

**BEFORE THE ADJUDICATING OFFICER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**

**[ADJUDICATION ORDER NO. Order/SR/PP/2020-21/7600/6]**

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

**In respect of**

**Pooja Arvind Goyal**

*(Address: Anmol Prestige, 2302  
Opposite Patel Petrol Pump  
SV Road Goregaon West,  
Mumbai- 400062)*

**(PAN: AEHPG5959B)**

**In the matter of Incap Financial Services Limited**

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**FACTS OF THE CASE IN BRIEF**

1. Securities and Exchange Board of India (in short **SEBI**) received a complaint from India Infoline Limited alleging that an individual (Prem Agarwal) had circulated a message through short messaging service regarding trading in the scrip of Incap Financial Services Limited (hereinafter referred to as "**Incap**"/ "the **Company**") on January 11, 2011, stating: "BSE call buy INCFS (530887) at CMP TRGT 35/50 within a week news (splited), going to declare dividend within week so hurry up don't miss profit [www.indiainfoline.com](http://www.indiainfoline.com)".
2. On the basis of the aforementioned complaint, a department of SEBI (in short **OD**) appointed Investigating Authority (in short **IA**) and undertook an investigation in the matter for a period from December 1, 2010 to February 23, 2011 (hereinafter referred

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to as **Investigation period / IP** ) to ascertain whether there was any violation of Securities and Exchange Board of India Act, 1992 (in short **SEBI Act**), the Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 (in short **PFUTP Regulations**) and the Securities and Exchange Board of India (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (in short **SAST Regulations**). The shares of Incap were listed at Bombay Stock Exchange Limited during IP. IA observed non-compliances with regard to SEBI Act, PFUTP Regulations and SAST Regulations by Pooja Arvind Goyal (in short **Noticee**) and others.

3. In view of the said investigation and observations by IA regarding Noticee, OD initiated adjudication proceedings against the Noticee to inquire into and adjudge under sections 15A(b), 15H and 15HA of the SEBI Act the alleged violations of provisions of regulations 7(1A) and 11(1) of SAST Regulations, sections 12A(a), (b), (c) of the SEBI Act and regulations 3(a), (b), (c) & (d), 4(1) and 4(2)(a) of PFUTP Regulations.

#### **APPOINTMENT OF ADJUDICATING OFFICER**

4. SEBI appointed Shri Nagendraa Parakh as the Adjudicating Officer (in short **AO**) and his appointment was communicated vide communique dated April 27, 2016 under section 15-I of the SEBI Act read with (r/w) rule 3 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (in short **AO Rules, 1995**) to inquire into and adjudge under section 15A(b), 15H and 15HA of the SEBI Act the alleged violations of provisions of regulations 7(1A) and 11(1) of SAST Regulations, sections 12A(a), (b), (c) of the SEBI Act and regulations 3(a), (b), (c) & (d), 4(1) and 4(2)(a) of PFUTP Regulations by the Noticee. Subsequently, the matter was transferred and Ms. Sangeeta Rathod

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(undersigned) was appointed an AO in this matter. The appointment of undersigned as AO was communicated to the Noticee vide order dated July 10, 2017.

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

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

*i) It is alleged that Noticee has lent her name to Arvind Babulal Goyal, Executive Director & Compliance Officer and all the trading in her account was done by him only, therefore acted in concert with each other i.e. Persons acting-in-concert (PAC).*

*ii) It is further alleged that the combined shareholding of Noticee crossed 5% of issued capital of Incap along with Arvind Babulal Goyal and Ramesh Dwarkades Daga on 6<sup>th</sup> December, 2010, of shares of Incap, which allegedly attracted the provision of regulation 11(1) of the SAST Regulations, 1997, however, no open offer was given under the SAST Regulations, 1997. Therefore, Noticee being PAC, have failed to comply with the provisions of regulation 11(1) of the SAST Regulations, 1997. Further, it is alleged that Noticee has failed to make disclosure for change in shareholding as PAC as required under regulation 7(1A) of SAST Regulations, 1997.*

*iii) Details of violations are given below:*

<i>Alleged violation of provisions of law</i>	<i>Charging Sections under Act</i>
<i>Regulation 7(1A) of SEBI SAST regulations, 1997 Regulation 11(1) of SEBI SAST Regulations, 1997</i>	<i>Sec.15A(b) of SEBI Act, 1992 Sec.15H of SEBI Act, 1992</i>
<i>Section12A(a), (b), (c) of SEBI Act r/w Regulation 3(a), (b), (c) &amp; (d) and Reg.4(1), 4(2)(a) &amp; (g) of SEBI (PFUTP) Regulations, 2003</i>	<i>Sec.15HA of SEBI Act, 1992</i>

6. The SCN was sent to the Noticee through the speed post acknowledgment due (**SPAD**). Proof of service of the SCN upon the Noticee is available on record. Vide letter dated June 09, 2016, Noticee interalia denied the allegations alleged in the SCN, requested for certain documents and further three weeks thereafter for reply. Vide letter dated June 17, 2016, Noticee was advised to contact OD latest by June 04, 2016 for the inspection of documents and the documents sought by. Noticee vide letter dated July 11, 2016 intimated the change in correspondence address and accordingly the new address, "Anmol Prestige, 2302, Opposite Patel Petrol Pump SV Road Goregaon West Mumbai 400062" was brought on record.
7. Vide email dated July 27, 2016 once again Noticee was intimated a fresh date for inspection and Noticee was advised to complete the inspection of documents on or before August 18, 2016. Vide letter dated Noticee was advised to file reply to the SCN by September 07, 2016 as Noticee had failed to avail the inspection of documents.
8. Vide hearing Notice dated October 18, 2016, Noticee was advised to file reply to the SCN on or before November 03, 2016 and an opportunity of hearing was granted and hearing was scheduled on November 09, 2016. Vide second hearing notice dated December 13, 2016, it was intimated to the Noticee that the hearing notice dated October 18, 2016 for the hearing scheduled on November 09, 2016 is returned undelivered with comment "left" from both the addresses available on record. Thus, vide letter dated December 13, 2016 another opportunity of hearing was granted and the hearing was scheduled on January 11, 2017. Noticee has neither filed reply nor avail the opportunity of hearing. Vide letter dated March 30, 2017 Noticee was intimated that her reply is not received, further an opportunity of hearing is granted and hearing is scheduled on April 12, 2017.

9. Noticee vide letter dated April 08, 2017 stated that she has not received the earlier communications and regret the inconvenience. Further the submissions made in the said letter are summarised hereunder-

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

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

*3. Further I submit that I am not a regular investor in the securities market admittedly all the trades in my account was carried out by my spouse Mr Arvind Babulal Goyal I have minuscule knowledge of the securities market and I hardly trade independently therefore cannot be held responsible for the alleged violation of SEBI Act as sast regulations and pfutp regulations I have absolutely no knowledge with respect to disclosure requirements or requirements to give an Open offer under SAST regulations 1997.*

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

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

Goyal vide letter dated August 22, 2018 made joint submissions on his behalf and on behalf of the Noticee as summarised hereunder-

- 1. I deny that I have violated any of the provisions of SEBI Act, PFUTP Regulations, PIT Regulations and code of conduct specified there in SAST Regulations, SCRA and other provisions of act rules regulations as alleged.*
- 2. I have vide my letter dated June 14 2016 sought inspection of documents which have not been provided to me. However, I am in the the process of drafting suitable reply and would be filing the same in due course.*
- 3. In view of the judgement passed by Hon'ble High Court of Delhi in the case of Amit Jain vs SEBI (W.P.(C)8394/2014), and where in Hon'ble Court has held that the formation of opinion by the WTM is necessary prerequisite for the board to exercise its jurisdiction in view of the above I would request you to provide a copy of the office note where in the WTM of SEBI has independently formed an opinion that there are grounds for adjudging under chapter VI A of SEBI Act so as to ensure that the appointment of the adjudicating officer in the matter has been followed.*
- 4. I request you to provide me above mentioned documents in addition to the documents sought vide letter dated June 14, 2016, I may also be granted inspection of the originals of the office note whereby the opinion been formed. No order maybe passed without granting me an opportunity to file my reply and granting me personal hearing.*

11. Arvind Babulal Goyal vide letter dated August 29, 2018, interalia submitted that-

- 1. During September 2010, Mr Jayesh Solanki employee of Incap who looked after the Mumbai office of the company approached me to look after compliance of Incap and took my documents by cheating and appointed me as the director on Board of Incap Financial Services Limited. In November, 2010 when I became aware of my appointment as the director of Incap, I tendered my resignation. I therefore submit that I had already resigned from the company even before the beginning of the investigation period i.e. 1st December 2010.*
- 2. Trading account in my name in Yoke securities was opened at the instance of Mr Jayesh Solanki. Also to facilitate trading I deposited signed blank cheque book and delivery instruction slips to him in good faith. I had deposited blank cheques and delivery instruction slip with Yoke Securities for the purpose of convenience of transactions. However, he betrayed my trust and misused them. Many trades are executed in my account with Yoke Securities without my knowledge. I have faced grave hardship because of them. My money was siphoned off and I am left completely cheated cornered and devastated.*

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

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

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

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

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

The fact that my email ID was provided in Abhay Javlekar's KYC does not prove anything against me, and the telephone number provided was in fact Abhay's own number. The handwriting on the KYC form of Abhay Javlekar does not belong to me. I have not done any trading, or placed any order on behalf of Abhay Javlekar. No call recording, copy of any email, or any other documentary proof has been provided by Yoke Securities in this relation that may prove otherwise. I submit that anyone can fill in the KYC and enter any email id mobile number they desire, as no proof is to be attached with it for the same. However the same holds no

*meaning if the said email ID or number is never used for placing orders. SEBI has also alleged that my email ID that is agoyal143@yahoo.com was used to place orders as well as confirm them for Mr. Dharmendra Bhojak which is untrue.*

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

13. Authorised representative (AR) appeared for hearing on February 27, 2020 reiterated the submissions detailed in replies dated April 04, 2017, August 22, 2018 and mentioned about the request of inspection. Further sought time for additional submissions. Acceding to the request for additional submissions, time till March 09, 2020 was granted. Vide letter dated March 09, 2020 Noticee requested extension of time till March 18, 2020 for additional submissions. Vide letter dated March 16, 2020 Arvind Babulal Goyal filed additional submissions on behalf of Noticee as summarised hereunder-

*Allegations relating to synchronized, reversal or self-trades*

*Arvind Babulal Goyal has not done trading in any other noticee's account except his wife, Pooja Goyal. As regards the alleged synchronized or reversal trades in respect of the Arvind Babulal Goyal, it is submitted that the same are miniscule as compared to the trading undertaken during the relevant period. It is submitted that the he is alleged of entering into only 6 synchronized trades with quantity of 15,268 shares having Sum of LTP% Diff 0.32% and Sum of LTP Diff. (INR) 0.1. Likewise, there are*



*allegedly only 6 reversal trades with quantity of 3,000 shares. It is submitted that the aforesaid trades by themselves do not attract the provisions of PFUTP Regulations.*

*No violation of making open offer under Takeover Regulations 1992*

*It is submitted that save and except in the case of Noticee, who is married to Arvind Babulal Goyal, the Noticee is not related to and has not acted in concert with any of the other noticees.*

*It is further submitted that mere knowledge or acquaintance with another person cannot satisfy the test to establish whether two persons are acting in concert or not.*

*Regulation 7(1A) of Takeover Regulations 1997*

*The Noticee has at no point of time crossed the threshold limits provided under Regulation 7(1A) of the Takeover Regulations 1997 and have thus, not violated any disclosure requirements thereunder.*

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

**CONSIDERATION OF ISSUES, EVIDENCES AND FINDINGS**

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

**Issue (a): Whether the Noticee has violated the provisions of regulations 7(1A) and 11(1) of SAST Regulations, sections 12A(a), (b), (c) of SEBI Act and regulations 3(a), (b), (c) & (d), 4(1) and 4(2)(a) of PFUTP Regulations?**

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

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

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

### **SAST Regulations**

#### *Disclosures of Shareholding and Control in a Listed Company*

##### *Acquisition of 5% and more shares of a company*

7.(1) ...

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

### **Consolidation of holdings**

11. (1) No acquirer who, together with persons acting in concert with him, has acquired, in accordance with the provisions of law, 15 per cent or more but less than fifty five per cent. (55%) of the shares or voting rights in a company, shall acquire, either by himself or through or with persons acting in concert with him, additional shares or voting rights entitling him to exercise more than 5% of the voting rights, in any financial year ending on 31st March, unless such acquirer makes a public announcement to acquire shares in accordance with the Regulations.

### **SEBI Act**

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

12A. No person shall directly or indirectly—

(a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;

(b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;

(c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;

### **PFUTP Regulations**

3. *Prohibition of certain dealings in securities*

*No person shall directly or indirectly—*

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

**4. Prohibition of manipulative, fraudulent and unfair trade practices**

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

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

**Issue (a): Whether the Noticee has violated the provisions of regulations 7(1A) and 11(1) of SAST Regulations, sections 12A(a), (b), (c) of SEBI Act and regulations 3(a), (b), (c) & (d), 4(1) and 4(2)(a) of PFUTP Regulations?**

**Open offer violations**

a) As per SCN, an allegation against the Noticee is that the Noticee was person acting-in-concert (PAC) with other entities, Noticee being PAC allegedly triggered open offer obligations on December 06, 2010 under regulation 11(1) of the SAST Regulations, however, no open offer was made under the SAST Regulations. Therefore, Noticee being PAC, has allegedly failed to comply with the provisions of regulation 11(1) of the SAST Regulations. As regards, the said allegation, in the reply dated August 29, 2018

Arvind Babulal Goyal has contended that, "I have inform SEBI in my statement that I Adjudication Order in respect of Pooja Arvind Goyal in the matter of Incap Financial Services Limited

have opened my wife, Miss Pooja Goyal's trading account with Yoke Securities through Mr Jayesh Solanki and also that I introduced Mr. Abhay Javlekar to Mr Jayesh Solanki. With regards to the table of connections relationship, an attempt has been made to draw connection between me, Abhay Javlekar, Dharmendra and Ramesh Daga on the basis of my cell number and email ID. Upon perusal of the material on record, i.e. Investigation Report (in short IR) and other material I note that there is details of connection between Noticee and others who were alleged to be PAC in the table reproduced below:

Sr. no.	Name	Observations
1	Abhay Javlekar	As per kyc, <i>agoyal143@yahoo.com</i> was mail id for confirmation of contract notes with yoke securities, religare securities limited. This id also belonged to Arvind Goyal.
2	Arvind Goyal	Off-market transfers with chandrakanta satish mandowara, dharmendra bhojak, chandra shekhar sunil, manjulaben patel, dharmesh visariya, ramesh daga.
3	Dharmendra Bhojak	Acknowledged knowing arvind goyal, pooja goyal, ramesh daga and chandrakanta satish mandowara.
4	Pooja Goyal	Spouse of arvind goyal (director). as per kyc cell no 9322229797 and e-mail id for confirmation of contract notes belonged to arvind goyal.
5	Ramesh Daga	Off-market transfers with abhay javlekar, dhaval shah, dharmesh visariya and ishwari dharmesh visariya. same e-mail as that of arvind goyal at kyc of guinness securities i.e. <i>csbhatt111@zapak.com</i> . acknowledged knowing arvind goyal.

It is an admitted position that Arvind Babulal Goyal had opened Noticee's trading account with Yoke Securities through Mr Jayesh Solanki and Arvind Babulal Goyal was trading in Noticee's account. ▯

As regards, these contentions of the Noticee, I note from the IR that the combined shareholding of Arvind Babulal Goyal, Abhay Javlekar and Dharmendra Bhojak along

with Noticee and Ramesh Dwarkadas Daga) crossed 5% of share capital of Incap on December 6, 2010. Following are details regarding shares acquired:

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

I refer to definition of PAC- as per regulation 2(1)(e) of the SAST Regulations , ‘persons acting in concert’ inter alia comprises: “(1) persons who, for a common objective or purpose of substantial acquisition of shares or voting rights or gaining control over the target company, pursuant to an agreement or understanding (formal or informal), directly or indirectly co-operate by acquiring or agreeing to acquire shares or voting rights in the target company or control over the target company. (2)

Without prejudice to the generality of this definition, the following persons will be deemed to be persons  
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*acting in concert with other persons in the same category, unless the contrary is established...*” I note from IR that Arvind Babulal Goyal was instrumental in opening trading account of Noticee and Abhay Javlekar for facilitate trading for himself.

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

Under Regulation 11(1) of the SAST Regulations 1997, any person, who together with ‘persons acting in concert’, already owns 15% or more shareholding in a company but less than 55%, must make a public announcement if he intends to acquire additional shareholding of more than 5% in a company with post acquisition shareholding or voting rights not exceeding 55% in any financial year ending on March 31 unless such acquirer makes a public announcement to acquire shares in accordance with the Regulations. Record shows that the acquisitions made by Noticee along with ‘persons acting in concert’ with her (as reproduced below) was over the threshold limits specified under Regulation 11(1) (as on December 6, 2010 – Noticee along with Abhay Javlekar, Arvind Babulal Goyal, Dharmendra Bhojak and Ramesh Dwarkadas Daga crossed 5% on 06/12/2010, of shares of the company which attracted the provision of Regulation 11(1) of SAST

Regulations. However, no open offer was given under the SAST Regulations. Thus, Noticee has not complied with the provisions of Regulation 11(1) of SAST Regulations.

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

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

### **Disclosure violations**

b) Further, it is alleged in the SCN that Noticee has failed to make disclosure for change in shareholding as PAC as required under regulation 7(1A) of SAST Regulations. Following table shows the transactions for which disclosure under SAST Regulations were required to be made by Noticee being PAC

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

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

### **PFUTP violations**

There is no evidence on record to substantiate the allegations made in the SCN regarding PFUTP violations by the Noticee, which do not stand established.

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

In light of the analysis regarding various allegations in terms of material available on record, it has been established that Noticee has violated provisions of regulations 7(1A) and 11(1) of SAST Regulations. The relevant provisions in this regard is as under-



## **SEBI Act**

### **Penalty for failure to furnish information, return, etc.**

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

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

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

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

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

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

*(iii) make a public offer by sending letter of offer to the shareholders of the concerned company; or*

*(iv) make payment of consideration to the shareholders who sold their shares pursuant to letter of offer,*

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

**Issue (c): If yes to issue b then what would be the quantum of monetary penalty that can be imposed upon the Noticee taking into consideration the factors mentioned in section 15J of SEBI Act?**

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

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

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

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

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

I observe, that the material available on record, does not quantify disproportionate gains or unfair advantage, if any, made by the Noticee and the loss, if any, suffered by the

investors due to such failure on the part of the Noticee. Material on record does not show that failure is repetitive in nature. Therefore taking into consideration the facts/circumstance of the case, I am of the view that the Noticee is liable for a monetary penalty as mentioned below for the failure to comply with the provisions of regulation 7(1A) and regulation 11(1) of SAST Regulations.

<b><i>Charging Sections</i></b>	<b><i>Penalty (In Rs)</i></b>
<i>Sec.15A(b) of SEBI Act</i>	6lakh
<i>Sec.15H of SEBI Act</i>	8lakh

## **ORDER**

18. In exercise of the powers conferred under section 15-I of SEBI Act and rule 5 of the AO Rules 1995, I hereby impose a penalty of Rs 14,00,000/- (Rupees Fourteen Lakh only) under sections 15A(b) and 15H of SEBI Act. I am of the view that the said penalty is commensurate with the defaults committed by the Noticee.

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

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

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

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

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

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

**Date: April 30, 2020**

**SANGEETA RATHOD**

**Place: Mumbai**

**ADJUDICATING OFFICER**