

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. NP/SJ/AO/07-09/2016]

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

In respect of

Sr. No.	Name	PAN
1	HRI Cosmetic (India) Pvt. Ltd.(Now known as Hygienic Research Institute Pvt. Ltd.)	AABCH1547F
2	Mr. Ashish K Chhabra	AAECP1684J
3	Mr. Manish K Chhabra	AABPC0432F

In the matter of Navneet Publication India Ltd.

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (hereinafter referred to as 'SEBI') conducted an investigation into buying, selling and dealings in the shares of Navneet Publication India Ltd. (NPIL/Company/Navneet) for the period from June 23, 2009 to September 08, 2009 (hereinafter referred to as 'Investigation Period'). The shares of NPIL are listed on the National Stock Exchange of India Ltd. (NSE) and Bombay Stock Exchange Ltd. (BSE). The investigation revealed that HRI Cosmetic (India) Pvt. Ltd. (now known as Hygienic Research Institute Pvt. Ltd. and hereinafter referred to as Noticee 1), Mr. Ashish K Chhabra (hereinafter referred to as Noticee 2) and Mr. Manish K Chhabra (hereinafter referred to as Noticee 3) are alleged to have violated Regulation

3(i) and Regulation 4 of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as 'SEBI (PIT) Regulations').

APPOINTMENT OF ADJUDICATING OFFICER

2. Based on the said investigation, SEBI initiated Adjudication Proceedings against the all the noitcees and appointed Shri Piyoosh Gupta as Adjudicating Officer, vide order dated April 24, 2012, under section 15-I of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as 'SEBI Act') and rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as 'AO Rules') to enquire into and adjudge under section 15G of SEBI Act for the alleged violations of Regulations 3(i) and 4 of SEBI (PIT) Regulations. Consequent to the transfer of Shri Piyoosh Gupta, Shri JayantaJash was appointed as the Adjudicating Officer vide order dated November 08, 2013. Subsequently, the undersigned had been appointed as the Adjudicating Officer to enquire into and adjudge the present matter vide internal Order of Whole Time Member, SEBI dated December 14, 2015.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

3. A common show-cause notice dated March 11, 2013 (hereinafter referred to as SCN) was issued to the three Noticees under rule 4 of the AO Rules to show-cause as to why an inquiry should not be initiated against them and why penalty be not imposed on them under section 15G of SEBI Act for the alleged violation specified in the said SCN. The SCN was sent through the speed post acknowledgment due and the same has been received byall the noticees.
4. It was alleged in the SCN that
 - a. **Financial Performance:** NPIL has reported net profit of Rs.542.10 million, Rs.589.40 million and Rs.639.50 millionfor the financial year (FY) ended 31/03/2008, 31/03/2009 and 31/03/2010 respectively. The financial results of the company are as follows:

Particular (In ` million)	QE 30/03/09	QE 30/06/09	QE (30/09/09)	QE 31/12/09	YE 31/03/08	YE 31/03/09	YE 31/03/10
Total income (Operating Income)	1,028.20	1,023.60	933.30	680.60	4,111.20	5,065.00	5,324.60
Net Profit after Tax	92.40	92.40	71.90	47.50	542.10	589.40	639.50
EPS (₹)	1.29	1.29	0.42	0.32	5.69	7.41	2.68
Equity capital	190.60	190.60	476.40	476.40	190.60 [FV Rs. 2]	190.60 [FV Rs. 2]	476.40 [FV Rs. 2]
Reserve	--	--	--	--	2,117.40	2,392.90	2,463.30

b. **Dividend History:** NPIL has declared the dividend of 100%, 120% and 130% for the year ended 2007, 2008 and 2009 respectively.

c. **Price Movement of Scrip:** The price of the scrip of NPIL was Rs. 72.3 on NSE and Rs. 71.6 on BSE as on June 15, 2009. In the beginning of the Investigation Period the high price was Rs. 73.8 on NSE and at the end of the Investigation Period the price was Rs. 43 post bonus. It was observed the price gradually increased from Rs. 73.8 as on June 24, 2009 to Rs. 82.35 as on July 15, 2009. On July 16, 2009 the price was Rs.89.9 and after announcement of bonus the price increased to Rs.100.35 as on July 31, 2009. Subsequently, the scrip traded in the range of Rs. 85 to Rs. 105.35 till September 07, 2009. The record date for the bonus issue was September 09, 2009.

d. **Price-Volume analysis:** During the investigation period, the price of the scrip moved from Rs. 73.8 to Rs. 105.35 registering a rise of 42.75 % in 54 trading days. The price and volume variation in the scrip are as follows:

Price-Volume

Price Variation NSE							
Period	Price Variation `				Volume Variation		
	Open	High	Low	Close	High	Low	Avg.
Pre-Investigation Period: (March 23, 2009 to June 23, 2009)	45	84	43.1	68.65	826759	50	102,040
Investigation Period: (June 24 to Sep 07, 2009)	72.2	105.35	70.6	97.5	14,81,681	69,969	4,00,043
Post- Investigation Period: (Sep 08 to Dec 08, 2009)	40.1	44.95	36.4	38.8	24,63,794	49,032	2,63,636
Current Market Price: As on Nov 29, 2011	57.50	58.00	54.40	54.90	-	-	2,95,808

- e. **Corporate Announcements:** During the Investigation Period, two Board Meetings were held, first on June 24, 2009 and then on July 31, 2009. On June 24, 2009 the board approved the audited annual accounts for the year ended March 31, 2009 and declared a dividend of 130%. Further, 2009 was the 50th year of the company and this was the highest dividend that had been declared so far. In the board meeting held on July 31, 2009, the board approved bonus issue in the ratio of 3:2. The impact of the announcements made in respect of the board meetings held on June 24, 2009 and July 31, 2009 is given in the following table:

Date and Time	Announcement (figures/comments under Bracket pertains to that for BSE)	Price Impact Rs./Shares Traded [figures/comments under Bracket pertains to that for BSE]	Remarks [figures/comments under Bracket pertains to that for BSE]								
June 16, 2009 16:30:46	NPIL informed BSE that board meeting of the company will be held on June 24, 2009, inter alia to consider, approve and take on records the audited financial records for entire FY 2008-09 and recommend dividend, if any for FY ended 2008-09. Investigation department has	15/06/09 <table border="1"> <tr> <td>O</td><td>H</td><td>L</td><td>C</td></tr> <tr> <td>[71]</td><td>74.9 [75]</td><td>67.1 [68.7]</td><td>72.3 [71.6]</td></tr> </table> No. of shares traded: 86,839 [87382]	O	H	L	C	[71]	74.9 [75]	67.1 [68.7]	72.3 [71.6]	There was no impact of this announcement. As per the minutes of the audit committee, the meeting held on June 24, 2009 Audit committee of directors reviewed the Annual A/c for FY 2008-09 placed before them by President Finance and also
O	H	L	C								
[71]	74.9 [75]	67.1 [68.7]	72.3 [71.6]								

	<p>noted that:-</p> <ol style="list-style-type: none"> 1. NPIL vide e-mail dated March 26, 2012 informed SEBI that Company Annual a/c internally got ready on June 23, 2009. 2. Date and timing of the board meeting to be held on June 24, 2009 was intimated in the first week of June 2009 to Board of Directors. 3. Agenda for the said meeting was circulated on June 18, 2009. 4. On June 24, 2009 annual Accounts for FY ended 2008-09 was approved at 16:45 hrs by the Board and recommended dividend of Rs. 2.60 (130%) per share on face value of Rs. 2/- each for FY 2008-09. 5. Stock Exchange was informed on the same date. 	<p>16/06/09</p> <table border="1"> <thead> <tr> <th>O</th><th>H</th><th>L</th><th>C</th></tr> </thead> <tbody> <tr> <td></td><td>71.45</td><td>69.15</td><td>71</td></tr> <tr> <td>[71]</td><td>[71.5]</td><td>[69.1]</td><td>[70.8]</td></tr> </tbody> </table> <p>No. of shares traded: 99,440</p> <p>[55,196]</p> <p>17/06/09</p> <table border="1"> <thead> <tr> <th>O</th><th>H</th><th>L</th><th>C</th></tr> </thead> <tbody> <tr> <td></td><td>73.6</td><td>68.3</td><td>69.2</td></tr> <tr> <td>[70]</td><td>[73.8]</td><td>[68.5]</td><td>[69.4]</td></tr> </tbody> </table> <p>No. of shares traded: 49,583</p> <p>[58,397]</p>	O	H	L	C		71.45	69.15	71	[71]	[71.5]	[69.1]	[70.8]	O	H	L	C		73.6	68.3	69.2	[70]	[73.8]	[68.5]	[69.4]	<p>resolved to forward the aforesaid result to Board of Directors for its approval.</p>
O	H	L	C																								
	71.45	69.15	71																								
[71]	[71.5]	[69.1]	[70.8]																								
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[70]	[73.8]	[68.5]	[69.4]																								
<p>June 25, 2009</p> <p>09:37am</p> <p>[08:48]</p>	<p>The financial results were displayed on Exchange web-site.</p>	<p>24/06/09</p> <table border="1"> <thead> <tr> <th>O</th><th>H</th><th>L</th><th>C</th></tr> </thead> <tbody> <tr> <td></td><td>73.8</td><td>70.6</td><td>72.15</td></tr> <tr> <td>[72.35]</td><td>[73.8]</td><td>[70.5]</td><td>[71.45]</td></tr> </tbody> </table> <p>No. of shares traded: 1,54,586</p> <p>[1,67,557]</p> <p>25/06/09</p> <table border="1"> <thead> <tr> <th>O</th><th>H</th><th>L</th><th>C</th></tr> </thead> <tbody> <tr> <td></td><td>79.05</td><td>72.15</td><td>77.55</td></tr> <tr> <td>[73]</td><td>[79]</td><td>[72.15]</td><td>[77.35]</td></tr> </tbody> </table> <p>No. of shares traded: 9,00,662</p> <p>[7,69,419]</p>	O	H	L	C		73.8	70.6	72.15	[72.35]	[73.8]	[70.5]	[71.45]	O	H	L	C		79.05	72.15	77.55	[73]	[79]	[72.15]	[77.35]	<p>Spurt in traded volume observed after this announcement.</p> <p>-On 25 June 2009, total shares traded on NSE were 900,662 and the same on BSE were [769,419] which was just 154,586 [167,557] previous day on NSE.</p> <p>- On June 26, 2009. volume was 1248,979 [1236,623]</p> <p>-Price of the share moved by 8.25% and 1.29% from previous day starting from June 24.</p>
O	H	L	C																								
	73.8	70.6	72.15																								
[72.35]	[73.8]	[70.5]	[71.45]																								
O	H	L	C																								
	79.05	72.15	77.55																								
[73]	[79]	[72.15]	[77.35]																								

		26/06/09 <table border="1"> <tr> <th>O</th><th>H</th><th>L</th><th>C</th></tr> <tr> <td></td><td>82.4</td><td>77.65</td><td>78.75</td></tr> <tr> <td>[80]</td><td>[82]</td><td>[77.2]</td><td>[78.35]</td></tr> </table> No. of shares traded: 12,48,979 [12,36,623]	O	H	L	C		82.4	77.65	78.75	[80]	[82]	[77.2]	[78.35]																									
O	H	L	C																																				
	82.4	77.65	78.75																																				
[80]	[82]	[77.2]	[78.35]																																				
Thursday, July 16, 2009 [11:11] AM	NPIL informed BSE that a meeting of the Board of Directors of the Company will be held on July 31, 2009, inter alia, to transact the following matters: 1. To take on record the Unaudited Financial Results for the quarter ended June 30, 2009. 2. to consider issue of Bonus Equity Shares of the Company	15/07/09 <table border="1"> <tr> <th>O</th><th>H</th><th>L</th><th>C</th></tr> <tr> <td></td><td>82.35</td><td>77.4</td><td>80.5</td></tr> <tr> <td>[78.8]</td><td>[82.3]</td><td>[78.2]</td><td>[80.5]</td></tr> </table> No. of shares traded: 3,01,151 [1,98,152] 16/07/09 <table border="1"> <tr> <th>O</th><th>H</th><th>L</th><th>C</th></tr> <tr> <td></td><td>89.9</td><td>81.1</td><td>83.15</td></tr> <tr> <td>[82.5]</td><td>[89.9]</td><td>[81.5]</td><td>[83.4]</td></tr> </table> No. of shares traded: 11,21,847 [11,15,159] 17/07/09 <table border="1"> <tr> <th>O</th><th>H</th><th>L</th><th>C</th></tr> <tr> <td></td><td>85.95</td><td>83.5</td><td>84.25</td></tr> <tr> <td>[85.4]</td><td>[86.2]</td><td>[83.5]</td><td>[84.5]</td></tr> </table> No. of shares traded: 3,12,282 [2,77,569]	O	H	L	C		82.35	77.4	80.5	[78.8]	[82.3]	[78.2]	[80.5]	O	H	L	C		89.9	81.1	83.15	[82.5]	[89.9]	[81.5]	[83.4]	O	H	L	C		85.95	83.5	84.25	[85.4]	[86.2]	[83.5]	[84.5]	- Agenda for the Board meeting to be held on 31 July 2009 was dated 16 th July, 2009. The said agenda was circulated to the Board of Directors on 16 & 17 July 2009. - Price of the share moved 3.60% and 1.31% from previous day starting from July- 15, 2009.
O	H	L	C																																				
	82.35	77.4	80.5																																				
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[85.4]	[86.2]	[83.5]	[84.5]																																				
July 31 , 2009 NSE 14:18	NPIL informed (BSE) that BoD of the company at its meeting held on 31 July 2009, inter alia, has recommended issue of Bonus Equity Shares in the ratio of (3:2) i.e. 3 shares for every two shares held). The above is subject to approval of	30/07/09 <table border="1"> <tr> <th>O</th><th>H</th><th>L</th><th>C</th></tr> <tr> <td></td><td>99.45</td><td>92.55</td><td>95.75</td></tr> <tr> <td>[95]</td><td>[99.65]</td><td>[93.05]</td><td>[96.85]</td></tr> </table> No. of shares traded: 8,87,159 [7,24,687]	O	H	L	C		99.45	92.55	95.75	[95]	[99.65]	[93.05]	[96.85]	-Bonus announcement resulted in surge in trading volume in both of the exchanges as it was positive news. However, there was no significant trading on the next trading																								
O	H	L	C																																				
	99.45	92.55	95.75																																				
[95]	[99.65]	[93.05]	[96.85]																																				

[BSE 14:31:54]	shareholders at the ensuing Extra Ordinary General Meeting of the company)	<p>31/07/09</p> <table border="1"> <tr> <th>O</th><th>H</th><th>L</th><th>C</th></tr> <tr> <td>[97.7]</td><td>100.35 [100.7]</td><td>92.55 [92.65]</td><td>95.6 [95.6]</td></tr> </table> <p>No. of shares traded: 13,53,321 [13,43,323]</p> <p>03/08/09</p> <table border="1"> <tr> <th>O</th><th>H</th><th>L</th><th>C</th></tr> <tr> <td>[98.9]</td><td>97.6 [98.9]</td><td>91.75 [91.7]</td><td>92.65 [92.4]</td></tr> </table> <p>No. of shares traded: 2,52,045 [2,19,264]</p>	O	H	L	C	[97.7]	100.35 [100.7]	92.55 [92.65]	95.6 [95.6]	O	H	L	C	[98.9]	97.6 [98.9]	91.75 [91.7]	92.65 [92.4]	<p>day.</p> <p>It is pertinent to point out that in the minutes for the meeting held it has been recorded that “statements for various ratios placed before the board for consideration. The directors perused the statements and after detailed deliberations - it was decided to approve a bonus equity ratio of 3:2.</p>
O	H	L	C																
[97.7]	100.35 [100.7]	92.55 [92.65]	95.6 [95.6]																
O	H	L	C																
[98.9]	97.6 [98.9]	91.75 [91.7]	92.65 [92.4]																

- f. **Unpublished price sensitive information:** In terms of regulation 2(ha) of SEBI (PIT) Regulations, announcements relating to ‘*financial results, intended declaration of dividend and issue of shares by way of bonus*’ are inter alia considered as price sensitive information (PSI). During the investigation period, the price sensitive information was i) declaration of annual financial result, dividend and ii) bonus announcement. Thus, it is alleged the information of bonus announcement of shares by the company is unpublished price sensitive information (hereinafter referred to as “UPSI”).

- g. **Events relating to announcement of issue of bonus shares leading it to be UPSI:**

Sr. no.	Date	Event
1	June 24, 2009	Annual results for FY 2008-09 was approved by the Board of Director and highest dividend of 130% declared
2	June 24, 2009	Soon after the Board meeting, considering that it was the 50 th year of the company and the annual results were also good, an internal discussion was held within the family members wherein the issue to come out with the bonus

		issue was discussed. From the written statement dated June 16, 2011 of Shri Amarchand Gala, Managing Director, it is observed that he discussed the financials & issuance of bonus with Gnanesh Gala. On the same day issuance of bonus was discussed with other family members and consideration of bonus was decided.
3	July 16, 2009	The issue of taking up the issuance of bonus in the board meeting to be held on July 31, 2009 was discussed within the company by Shri Amarchand Gala, Managing Director and Shri Gnanesh Gala, President Finance and on the same day the stock exchanges were informed that the company will hold a board meeting on July 31, 2009 to consider bonus issue and unaudited results for quarter ended June 30, 2009.
4	July 16, 2009 (BSE at 10:39 am and NSE at 10:37 am) <i>Observations- The price of the scrip closed at Rs. 83.40 on July 16, 2009 i.e. the day of announcement as against a close of Rs. 80.50 on the previous day i.e. 3.6% higher than the previous day's closing price.</i>	NPIL informed that meeting of the Board of Directors of the Company will be held on July 31, 2009, inter alia, to transact the following matters: a) To take on record the Unaudited Financial Results for the quarter ended June 30, 2009; b) To consider issue of Bonus Equity Shares of the Company. From the copy of the agenda furnished it is observed that one of the agenda items was recommendation of Bonus equity share and to determine record date for entitlement of bonus equity share.
5	July 16, 2009 and July 17, 2009	Agenda papers for the Board of Directors meeting to be held on July 31, 2009 were circulated amongst board of directors.
6	July 31, 2009 (14:31hrs) <i>Observations - July 31, 2009 the price touched a peak of Rs.100.7 & also the very next trading day on August 03, 2009 a peak of Rs. 98.9.</i>	NPIL informed (BSE) that Board of Directors of the company at its meeting held on July 31, 2009, inter alia, has recommended issue of Bonus Equity Shares in the ratio of (3:2) i.e. three shares for every two shares held. The above is subject to approval of shareholders at the ensuing Extra Ordinary General Meeting of the company to be held on August 29, 2009.

Shri Amarchand Gala, MD in his written statement dated June 16, 2011 has stated that he does not clearly remember the day when the issue of consideration of bonus shares was discussed internally among family members. Similarly, Shri Gnanesh Gala, President Finance in his written statements dated May 11, 2011 and June 16, 2011 also stated that he and Shri Amarchand Gala, MD took the decision to issue bonus shares after deliberation with the promoter family. The investigation report states that both of them in their statements have clearly stated that the decision to come out with the bonus issue was arrived at after discussion within family members and soon after the approval of annual results by the Board. The names of persons who were present in the deliberations is given below:

S. NO.	Name	Remarks
1.	DungarshiRamji Gala	Director, NPIL
2.	HarakhchandRamji Gala	Director, NPIL
3.	ShantilalRamji Gala	Director, NPIL
4.	JitendraLali Gala	Director, NPIL
5.	BipinAmarchand Gala	
6.	Anil Dungarshi Gala	
7.	RajuHarakhchand Gala	
8.	KalpeshHarakhchand Gala	
9.	Sandeep Shantilal Gala	
10.	ShailendraJitendra Gala	
11.	SanjeevJitendra Gala	
12.	J.K. Sampat	Director, NPIL,(Joint Managing Director)
13.	Dilip C Sampat	

- h. An analysis of the trading pattern of the entities connected/related to promoter family / company officials revealed similar purchase/ sale transactions i.e. purchases from June 29, 2009 and sales from July 16, 2009 to September 7, 2009

prior to the record date of issue of bonus shares. This indicates that the internal family discussion took place much before the formal announcement on consideration of issue of bonus by the company on July 16, 2009 and that too prior to June 29, 2009

- i. **UPSI Period:** Thus, from the preceding para, it can be inferred that after the internal discussion of Shri Amarchand Gala and Shri Gnanesh Gala with other family members, decision was taken to come out with issue of bonus shares soon after the approval of annual results by the Board. Further, NPIL vide email dated March 26, 2012 informed SEBI that company's annual accounts internally got ready on June 23, 2009. The said accounts were approved on June 24, 2009 in its Board Meeting. Hence, during the period from June 24, 2009 to July 16, 2009 the aforesaid two persons as well as other family members were in knowledge that there was a proposal issue of bonus shares and the same would be put up to the Board for approval. However, formal announcement regarding the meeting of Board of Directors to consider the issue of bonus shares was made on July 16, 2009. In view of all these factors, the period June 23, 2009 to July 16, 2009 is considered as the UPSI period for the bonus announcement.
- j. **Relationship and Connections:** Mr. Gnanesh Gala (President Finance, NPIL) is the nephew of Mr. Amarchand Gala (Managing Director, NPIL). Shri Hemant Goshar (hereinafter referred to as "Hemant") is the Karta of Hemant Goshar HUF and is brother-in-law of Shri Gnanesh Gala and resides in the same building where Shri Amarchand Gala (MD of NPIL) resides. Hemant in his written statement dated June 02, 2011 confirmed that Shri Gnanesh Gala is his sister's husband. Therefore, Hemant, Gnanesh Gala and Amarchand Gala are connected to each other. From the above, it is alleged that Hemant had an access to / was in possession of UPSI (i.e. issue of bonus shares) soon after the matter of bonus issue was internally discussed among the Gala family.

Shri Prashant Vallabh Desai (hereinafter referred to as "Prashant") is father of Shri Aansh P Desai (hereinafter referred to as "Aansh"). It is observed that Prashant introduced the account of Hemant Goshar HUF in Bank of Baroda and is also the witness for the Depository Participant (DP) account of Hemant with Stock Holding

Corporation of India Limited. Thus, it is alleged that Hemant and Prashant are also connected. Prashant, in his written statement dated May 20, 2011 stated that he is having a business of chemicals & pharmaceuticals in the name of M/s Marcopia Chemical Industries. He also stated that he had chemical business dealings with Noticee 1. Noticee 2 and Noticee 3 are the directors of the Noticee 1. Thus, it is alleged that Prashant, Noticees 1, 2 and 3 are connected to each other.

- k. **Trading Activities:** The said UPSI was allegedly used by all the Noticees for substantial trading in NPIL shares. It is observed that on July 02, 2009 & July 03, 2009, there was purchase of NPIL shares and sale on September 03, 2009 in the account of the Noticee 1. The total buy volume was 10,000 shares and sale volume was also 10,000 shares during the period June 23, 2009 to September 07, 2009

On July 02, 2009 & July 10, 2009, there was purchase of NPIL shares and sale on September 07, 2009 in the account of the Noticee 2. The total buy volume was 10,000 shares and sale volume was also 10,000 shares during the period June 23, 2009 to September 07, 2009.

On July 02, 2009 & July 10, 2009, there was purchase of NPIL shares and sale on September 02, 2009 & September 03, 2009 in the account of the Noticee 3. The total buy volume was 10,000 shares and sale volume was also 10,000 shares during the period June 23, 2009 to September 07, 2009.

Trading pattern of the three Noticees in the shares of NPIL during the period June 23, 2009 to September 07, 2009 are depicted in the following tables:

HRI Cosmetics (I) Pvt. Ltd (Noticee 1)

Day Date	Buy Volume	Sell Volume	Avg buy price	Avg sell price	Net Volume	% to mkt gross	% to mkt Net
02-Jul-09	5105	0	84.00	0.00	5105	0.17	1.05
03-Jul-09	4895	0	84.98	0.00	4895	0.25	1.65
03-Sep-09	0	10000	0.00	101.61	10000	0.43	2.26

Ashish K Chhabra (Noticee 2)

Day Date	Buy Volume	Sell Volume	Avg buy price	Avg sell price	Net Volume	% to mkt gross	% to mkt Net
2-Jul-09	5000	0	84.25	0.00	5000	0.17	1.03
10Jul-09	5000	0	76.05	0.00	5000	1.23	5.42
7-Sep-09	0	10000	0.00	99.05	10000	1.36	3.88

Manish KailashChhabra (Noticee 3)

Day Date	Buy Volume	Sell Volume	Avg buy price	Avg sell price	Net Volume	% to mkt gross	% to mkt Net
2-Jul-09	5000	0	84.25	0.00	5000	0.17	1.03
10Jul-09	5000	0	76.05	0.00	5000	1.23	5.42
2-Sep-09	0	440	0.00	99.35	440	0.05	0.28
3-Sep-09	0	9560	0.00	101.80	9560	0.41	2.16

Further, it is alleged that during financial year (FY) 2008-09 and during FY 2009-10 (upto June 23, 2009), the Noticees had not traded in any scrip. However, during the short period from June 24, 2009 to July 15, 2009, the Noticees each had bought 10,000 shares of NPIL on NSE and each had sold 10,000 shares of NPIL. Even during the aforesaid period, the Noticees had traded in NPIL shares only.

Thus, from the above and from trading pattern of the Noticees, it is alleged that Noticee 1 and its directors, Noticees 2 and 3 had an access to / were in possession of UPSI (i.e. issue of bonus share) soon after the matter of bonus issue was internally discussed among the Gala family and on the basis of such UPSI, the Noticees had traded in the shares of NPIL. Therefore, it is alleged that all the Noticees are insiders as per regulation 2(e) of SEBI (PIT) Regulations and have violated Regulations 3(i) and 4 of SEBI (PIT) Regulations.

5. The Noticees were given fifteen days' time to make submission against the SCN. The Noticee1 vide letter dated March 26, 2013 had expressed its desire to avail consent process and sought inspection of documents and cross-examination of Mr.Amarchand

Gala, Mr.Gnanesh Gala and Mr.Prashant Desai and undertook to file detailed reply within 15 days from the receipt of the documents and AO letter intimating that it is required to file reply to the SCN during the pendency of the consent application. Similar letters were also received from the Noticees 2 and 3. It be noted that their consent applications got rejected because as per Clause 1(i) of the Consent Circular dated May 25, 2012 which provides that violations of Regulations 3 and 4 of SEBI (PIT) Regulations shall not be settled by SEBI.

6. Acceding to their request with respect to inspection of documents, the inspection of documents had been carried out by the Noticees on June 28, 2013. The proceedings of cross-examinations of Mr.HemantGoshar, Mr.Prashant Desai and Gnanesh Gala had been carried out on March 04, 2014. Due to the old age and sickness of Mr.Amarchand Gala, the Noticees have expressed that a questionnaire could be forwarded to him and his statement could be recorded to the said questionnaire. Conceding to the same, the questionnaire prepared by the Noticees had been forwarded to Mr.Amarchand Gala and he vide his letter dated July 07, 2014 have submitted his reply to the said questionnaire. Thereafter, copy of the reply to the questionnaire received form Mr.Amarchand Gala had been forwarded by then AO to the Noticees and asked them to file reply, if any, within 15 days of the receipt of the said letter of AO. Then AO has also asked the Noticees to indicate him whether they desire any personal hearings in the said matter. The Noticees have expressed their desire for personal hearings. Consequent to the transfer of then AO Mr.JayantaJash, I was appointed as the AO vide SEBI Order dated December 14, 2015. Thereafter, an opportunity of personal hearings was granted to the Noticees and they were asked to appear on May 23, 2016. The Noticees however, requested for an adjournment and they were asked to appear on June 13, 2016. The Noticees through their Authorised Representatives (ARs) appeared on the said date and they reiterated the submissions made in their previous replies to the SCN. The ARs also requested 10 days time to furnish additional information which was allowed. The Noticees vide their letters dated August 05, 2016 submitted additional written submissions, three orders of the Securities Appellate Tribunal (SAT) for AO's reference and statement giving details of investment in mutual funds and shares during the relevant period by the Noticees.

7. The Noticees in their replies to SCN and at the time of personal hearings, inter-alia, submitted that:-

- i. *“We deny that we are insider and having any business or personal relationship with NPIL or promoters and or officers named in the SCN. We had an investment in mutual funds and shares during April 01, 2009 to March 31, 2010 and the said investment include the purchases of shares of NPIL during the Investigation Period. Mr. Vijay Ghoslakar who advises us for investment of mutual funds since last 7 years, showed us an article published by IIM Bangalore from the website <http://tejas.iimb.ac.in> on the future prospects of NPIL recommending an investment into shares of NPIL for short or medium term. The said investment was independent and not based on any UPSI. We purchased the shares at highest rate prevailing during the period from June 23, 2009 to July 01, 2009.*
- ii. *We are not connected person or insider in terms of SEBI (PIT) Regulations. The relationship and connections holding us connected to Mr.Hemant, Mr.Gnanesh Gala, or Mr.Prashant is highly imaginary and contrary to the provisions of Regulation 2(c) of SEBI (PIT) Regulations.*
- iii. *We state that SEBI has not produced any evidence worth believing to show and establish that we had received UPSI from any connected person. There is no evidence on record to show that UPSI about allotment of bonus shares by NPIL was known to us directly from the promoters of NPIL or Mr.Gnanesh Gala.*
- iv. *We state that we were not aware of any internal discussions between the promoter family and between Mr.Amarchand Gala and Mr.Ganesh Gala.*
- v. *We state that our stand that our decision of purchase of shares of NPIL was independent and not based on any UPSI is also proved on the basis of our date of purchase and rate of purchase. We further state that we had purchased at the highest rate prevailing during the period from 24th June 2009 to 1st July 2009. Had we received / possessed any information as alleged, we would have purchased the shares prior to 2nd July 2009 to take benefit of the said information. It is therefore clear that our purchases were not based on any information as alleged to be in our possession.*
- vi. *We state that the allegation of insider trading is a serious allegation and as per the well settled proposition of law as laid down by the Hon’ble Securities Appellate Tribunal(‘SAT’) and the Hon’ble Courts all over the world that the said allegation should be supported by evidence worth believing. We refer to and rely upon the finding of the Hon’ble SAT in **Appeal***

No. 80 of 2009 in the case of Dilip S. Pendse V/s. SEBI where under para 13 of the said Judgement the Hon'ble SAT has held as under:

'The charge of insider trading is one of the most serious charges in relation to the securities market and having regard to the gravity of this wrong doing, higher must be the preponderance of probabilities in establishing the same. In MousamSingha Roy V/s State of West Bengal (2003) 12 SCC 377, the learned judges of the Supreme Court in the context of the administration of criminal justice observed that, "It is also a settled principle of criminal jurisprudence that the more serious the offence, the stricter the degree of proof, since a higher degree of assurance is required to convict the accused." This principle applies to civil cases as well where the charge is to be established not beyond reasonable doubt but on the preponderance of probabilities. The measure of proof in civil or criminal cases is not an absolute standard and within each standard there are degrees of probability. In Hornal V. Neuberger Products Ltd. (1956) 3 All E. R. 970 Hodson L. J. observed as under:

"Just as in civil cases, the balance of probability may be more readily tilted in one case than in another, so in criminal cases proof beyond reasonable doubt may more readily be attained in some cases than in others." We are also tempted to refer to what Denning L.J. observed in Bater V. Bater (1950) 2 ALL E. R. 458 wherein he was resolving the difference of opinion between two Lord Justices regarding the standard of proof required in a matrimonial case."

"In the light of the aforesaid principles on degree of proof, we have carefully gone through the impugned order and the material on the record and find that the Whole Time Member has miserably failed to establish the charge of insider trading against the appellant with the required degree of probability necessary to establish such a serious charge. The only ground on which the whole time member holds that the sale transactions of Mrs.Pendse and Nalini were executed in the end of March 2001 is that the delivery of shares was given by the sellers on March 28, 2001 and payment for the shares was received on March 30, 2001. The whole time member has noticed the long delay in settling the trade for which the contract was completed in September, 2000 and has concluded that the sale of the shares took place in March, 2001. We have already dealt with this aspect of the matter earlier in our order and we cannot agree with the findings recorded in this regard. As already observed, the trades may have been contrary to the Bye-laws of the Exchange but it cannot be said that the contract was not completed in September, 2000. If the sale did not take place in September, 2000 then what was the Broker reporting to the stock exchange as per its letter dated

September, 16, 2000. We have already noticed that the Bombay Stock Exchange had acknowledged the receipt of this letter from the Broker in its letter of November 26, 2002. In this view of the matter, the charge must fail. Accordingly, we answer the question posed in the opening part of our order in the negative and hold that the appellants are not guilty of insider trading."

We respectfully submit that it is therefore clear that while alleging violation of Insider Trading Regulations, it is the primary responsibility of SEBI to produce evidences worth believing which is not produced by SEBI in our case. It is pertinent to note that as per para 16 of the SCN, it is not even the case of SEBI that we were having possession of or access to UPCI when we purchased the shares of NPIL.

- vii. We submit that we were neither a director of NPIL nor we can be considered as a deemed to be director of NPIL as we have no right and authority to give direction to the Board of Directors of NPIL and they act on the basis of our instructions, therefore as per Definition 2(c)(i) of SEBI Insider Trading Regulations, we cannot be considered as a connected person.*
- viii. We submit that we are neither an officer nor an employee of NPIL or hold a position involving a profession or business relationship with NPIL in any manner. We further submit that we have no means to have access to UPSI in respect of NPIL. We further submit that it is even not the case of SEBI that we are connected with NPIL as per the definition of connected person given under Regulation 2(c) of SEBI Insider Trading Regulation.*
- ix. We submit that under para 13, 15 and 16 of the SCN and Annexure - 7 you have provided the basis of holding us as connected person. According to Annexure – 7, the basis is that Prashant Desai introduced us to VFC Securities Pvt. Ltd. as a client who according to SEBI was contacted by Mr. Ganesh Gala on his number 22062836 at the time of Gujarat earthquake for extending some medicines and help to the victims of the earthquake cannot be the basis for the allegation that because of these 2 incidents we can be called as Connected/ Associated Persons to Mr.Amarchand Gala of Mr. Ganesh Gala. The second basis is that Mr.Prashant Desai's company supplies chemicals to us. We respectfully, submit that the basis of your decision to hold us as a connected person is contrary to Regulation 2(c) of SEBI Insider Trading Regulations and even otherwise is not a valid and justifiable ground.*
- x. We are not connected with NPIL and since we are not connected with NPIL we cannot be an insider as defined under SEBI Insider Trading Regulations. We further submit that it is not even the case of SEBI under para 16 of the SCN that we were in possession or had access to*

UPSI and on the basis of said UPSI, we had executed transactions for purchase of shares of NPIL.

- xi. We are neither a connected person nor an insider as per the definition given under SEBI Insider Trading Regulations. It is even not the case of SEBI that we were in possession or having access to UPSI and therefore our purchase of 10000 shares of NPIL on 2nd July 2009 and 3rd July 2009 cannot be in violation of Regulation 3(i) of SEBI Insider Trading Regulation.*
- xii. It is the allegation of SEBI that on 24th June 2009, after the board meeting of NPIL approving the annual accounts of the company for the year ended 31st March 2009, the directors had a discussion about the bonus issue. We submit that on review of the Annexure – 4 i.e. Written Statement of Amarchand Gala, it is clear that there is no admission about the alleged discussion about the allotment of bonus shares after the conclusion of the board meeting dated 24th June 2009. In this regard, answer to question 4 is relevant wherein Mr. Gala has not given any date of discussion and the said answer was in respect of your question for agenda item for the board meeting to be held on 31st July 2009. There is no statement which can be considered as the admission of Mr. Amarchand Gala that the decision to allot bonus shares was discussed amongst the directors or the family members soon after, the board meeting dated 24th June 2009.*
- xiii. We submit that the cross examination of Mr. Ganesh Gala on 4th March 2014 is very relevant in this regard, wherein in answer to question no. 5, Mr. Ganesh Gala has made a categorical statement that the discussion on issue of bonus shares was not held on 24th June 2009 and same was discussed in first or second week of July 2009. We are reproducing the question No. 5 and its answer for ready reference as under:*

Question 5: What time after the board meeting you had discussion with Shri. Amarchand Gala about allotment of bonus shares?

Answer: The discussion on issue of bonus shares was not held on 24th June 2009. I might have discussed the same in first or second week of July 2009.

We submit that after the completion of answers by Mr. Ganesh Gala, the officer of the SEBI has objected to the said answer and put a question to Mr. Ganesh Gala that the bonus issue was discussed on 24th June 2009 and Mr. Ganesh Gala has denied the correctness of the statement of the SEBI officer. We are reproducing the objection of SEBI officer and the answer of Ganesh Gala for ready reference:

Objection raised by SEBI Presenting Officer: As per the record, informal meeting was held between Shri Amarchand Gala and Shri Ganesh Gala - President Finance, soon after finalization of annual accounts on 24th June 2009.

Answer: I do not agree to this and would request to show me that statement of Shri Amarchand Gala on the same.

The statement of Shri Amarchand Gala dated 16th June 2011 was shown to Shri Ganesh Gala and specific reference was made by the Presenting Officer of Qt No. 4 & 6 of the statement of Shri Amarchand Gala.

Answer of Shri Ganesh Gala: I would like to reproduce the Q and Ans of statement of Shri Amarchand Gala dated 16th June 2011.

“Q 4: Please inform what factors were considered while arriving at the decision of recommending issue of bonus shares as an agenda item for the board meeting to be held on July 31, 2009?”

Ans: Myself and Ganesh Gala discussed the financials, book value of the company and considering 50th year of publication commencement, it was decided to consider issue of bonus. Subsequently, on the same day, after discussing with over family members, considerations of bonus was decided. However, due to old age I don't remember the exact date of this discussion.

Q 6: Please inform when was the decision of recommending issue of bonus shares as an agenda item for the board meeting to be held on July 31, 2009 taken? Any supporting documentary evidence bringing out the discussion and the persons/ officials involved in the said decision?

Ans : In view of the my old age, I don't remember the exact date. There are no supporting documentary evidence for the discussion.”

From the above two statements, it is clear that the issue of bonus was discussed and decided on the day of finalizing the agenda items (i.e. 16th July 2009, when the notice of board meeting was sent to BSE & NSE) for the board meeting to be held on 31st July 2009.

We state that after completion of the answer by Ganesh Gala, as referred above, the officer of the SEBI has again asked another question and Mr. Gala answered that the book value is not

the only important item to decide the bonus shares. We are reproducing the question raised by the SEBI officer and the answer of Ganesh Gala for ready reference:

Objection raised by SEBI Presenting Officer: *In the statement of Shri Ganesh Gala, it was asked input of arriving the decision of recommending issue of bonus shares as agenda item for the board meeting to be held on July 31, 2009. The input for decision making was taken after knowing the total book value of the company for the year ending March 2009. The unaudited result of March 2009 was declared in the end of April 2009. So material to consider issuance of bonus shares was already there vide email dated March 26, 2012, it was informed that as a general practice, company annual account for the year 2008 -09 would have integrally got ready on 23rd June 2009.*

Answer of Shri Ganesh Gala: *With context with the Question No. 6 raised in my written statement dated 11th May 2011, please see my answer. On completion of my answer, I recollect another oral Question were raised to confuse me. There are three signatures of mine in between the statement that proves that subsequent answers after the first signature were with subsequent oral questions. Since there are no record of oral questions, I cannot comment more on this.*

With regard to consideration of issue of bonus, the book value is not only an important item to finally decide on issue of bonus shares. Apart from book value, 50th year of publishing business, even the first quarter results needed to be considered before arriving at any decision."

In view of the statement of Mr.Amarchand Gala and Ganesh Gala recorded by SEBI and the cross examination of both of them, it is very clear that your decision to fix UPSI from 23rd June 2009 to 16th July 2009 is erroneous and based on your presumption and surmises and not on the basis of Mr.Amarchand Gala's statement as alleged in para 10 of the SCN.

In view of the facts narrated hereinabove, it is clear that your decision to fix the period of UPSI from 24th June,2009 to 31st July,2009 is not based on any evidence but only your presumption and surmises.

Possession of UPSI and execution of trade based on the said UPSI:

- xiv. *We submit that it is your own case under para 15 of the SCN that Prashant Desai has no access to or was in possession of UPSI but you had alleged that he was connected with Gnanesh Gala because he had introduced HemantGhosar HUF (HemantGoshar is Brother in*

law of Gnanesh Gala) to Bank of Baroda for opening a bank account. As per para 16 of the SCN, it is your own case that we were not having access to or were in possession of any UPSI but was allegedly connected to Prashant Desai as his company supplied chemicals to us. We respectfully submit that in the event, if we do not have access to or possession of UPSI, our transaction for purchase of shares of NPIL on 2nd and 3rd July 2009 cannot be in violation of SEBI Insider Trading Regulations as Regulation 3(i) of SEBI Insider Trading Regulations prohibits any insider from dealing in securities of a company listed on any stock exchange when in possession of any unpublished price sensitive information.

xv. The Hon'ble SAT while dealing with the following two cases have set aside the SEBI orders where the SEBI had not produced evidence about possession of UPSI:

i. Before Securities Appellate Tribunal (Appeal No. 83 of 2004) Samir C. Arora V/s SEBI

Para 60:Based on the above extracts it seems that SEBI's case simply is that the Appellant is covered in the definition of an insider, that the merger ratio was a price sensitive information; that since he liquidated his entire stock after having once commended it he must have done so as an insider on the basis of the price sensitive information and that because of these circumstances it is not necessary for SEBI to show how and from whom and from where he accessed this price sensitive information. We regret our inability to accept this line of reasoning. However, in the absence of any clinching evidence in the impugned order we have even tried to go back to the Show Cause notice since the show cause Notice dated 20th February 2004 is referred to in paras 9.16 and 9.20.

Para 61: From the above sequence it will be seen that it has been alleged that the funds managed by the Appellant held 4.45% of the paid up equity capital of DGL on April 11 2003 and that there was no trading of the shares by him for a period of about one month between April 11, 2003 and May 8, 2003. The imputation here seems to be that the trading in the shares, which were otherwise dormant, was taken up on May 8, 2003 only because of the insider information. That, however, does not seem to be case. The same show cause notice mentioned in para 7.0 that "the fund's combined holding reached up to 9.5% of the paid up capital of DGL in September, 2002". Obviously, therefore these shares were sold by the funds managed by the Appellant in substantial quantities between September, 2002 and April 2003 and these shares were certainly not dormant. The interview to the Business Standard

and the reasons recorded on different dates for sale of shares between May 8, 2003 and May 12, 2003 have already been discussed above. The new fact that emerges from the next 2-3 sub paras of the quote above is that one of these sub paras (A) itself stated that the agenda papers for the Board meeting did not mention any discussion about the de-merger ratio while in the very next sub para (B) above it is mentioned that “the hurry shown by ACMF to dispose off its holdings by May 12, 2003 is significant considering that DGL’s Board meeting was to be held on May 12, 2003 and one of the agenda item was ‘Integration Related Items’”. Apart from the contradiction inherent in the positions taken in the show cause notice in these two sub paras, what is significant is that “Integration Related Items” was very much on the agenda of the Board meeting and that this agenda was very much in the public domain, having been statutorily filed with the Stock Exchanges. Seen in this context, the reasons recorded about the appellant’s nervousness arising from the “event risk from tomorrow’s announcement” and the bipolarity of the situation become quite understandable. It is conceded in para 9.20 of the impugned order reproduced above at page 75 that there is no direct evidence and that one had to go on the basis of the facts which speak for themselves. Agreeing entirely with Shri. Rafique Dada, the learned Senior Counsel, we have done exactly that, but unfortunately for the respondents, we have come to conclusions entirely different from the ones drawn by the respondent. We find that there were good reasons for the Appellant to sell the DGL stock even after his interview to Business Standard due to subsequent events. These events were (a) downgrading of stock by his own equity analyst and CLSA; (b) appointment of Banshi Mehta to suggest merger ratio and (c) the forthcoming meeting of Board of Directors in USA on May 12, 2003 slated to discuss, inter alia, “integration related issues”. These events were sufficient to induce nervousness about the emerging bipolar risk situation as correctly recorded by the Appellant. We also find his action of liquidating his entire holding in DGL to be in conformity with the same action taken by him in respect of some other stocks even during the month of May 2003 as also in conformity with similar action contemporaneously taken by some other prominent mutual funds. It is, therefore not possible to hold the charge of insider trading as proved by drawing inference merely from the fact of his liquidation of his entire stock. We have already held that there is no collateral evidence in support of the charge that can withstand even elementary scrutiny. We also note that the supposedly insider information about on impending merger announcement did not materialize. We were also supplied with uncontested figures to show that even after the announcement of the merger in June, 2003, while the price did dip initially, it started rising again within two months and the scrip was selling at as high as Rs.

842/- at the time of its de-listing in April, 2004 as against Rs. 510/- to Rs. 573/- recovered by the appellant for his sale during May 2003.

ii. ***Before Securities Appellate Tribunal (Appeal No. 64 of 2012)Mr. Manoj Gaur V/s SEBI***

Para 12:Referring to the order of this Tribunal in the case of Dilip S. Pendse V/s. Securities and Exchange Board of India (Appeal No. 80 of 2009 decided on November 19, 2009) it has been rightly pointed out by the learned senior counsel for the appellant that the charge of insider trading is one of the most serious charges in relation to the securities market and having regard to the gravity of this wrong doing, higher must be the preponderance of probabilities in establishing the same.

Para 14: There is no denying the fact that Mr. Manoj Gaur being the Executive Chairman of the company is an insider and Mrs.UrvashiGur and Mr. Sameer Gaur being the wife and brother respectively of Mr. Manoj Gaur are deemed to be connected persons and hence they also fall within the definition of 'insider' for the purposes of the said Regulations.

Para 15:In the facts and circumstances of this case, the availability of the trial balance from the various units in the corporate office, which were discussed with the Executive Chairman of the company, leads us to the only conclusion that on the basis of trial balance, the UPSI was in existence on October 11, 2008 and Mr. Manoj Gaur being the Executive Chairman of the company was in possession of the same. ***The question that arises for further consideration is whether he had passed on this information to Mrs.Urvashi Gaur, his wife, and Mr. Sameer Gaur, his brother, who are Appellant in other two Appeals and whether the trading done by them on October 13, 14 and 16, 2008 is based on the UPSI.***

Para 16:We had an occasion to deal with a similar situation in the case of Mrs.Chandrakala Vs. the Adjudicating officer, Securities and Exchange Board of India (Appeal No. 209 of 2011 decided on January 31, 2012) where we have observed that prohibition contained in Regulation 3 of Regulations apply only when insider trades are deals in securities on the basis of any unpublished price sensitive information and not otherwise It means that the trades executed should be motivated by the information in the possession of the insider. ***If any insider trades or deals in securities of a listed company, it may be presumed that he has traded on the basis of unpublished price sensitive information unless contrary to the same***

is established. The burden of proving a situation contrary to the presumption mention above lies on the insider. If an insider shows that he did not trade on the basis of unpublished price sensitive information and that he traded on the some other basis, he cannot be said to have violated the provisions of Regulation 3 of the Regulations.

- xvi. *In view of the facts mentioned above and the law laid down by Hon'ble SAT, we respectfully submit that the caption SCN is be withdrawn as we have not violated any of the provisions of the SEBI (Insider Trading) Regulation.*

We, therefore, pray that the Ld. Adjudicating Officer be pleased to pass an order and drop the adjudication proceedings.

Consideration of Issues, Evidence and Findings

8. I have carefully perused the charges levelled against the Noticees in the SCN, their replies, submissions made at the time of personal hearings and the material documents available on record. In the instant matter, the following issues arise for consideration and determination:-

- a. Whether the Noticees have violated Regulation 3(i) and Regulation 4 of SEBI (PIT) Regulations.
- b. Do the violations, if any, on the part of the Noticees attract monetary penalty under Section 15G of the SEBI Act, 1992 for the alleged violations by the Noticees.

9. Before proceeding further, I would like to refer to the relevant provisions of the SEBI (PIT) Regulations, 1992 and Section 15G of the SEBI Act:

SEBI (PROHIBITION OF INSIDER TRADING) REGULATIONS, 1992

The relevant provisions of PIT Regulations are as under:

Definition

Regulation 2(e) "insider" means any person who,

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

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

Regulation 3. No insider shall—

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

Provided that nothing contained above shall be applicable to any communication required in the ordinary course of business or profession or employment or under any law.

Violation of provisions relating to insider trading.

Regulation 4. Any insider who deals in securities in contravention of the provisions of regulation 3 or 3A shall be guilty of insider trading.

SEBI Act, 1992

Penalty for insider trading.

Section 15G. If any insider who,—

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

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

FINDINGS:

10. I find that a common SCN was issued to the Noticees since the facts are similar in nature. In view of this, a common order is being passed against the Noticees in line with the common SCN. I find that there were two Board Meetings that held during the Investigation Period, first on June 24, 2009, and then on July 31, 2009. On July 16, 2009 the issue of taking up the issuance of bonus in the Board Meeting to be held on July 31, 2009 was discussed within the company by Mr.Amarchand Gala (MD-NPIL) and Mr.Gnanesh Gala (President – Finance, NPIL) and on the same date stock exchanges were informed that the company will hold a Board Meeting on July 31, 2009 to consider the proposal to issue bonus shares and to take on record the unaudited financial results for the quarter ended June 30, 2009.
11. The first question that arises is when the UPSI with respect to issuance of bonus shares had come into existence. The investigation report mentions period from June 23, 2009 to July 16, 2009 as the period during which the UPSI was in existence. The basis for considering the said period as UPSI in the Investigation Report are the statements of Mr.Amarchand Gala dated June 16, 2011 and Mr.Gnanesh Gala dated May 11, 2011 and June 16, 2011. In the said statements Mr.Amarchand Gala and Mr.Gnanesh Gala though admitted that the proposal to issue bonus shares was discussed with the family members of the promoter group but have not stated the exact date of such discussion. Further, Investigation Report did not specifically point out that how either Mr.Amarchand Gala or Mr.Gnanesh Gala or any of the 13 family members with whom the proposal to issue Bonus Share was discussed, had communicated or passed on the UPSI to the Noticees. Even the Investigation report mentions that there are circumstantial evidences available to suggest that Noticees had traded in the scrip of NPIL on the basis of UPSI. Noticees are not part of the family members of the promoter group who were present during the discussion on the proposal to issue bonus shares. Further, the existence of UPSI as per investigation report is based on the fact that proposal to issue Bonus shares was discussed amongst the family member of Gala family, however, the date on which that discussion took place could not be conclusively established. During cross examination, Mr Amarchand Gala and Ganesh Gala both

could not give the exact date on which such discussion to issue bonus shares with family members of promoter group took place but they confirmed that the same took place somewhere in the first or second week of July 2016. The exact date on which UPSI came into existence is not established in the investigation report. If it is presumed that the promoter family was in knowledge of the proposal to issue bonus shares even before disclosing the same to Stock Exchanges and through it to the public at large, it is noted that it was just a proposal to issue bonus shares and the same needed to be approved by the Board members in the Board Meeting where Independent Directors also have a role to play and after approval by the Board, proposal to issue bonus shares also needs approval of the shareholders in their Annual General Meeting (AGM) or Extra-ordinary General Meeting (EGM). Unless and until, the said proposal is approved by the Board of Directors and shareholders, the company could not have issued bonus shares.

12. Mr.HemantGoshar is the brother-in-law of Mr.Gnanesh Gala and resides in the same building where Mr.Amarchand Gala resides. It was therefore, alleged that Mr.Hemant, Gnanesh and Mr.Amarchand are connected to each other and therefore, Mr.Hemant had an access to UPSI. Further, Mr.Prashant Desai introduced the account of Mr.HemantGoshar HUF in Bank of Baroda and is also the witness for the DP account account of Mr.Hemant with Stock Holding Corporation of India Ltd, it was thus alleged that Mr.Hemant and Mr.Prashant are connected. It is alleged that Mr.Prashant who is connected with Mr.Hemant is also connected with the Noticee 1 by virtue of his having business relationship. Mr.Prashant is having the business of chemicals and pharmaceuticals in the name of M/s Marcopia Chemical Industries and had business dealings with Noticee 1. The Noticee 2 & 3 being the directors of the Noticee 1 are therefore alleged to have been connected to Mr.Prashant. Mr.Prashant is alleged to have connected with Mr.Amarchand Gala and Mr.Gnanesh Gala through Mr.Hemant. Mr.Prashant did not have any relationship with Mr.Hemant except that he has introduced him in opening of bank account and DP account. Also Mr.Prashant who is key person to establish connection between NPIL and Noticees had only business dealings with the Noticee 1. To prove the charges of insider trading it is not only essential to prove the relationship / connection between insiders but also that insiders were in possession of UPSI. In view of this, I find that the connection or relationship on the basis of which the Noticees have been alleged to have been an insider is remote. The

findings in the Investigation Report does not substantiate that UPSI had reached the Noticees through Mr.Prashant who in turn received the same from Mr.Hemant. This remote connection between Mr.Hemant and Mr.Prashant and the Noticees cannot be relied upon for arriving at the conclusion that the Noticees were in possession of UPSI and on that basis they have traded in the scrip of NPIL. In view of this, I find that whole charge of insider trading by Noticees have been relied upon a very remote relationship that existed between Noticees and persons privy to the UPSI.

In the case of Dilip S. Pendse V/s. Securities and Exchange Board of India (Appeal No. 80 of 2009 decided on November 19, 2009), the Securities Appellate Tribunal has inter-alia observed that “it has been rightly pointed out by the learned senior counsel for the appellant that the charge of insider trading is one of the most serious charges in relation to the securities market and having regard to the gravity of this wrong doing, higher must be the preponderance of probabilities in establishing the same”.

In the case of Mr. Manoj Gaur V/s. Securities and Exchange Board of India (Appeal No. 64 of 2012 decided on October 03, 2012), the Securities Appellate Tribunal has inter-alia observed that “it may be noted that the trading has not been by Mr. Manoj Gaur who is not supposed to trade during the closure of trading window. The trading is done by his wife and brother. No doubt, being deemed to be connected persons to Mr. Manoj Gaur, they were insiders. But no evidence has been brought on record, direct or circumstantial, to show that they were in possession of UPSI about the financial results of the company for the quarter ending September 30, 2008. As we have observed earlier, having regard to the gravity of charge of insider trading, higher degree of preponderance of probabilities is needed to bring home the charge. The adjudicating officer has not brought any material on record to show that they were in possession of UPSI.”

13. It is observed from the trading details of the Noticees that each of the Noticees in total have purchased 10,000 shares of NPIL and sold the said 10,000 shares of NPIL. The purchase and sale of the said number of shares of NPIL had taken place between July 02, 2009 and September 07, 2009. It is noted from the price – volume information of NPIL at NSE and BSE that the purchase of 10,000 shares of NPIL by the Noticees were amongst on the higher side. The Noticees, if were privy to UPSI, could have purchased

the shares of NPIL on or just after June 23, 2009 and would not have delayed the purchase till July 02, 2009 and in that case the Noticees could have bought these shares at lower prices. Further, the sale of 10,000 shares of NPIL on September 03, 2009 or September 07, 2009 was after the information regarding the Board Meeting on July 31, 2009 recommending the issue of Bonus shares in the ratio of 3:2 disclosed to the stock exchanges for public knowledge. Further, Noticees had sufficient finances in the form of Mutual funds holdings which it could have used the said funds to buy large quantity of shares of NPIL so as to take advantage of possession of UPSI, which is not the case.

14. I further find from the Investigation Report that a person named Mr.BipinTanna who is alleged to have business relationship / connection with NPIL had bought 64,000 shares of NPIL during July 02, 2009 to July 06, 2009 and sold 6,250 shares of NPIL on July 31, 2009 and squared off 4500 shares of NPIL on September 01, 2009. It is mentioned in the Investigation Report that the trading pattern of Mr.BipinTanna does not indicate that his intention was to make profit. It be noted that Mr.BipinTanna also traded during the existence of alleged UPSI like the Noticees and also had connections or relationship with NPIL. If the trading activities of Mr.BipinTanna could not lead to insider trading then in the same way the trading of the Noticees also could not lead to insider trading.
15. I find that prohibition contained in Regulation 3 of SEBI (PIT) Regulations apply only when insider trades in securities on the basis of UPSI and not otherwise. I am of the view that the charge of insider trading is one of the most serious charges in relation to the securities market and having regard to the gravity of this wrong doing, higher must be the preponderance of probabilities in establishing the same. I further observe that the Investigation Report relied upon circumstantial evidences against the Noticees for establishing the charge of Insider Trading. Further, the connection or relationship between the Noticees and Mr.Amarchand Gala, Mr.Gnanesh Gala through Mr.Hemant and Mr.Prashant are remote and no evidence is available on record to suggest that the Noticees had traded in the shares of NPIL on the basis or while in possession of UPSI. In view of the above, I do not come to the conclusion that their trades were induced by the UPSI. The above conclusion is further strengthened by findings of the SAT mentioned above.

ORDER

16. I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act, 1992 read with Rule 5 of the said AO Rules, hereby, conclude that the Noticees viz. HRI Cosmetic (India) Pvt. Ltd. (now known as Hygienic Research Institute Pvt. Ltd.), Mr. Manish Chhabra and Mr. Ashish Chhabra have not violated Regulation 3(i) and Regulation 4 of SEBI (PIT) Regulations and the SCN is accordingly disposed of.
17. In terms of Rule 6 of the AO Rules, copies of this order are sent to the Noticees and also to The Securities and Exchange Board of India.

Date: November 29, 2016

Place: Mumbai

NagendraaParakh

Adjudicating Officer