profile or description. It is furthermore of relevance that the Noticee being associated with firm as a research associate, any of his estimates should have been expected to be well documents and the channel of communication to be in formal means on a need to know basis, especially when the information contained the significant details of the financial results. However, I note that Noticee has not produced me any

evidence of any such documentation of any demonstrable and verifiable trail of events in arriving at his estimates or any official/formal communication of such estimates having claimed to be arrived by him, especially when the communication has been made just a few hours before the announcement of financial results by the company to the exchanges. I note that Noticee has failed to demonstrate the basis in above lines.

28. From all the above, I am of the opinion that the submissions of the Noticee that the information shared through the whatsapp messages was of generally available nature by referring to the quarterly trends, the news reports/ polls from Bloomberg, CNBC, other broker estimates, etc cannot stand to be accepted and I am of the opinion that the same is clearly an afterthought. Therefore, based on the facts above, the information communicated to Shruti Vora which very closely matched with the subsequently announced results cannot be accepted to have sourced from the publicly available information as contended by him.

29. In this background I find it pertinent to note that the information of the nature of estimates that is published in the newspaper or by the brokerage houses estimating the results are in the public domain and there is generally no disparity in the access to such information. However, such information when being circulated on a private messaging platform like whatsapp among a closed set of people, such set of people forming part of the information communication chain alone become privy not only to the content of the information, but also to the knowledge of very existence of such information. I agree with the submission that the broking houses generally arrive at an estimate on results based on various parameters and such information generated by the brokerage houses may not constitute UPSI even if the same matches with the result announced subsequently. However, in the instant case before me, there is not a single evidence placed before me that the information communicated by the Noticee was the outcome of any specific publicly available information / estimates/predictions.

30. At this juncture, it is pertinent to note that the investigation in this case was initiated pursuant to the news article published in Financial Chronicle (sourced from Reuter's article

by Mr. Rafael Nam) dated November 17, 2017 whereby it was reported that unpublished financial results of some major Companies were posted in private whatsapp group prior to Companies announcements stock exchanges. In this regard, Shruti Vora had stated before SEBI that she was part of the Reuters Trading India Platform which comprised of various analysts, fund managers and traders of the reputed brokerage firms/fund houses and the member of the said group had formed a whatsapp group which she had admittedly was part of. Therefore, the Noticee forwarding to a person who had always been an active participant in the whatsapp groups of the nature reported in the aforementioned News article in the facts and circumstances of the cases gives a reasonable scope of his connection with such closed group.

31. Further, considering the fact that the shared information matched so closely with the subsequently published financial results, the submissions of the Noticee that such information was in the nature of publicly available information would be to say that the NII of the said company had already become public and being discussed openly among the general investors. However, there is no evidence to show that the NII that was announced was available in the form of any publicly published estimates. In the absence of any document or evidence on record to signify such fact even remotely, as already noted above, I am not inclined to accept such a contentious argument by the Noticee that the access to accurate financial results was available to larger public. Further, in the instant case, a few closed set of people including the Noticee were in possession of such UPSI and they alone had been privy to the information albeit all of them could not be tracked back due to the constraints, due to deletion of whatsapp messages, as stated above. With regard to the communication of the messages by the Noticee, I have also perused the job profile of the Noticee during the period the messages were communicated which involved*Updating financial model (pre and post quarterly results, considering historical trend in key business metrics such as Net Interest Income, Pre-provision Operating Profits, Provisions and Profit After Tax) of any entity as a research associate/analyst.*

32. Further it is evident from the job profile of the Noticee that Noticee was not required to *suo moto* share such information arising from his market research to Shruti Vora who was part

of the Sales Department in an informal way leaving no official trail of communication just a few hours prior to the announcement of results. Such information shared through the informal channel of communication with no documentation with the Sales department, would in all probability be made accessible to the clients who are in direct contact with the sales department. I am of the opinion that the circumstances and arrangement as observed above seen in context where the source of the information could not be traced back due to deletion of the messages in whatsapp by sender, gives a clear scope for transmission of UPSI through a chain of forward messages to various other entities/ closed groups thereby granting an undue advantage to them.

33. In view of the gravity of consequences arising out of such sharing of information among the closed groups through WhatsApp or social media platform, I am not inclined to give any benefit of doubt in favour of the Noticee.

34. The Noticee has also vehemently argued that the information forming part of the message had never been used by him to make monetary gains and no evidence has been placed to establish the same. In this regard, as already noted, due to the technological challenges, the trail of the messages could not be made out so as to identify the actual source or the complete list of persons who were part of the communication trail and therefore it is not entirely acceptable that no gain was made by any investor being privy to such information shared through WhatsApp messages. Furthermore, irrespective of the factors whether the information was originated from the Noticee or from anyone else from whom the Noticee received the same, the charge against the Noticee sustain to be considered as the same is concerned with whether the Noticee was in possession of UPSI and had shared it further. At this stage, I note that I am primarily of the opinion that it is against the interest of the investors to encourage any sharing of sensitive information within a closed group to the exclusion of general public especially when the source of such information cannot be traced back. If the same is allowed to continue in the pretext of sharing of market estimate through such private encrypted platform without being able to establish the source for arriving at the same, the insiders having access to the UPSI would be granted themselves with an unfettered mode of transmitting such information without having to be concerned about being tracked back to the source of the information. Considering the extent of impact, such

UPSI involving financial results hold on the price of the securities and any communication of information pertaining to the sensitive information as in the instant case has to be well documented and of verifiable trail. Considering all the above, I am of the opinion that a lenient view cannot be warranted so as to consider such information qualifying to be an UPSI as a publicly available information and allow the communication.

35. In this regard, I note that the Noticee has been alleged to have violated the provisions of Sections 12A(d) and 12A(e) of the SEBI Act, 1992 and Regulation 3 of the PIT Regulations, 2015. I note that Section 12A (d) prohibits directly or indirectly engaging in insider trading. With respect to the charge of Section 12A(d) against the Noticee, it has been contended before me that the same does not stand against the Noticee as there has been no allegation against him of any dealing or engagement in trading in the Scrip of HDFC. I agree with the submission of the Noticee and note that the charge of alleged violation of Section 12A(d) by the Noticee does not merit consideration in the instant case.

36. I note that Section 12A (e) *inter alia* prohibits any person from communicating any material or non-public information to any other person, in a manner that is in contravention of the provisions of SEBI Act or the Rules or the regulations made thereunder. Further, Section 3(1) of the PIT Regulations, 2015 prohibits any insider from communicating 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. In this connection, I also refer to the provisions of Regulation 2 (1) (g) of SEBI (PIT) Regulations, 2015, which state as under:

"insider" means any person who is:

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

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

37. In view of the aforesaid charges against the Noticee, I analyse the facts to ascertain whether the following essential requirements are established or not:

a) Whether the information constituted UPSI?

b) Whether the Noticee was an insider within the definition under Regulation 2(1)(g) of the PIT Regulations, 2015?

c) Whether the Noticee being an insider further communicated the UPSI?

a) Whether the information constituted UPSI

38. Firstly, it is the contention of the Noticee that the information forming part of the WhatsApp messages were sourced from the generally available documents/reports/estimates and therefore were in turn were publicly available information. In this regard, for the reasons already stated above, I do not find that the information stated in the WhatsApp messages qualify to be regarded as publicly available in the instant case. The Noticee has contended that merely the fact that the results exactly matched cannot be enough to allege the information to be a UPSI. In this regard, I find it pertinent to refer to the report of High-Level Committee to Review the SEBI (Prohibition of Insider Trading) Regulations, 1992 under the Chairmanship of Mr. Justice N K Sodhi (hereinafter referred to as "**Justice Sodhi Committee Report**") where the source of information as a material element while making a charge of insider trading was discussed.

39. In this regard, I note that the committee deliberating upon the issue of what information constitutes UPSI and what is to be regarded as generally available information and how the information of same nature may be UPSI in some case and generally available in others recorded various illustrations.

40. . In this regard, I note that UPSI is essentially an information that is not generally available but on becoming generally available materially affects price of securities. The committee laying down the principles on how such general availability needs to be ascertained stated that any information that is accessible to the public on non-discriminatory basis would

qualify to be generally available. Further, in the light of facts of the instant case, I also find it relevant to refer to the following paragraphs of the Report:

"*26. The Committee deliberated upon how one should understand —non-discriminatory access and it was felt that one should not over-stipulate how this should be understood since that could risk narrowing the scope of that term. For example, a research report that is priced for purchase and is made available to all clients of a stock broker would be considered non-discriminatory inasmuch as any client of the broker or any class of clients of a broker having a certain risk profile may acquire that research report. Merely because the report is priced and needs to be purchased would by itself mean that access to it is non-discriminatory? However, if one were to find extraordinary and peculiar structures such as pricing a research report at a level not in line with market practice such that only some identified persons may be able to acquire it and hope to rely on it by way of ostensible non-discriminatory access, it would not be non-discriminatory. Therefore, whether some information is available on a non-discriminatory basis would be a question of fact to be answered adopting the standard of a reasonable man.*

….

29. While these principles are also backed by the provisions containing the prohibition on communication of UPSI and the inducement of communication of UPSI in Regulation 3, it is important to also articulate how the concepts of —generally available information and —unpublished price sensitive information‖ are intended to be understood.

30. A piece of research work that is available on a discriminatory basis but is based entirely on generally available information would not change the character of the research work from being —generally available‖ to being —UPSI. The Committee is conscious that generally available information well analyzed by an insightful mind would not be transformed into UPSI. Therefore, the regulation explicitly provides that conclusions, deductions and analyses of generally available information too would be regarded as generally available information.

…..

33. To conclude, whether or not a piece of information is generally available or is unpublished would necessarily be a mixed question of fact and law. A bright line indicating the types of

matters that would ordinarily give rise to UPSI are listed to give illustrative guidance. It could well also be possible that information from such events could be routine in nature and consistent with a long history. Information about the repetition of the same event on predictable lines would not render it to be UPSI unless deviated from. For example, the declaration of dividend at the same rate at which a company has declared dividend for the several years as per publicly stated dividend policy."

41. In this regard, while I note that whether or not a piece of information is generally available or is unpublished would necessarily be a mixed question of fact and law, the statement that the information was an outcome of the research does not by itself make it generally available. I note that the test to ascertain an information to be UPSI or not is its non-discriminatory nature of availability. In the instant case, the Noticee has contended that the information forming part of his message was based on his research from the publicly available information. In this regard, I find it relevant to refer to illustration stated at paragraph 26 of the Committee Report, where a research work that is priced at *a level not in line with market practice such that only some identified persons may be able to acquire it* was opined to be of discriminatory nature. Therefore even if the information is said to be have been formed based on the research, firstly the research should have been based on the generally available information and secondly the research work should have been accessible on a non-discriminatory basis. However, in the instant case, even if the information is to be accepted as based on the research, there is no evidence brought on record by the Noticee to show that the research information emerged based on the generally available information. He has failed to exhibit even one specific estimate or public document or information that was relied upon in arriving at the NII that he shared in his messages. It becomes even more pertinent to note that the Noticee has forwarded the information just a few hours before the announcement of the results by HDFC and such action seen in the context of closely matching data cannot be treated as a mere coincidence. Furthermore, the said information has been forwarded to the person who had been a member of Reuters Trading India Platform which comprised of various analysts, fund managers and traders of the reputed brokerage firms/fund houses and the whatsapp group formed by them as stated by her vide her email and letter before SEBI. Therefore

such sharing of price sensitive information by the Noticee to Shruti Vora through WhatsApp messages by its very nature makes the access to information, discriminatory against the investors at large. Therefore the information in this case fails the test to be called generally available information as contended by the Noticee. I cannot ignore the fact that such information have been shared on the Whatsapp private messages and the general public had no knowledge of such information being shared on the WhatsApp platform to even have any access to the same.

42. From all the aforesaid findings, I am of the considered view that the messages pertaining to the financial results, circulated prior to the official announcement made by the HDFC, is UPSI. In my opinion, the private sharing of such information violates the rule of parity of information and perpetuated information asymmetry. The prohibition against insider trading helps in ensuring fairness, achieving information symmetry and ultimately market efficiency.

b) ***Whether the Noticee is an insider within the definition under Regulation 2(1) (g) of the PIT Regulations, 2015?***

&

c) ***Whether the Noticee being an insider further communicated the UPSI?***

43. I note that Regulation 2(1)(g) of the PIT Regulations, 2015 *inter alia* envisages that any person who is in possession of UPSI is regarded as an insider. Further, the note to the said provision also clarifies the legislative intent of the said provision by stating that such person is to be considered an insider regardless of how the UPSI has come into his/her possession. Therefore, once information is established to be a UPSI, anybody who is in possession of such information will be an insider.

44. Firstly, as already concluded, the financial results that were part of the WhatsApp messages clearly constituted UPSI as on January 25, 2016 for the reasons mentioned in the preparas. Secondly with respect to the possession of UPSI by the Noticee, the Noticee has contended that The PIT Regulations, 2015 puts the onus on SEBI to show that the Noticee was in

possession of or had access to UPSI and that SCN has failed to adduce any evidence in this regard. I note that there is no direct evidence available on record that Noticee was in possession of UPSI. However, I note that generally there are severe constraints faced during the investigation relating to oral communication of information involving an insider. I am also of the view that it is almost impossible to gather direct evidence of any form of oral communication given the current technologies, although the charges emanating from such oral communications, if actually available, are of serious nature. Therefore, I am of the view that the facts and circumstances of the case play a significant role in arriving at any conclusion. Accordingly in the instant case, I note that there has been an inherent impediments as mentioned above in ascertaining the source and recipients either individually or in group as the information is in the nature of unstructured and encrypted form. Therefore, the facts and circumstances surrounding the communication and other indirect evidences assume more significance with respect to the charges against the Noticee. Accordingly, the fact that Noticee has forwarded the NII and the same closely matched with the subsequently announced financial result of HDFC and that such communication of information had taken place just a few hours on the same day of the announcement of financial results by HDFC strongly indicates an access and possession of UPSI from the Noticee. This is especially apparent from the fact that the Noticee being a research analyst failed to substantiate the basis of the information forming messages claimed to be arising from his estimates. It is also pertinent to note that the message of the Noticee stated "*Hearing 7050cr NII and 3350cr PAT*" which on perusal indicates that the information was received by him in oral from a third party which makes oral communication as a possible source of his information. Considering the observations relating to difficulty involved in gathering direct evidence in the cases of oral communications of UPSI, I find that facts and circumstances go on to show that the Noticee was in possession of UPSI. Consequently I conclude that the Noticee was an insider with respect to the UPSI he possessed.

45. Further with respect to the circulation of the aforesaid UPSI by the Noticee, it is contended by the Noticee that despite the information being forwarded to Shruti Vora, there is no evidence as to anyone has traded on the basis of the UPSI. In this regard, I note that the

Regulation 3(1) of PIT Regulations, 2015 prohibits communication of UPSI from an insider in any mode. I note that the regulation does not exempt the person from the guilt of communicating merely on the fact that no trades had taken place based on the UPSI thus communicated. The main problem in case of dissemination of information through WhatsApp is the end to end encryption system of transfer of information because of which the data cannot be accessed by third party except receiver and sender. Such technological constraint has made it nearly impossible to discover the complete trail of messages though, on the face of the facts of the case, the messages were circulated among several market associated personals. Therefore, I am of the opinion that in order to safeguard the interest of the investors and the integrity of the securities market, one cannot import a liberal interpretation of the aforesaid provision so as to warrant the Noticee, who has been involved in the circulation of UPSI on a routine basis over the WhatsApp, with a benefit of doubt. Considering the same, as evident from the record, the Noticee being an insider for having the UPSI in possession on January 25, 2016 had forwarded such UPSI through WhatsApp messages to Shruti Vora. In view of the same there is no reasonable doubt in concluding the Noticee as an insider under the provisions of Regulation 2 (1) (g) of SEBI (PIT) Regulations who as in possession of UPSI and that he communicated the same further.

46. Further, the Noticee has placed before me various Judgments of Hon'ble Securities Appellate Tribunal (Hon'ble SAT) and Hon'ble Supreme Court of India which has been taken on record and duly considered. The Noticee during the hearing made detailed submissions by placing reliance on the Judgment of Hon'ble SAT in the matter of Samir C. Arora vs. SEBI dated October 15, 2004 whereby it was argued as under:

"....

SEBI had ruled that it need not show how, where and when Mr. Arora could have had access to the swap ratio, and the fact that his fund had sold shares would be enough to infer that he was in possession of the said UPSI. This finding in the SEBI order was discussed by the Hon'ble SAT at length in paragraphs 60 and 61 of the judgement (enclosed as Annexure A), to set it aside, holding the following:

d. *SEBI was completely satisfied that the swap ratio was safeguarded by Mr. Bansi Mehta at his end and that the independent director only opened the sealed envelope at the time of the board meeting. Thus, there was no leakage of information at the source where the information was generated or the during the travel of the independent director.*

e. *There was no evidence to show that the UPSI reached Samir Arora in any manner. In fact, Samir Arora was also not a person who was expected to have access to UPSI in respect of DGL.*

f. *In such a case, SEBI ought to have showed, on the basis of some evidence, that the UPSI reached Samir Arora. SEBI failed to discharge this burden.*

(xii) In the interest of brevity, Paragraphs 60 and 61 are not being reproduced, and the attention of the Hon'ble AO is drawn to Paragraphs 56 to 61 of the case.

Applicability of Samir Arora

(xiii) Samir Arora renders the SCN untenable for conversion into an order by SEBI. The facts of the Noticee are even superior in material particular, and the ratio squarely applies to the instant case. The submissions in this regard are:

a. *In Samir Arora, trading in DGL scrip actually took place, whereas in the present case there is no whisper of any trading by the Noticee or even by the person who received the speculative and hearsay net interest income ("NII") estimation from the Noticee;*

b. *Just as Mr. Bansi Mehta was a secure source of the swap ratio and it was not leaked, after careful scrutiny, SEBI has not found fault with HDFC Bank for leakage of any financial information much less the NII, which alone is being attributed to the Noticee;*

c. *Merely because a WhatsApp message from the Noticee contained an estimated speculated NII (it is admitted that profit after tax was in the public domain) and such NII took as in the public domain but varied from the speculation of the Noticee, the SCN has proceeded on the footing that the WhatsApp message is UPSI. On the basis that the WhatsApp message had UPSI, the Noticee is accused of being in possession of UPSI, and thereby an insider, and since he is presumed to be an insider, Regulation 3(1), prohibiting insiders from communicating UPSI was violated by him by sending a WhatsApp message with his speculation to his colleague. These allegations are made in the teeth of having no finding that any leakage took place from HDFC Bank or any of its connected persons to the Noticee. In short, SEBI's view is that it is irrelevant where the information came from, and so long as SEBI believes the*

information to be similar to what eventually was published, the information would become UPSI leading to the Noticee having violated Regulation 3(1).

d. *This above approach is precisely what was explicitly struck down in Samir Arora, where, SEBI's view was that the swap ratio did not leak from Mr. Bansi Mehta or from the independent director who carried it and opened the seal in the Board Meeting, but that such security of the information was irrelevant and one should assume that Mr. Arora had possession of UPSI only because Alliance Capital Mutual Fund sold all its shares. Since Mr. Arora would be presumed to have the UPSI, he would be presumed to be an insider. Since he would be presumed to be an insider, his sales would have violated the prohibition on an insider trading when in possession of UPSI.*

e. *That the Hon'ble SAT has struck down such a presumptive and conjectural rationale would squarely bind the Learned AO.*

(xiv) In view of the above, SEBI is bound by the decision of the Hon'ble SAT in Samir Arora. Any other finding will be in direct disregard to the law laid down by the Hon'ble SAT.

(xv) In any event, Regelation 3(1) of PIT Regulations is not applicable in the present case. Regulation 3(1) would typically cover a scenario where an insider communicates UPSI. In the present case, applying Samir Arora, the Noticee cannot be termed as an 'insider' in the first place."

47. I have perused the case. Firstly, I note that the charges arose for consideration in the matter of Samir Arora was with respect to of Violation of Prohibition of Insider Trading Regulations, 1992 whereas issue before me is with respect to violation of Prohibition of Insider Trading Regulations, 2015. I also note that the provisions and principles have undergone a change through the SEBI (PIT) Regulations, 2015 especially provided an explicit clarification on the onus of proof with respect to the charge which was not present earlier. In the instant case, the Noticee is charged with the violation of provisions of Regulation 3(1) of SEBI (PIT) Regulations, 2015. In this regard, I refer to the *Note* appended to the Regulation 3(1) of SEBI (PIT) Regulations, 2015 which *inter alia* states, "*…The onus of showing that a certain person was in possession of or had access to unpublished price sensitive information at the time of trading would, therefore, be on the person leveling the charge after which the person who has traded when in possession of or having access to unpublished price sensitive information may demonstrate that he was not in such possession or that he has not traded or or he could not access or that his trading when*

in possession of such information was squarely covered by the exonerating circumstances" Besides, I note that apart from the changes in law, the facts also is distinguishable in so much so that in the Smair Arora case, the act of receipt of UPSI and trading on that basis was in question whereas in the instant case, it relates to receipt and communication of UPSI. Further in this regard, it is pertinent to refer to the peculiar facts and circumstances of the instant case relating to difficulty in bringing the direct evidence as brought out in the prepara 44 owing to the mode of communication especially through oral/unstructured means. Therefore, evidences brought on record along with failure of Noticee to produce any cogent material to disprove the same is sufficient enough to distinguish from the case relied upon by the Noticee.

48. However, I note that the instant case is distinguishable from the facts of the case of Samir Arora.

49. In light of the facts concluded above, I find it relevant to note that the Hon'ble Supreme Court has been consistently of the view that what cannot be done directly, cannot be done indirectly. I note that in Jagir Singh v. Ranbir Singh (MANU/SC/0097/1978 : 1979 AIR 381), the Hon'ble Supreme Court has held that what cannot be done directly, cannot be allowed to be done indirectly as that would be an evasion of the statute. The Supreme Court has held that it is a well-known principle of law that the provisions of law cannot be evaded by shift or contrivance, and that the objects of a statute cannot be defeated in an indirect or circuitous manner. (As per Abbott C.J. in Fox v. Bishop of Chester (1824) 2 B & C 635 "To carry out effectually the object of a Statute, it must be construed as to defeat all attempts to do, or avoid doing, in an indirect or circuitous manner that which it has prohibited or enjoined"). I also note that the same principle is also enshrined in Section 12A of the SEBI Act, which *inter alia* states that no person shall directly or indirectly engage himself with communicating the UPSI when being in possession of the same.

50. In view of the all the above, I conclude that the Noticee is liable for violation of the provisions of Section 12 A (e) of the SEBI Act, 1992 and Regulation 3 (1) of SEBI (PIT) Regulations, 2015.

ISSUE II: Whether the Noticee is liable for monetary penalty under Section 15G of the SEBI Act, 1992?

51. A basic premise that underlines the integrity of securities market is that persons connected with the market conform to the standards of transparency, good governance and ethical behavior prescribed in securities laws and do not resort to fraudulent and deceptive activities like insider trading. Such activities are detrimental to the interests of the investors as well as the securities market. No person can be allowed to enrich himself/herself by way of wrongful or ill-gotten gains or avoidance of potential loss made on account of such activity. SEBI has been entrusted with the important mandate of protecting investors and safeguarding the integrity of the securities market. In this regard, necessary powers have been conferred upon SEBI under the securities laws. The SEBI (PIT) Regulations have put in place a framework for prohibition of insider trading in securities. The prohibitions provided in the Regulations ensure a level-playing field in the securities market and safeguard the interest of investors and integrity of securities market. I am of the view that the object and spirit of the SEBI (PIT) Regulations would get defeated if the alleged violators of the said Regulations are not made to face the consequences.

52. It is established from the findings that the Noticee being an insider had communicated the UPSI relating to HDFC Bank Limited., to other person through WhatsApp messages, which is in violation of the provisions of Sections 12 A (e) of the SEBI Act, 1992 and Regulation 3 (1) of SEBI (PIT) Regulations, 2015, for which the Noticee is liable for monetary penalty under Section 15G of the SEBI Act which reads as under.

Penalty for insider trading

15G.*If any insider who,—*

(i) either on his own behalf or on behalf of any other person, deals in securities of a body corporate listed on any stock exchange on the basis of any unpublished price-sensitive information; or

(ii) communicates any unpublished price-sensitive information to any person, with or without his request for such information except as required in the ordinary course of business or under any law; or

(iii) counsels, or procures for any other person to deal in any securities of any body corporate on the basis of unpublished price-sensitive information,

shall be liable to a penalty 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.

ISSUE III: If so, what quantum of monetary penalty should be imposed on the Noticee taking into consideration the factors mentioned in Section 15J of SEBI Act?

53. While determining the quantum of penalty under Section 15G of the SEBI Act, 1992, it is important to consider the factors stipulated in section 15J of SEBI Act, which reads as under:-

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

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

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

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

(c) the repetitive nature of the default."

54. I note that on the basis of data available on record, it is difficult, in cases of such nature, to quantify exactly the disproportionate gain or unfair advantage enjoyed by the Noticee and the consequent losses suffered by the investors. Further the amount of loss to an investor or group of investors also cannot be quantified on the basis of available facts and data. Even though the monetary loss to the investors cannot be computed, unauthorized circulation of UPSI such as financial results holds a scope to pose a greater threat to the integrity of the market. The technological advancements may also equip the manipulators with innovative

ways to flout and bypass the regulations that are put in place to protect the interest of the innocent investors. Today, developments in technology, information flow and access to markets have enabled new market structures to evolve and impact the way in which market manipulation occurs and new methods of market manipulation have emerged. The instant case before me is one such example where the information constituting UPSI has been circulated through WhatsApp messages, which conveniently wipes out any trace of the insider leaking the UPSI when the messages are deleted and manages to reach the selected group of targets. Such acts which are essentially in the form of making UPSI available on a discriminatory basis, if legitimized in the garb of routine sharing of market research without being backed by any publically available information will compromise the confidence of the market, as this kind of activity has a serious impact on the price of the securities where the limited set of people having access to UPSI stand to gain at the expense of the innocent gullible investors. I am of the opinion that the peculiar nature of such communication of UPSI as in the instant case has to be strictly dealt with, in order to curb and discourage any future attempts at the same.

ORDER

55. In exercise of the powers conferred under Section 15 I of the Securities and Exchange Board of India Act, 1992, and Rule 5 of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995, I hereby impose a penalty of ₹15,00,000/- (Rupees Fifteen Lakhs only) on the Noticee viz., Mr. Renish Hareshbhai Bhuva in terms of the provisions of Section 15G of the Securities and Exchange Board of India Act, 1992 for the violation of Sections 12 A (e) of the Securities and Exchange Board of India Act, 1992 and Regulation 3 (1) of SEBI (Prohibition of Insider Trading) Regulations, 2015.

56. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of the order 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

57. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to the "The Division Chief, EFD-1, DRA-II, SEBI, SEBI Bhavan, Plot No. C –4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai –400 051". The Noticee shall provide the following details while forwarding DD/ payment information:

    a) Name and PAN of the entity
    b) Name of the case / matter
    c) Purpose of Payment – Payment of penalty under AO proceedings
    d) Bank Name and Account Number
    e) Transaction Number

58. In the event of failure to pay the said amount of penalty within the timelines as mentioned in Paras above, recovery proceedings may be initiated under Section 28A of the Securities and Exchange Board of India Act, 1956 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

59. In terms of the provisions of Rule 6 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995, a copy of this order is being sent to Mr. Renish Hareshbhai Bhuva (Noticee) and also to the Securities and Exchange Board of India, Mumbai.

Date: August 31, 2020 **B J Dilip**
Place: Mumbai **Adjudicating Officer**