

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
ADJUDICATION ORDER No. Order/BD/VS/2020-21/7825**

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

In respect of:

Shruti Vishal Vora
(PAN: AKZPM7724N)
701-A, Surya Apartment
53, Bhulabhai Desai Road
Opp: Breach Candy Hospital
Mumbai – 400026

**In the matter of circulation of unpublished price sensitive information (UPSI) through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

BACKGROUND

1. During November 2017, there were certain articles published in newspapers / print media referring to the circulation of Unpublished Price Sensitive Information (*hereinafter referred to as "UPSI"*) in various private WhatsApp groups about certain companies ahead of their official announcements to the respective Stock Exchanges. Against this backdrop, Securities and Exchange Board of India (*hereinafter referred to as "SEBI"*) initiated a preliminary examination in the matter of circulation of UPSI through WhatsApp groups during which search and seizure operation for 26 entities of Market Chatter WhatsApp Group were conducted and approximately 190 devices, records etc., were seized. The WhatsApp chats extracted from the seized devices were examined further and while examining the chats, it was found that in respect of around 12 companies whose earnings data and other financial information had allegedly got leaked in WhatsApp. SEBI, while examining the chats from the seized device has identified other 11 scrip regarding which the UPSI (Unpublished Price Sensitive Information) was in circulation on one to one basis.

Mindtree Ltd. was one of the Companies among 11 scrip about which the following chat “Mindtree revenue 1295cr Pat 103 Pbit 128” dated on January 17, 2017 was found in the WhatsApp Chat of Ms. Shruti Vora (hereinafter referred to as “Noticee” / “SV”), a member of Market Chatter group whose device - (Apple iPhone 6s, IMEI: 355767073570777) was seized along with others. During the examination, the timing of the said message as per extract chat from her device was seen as 06:25:41. However, expert agency (Helik Advisory Ltd.), hired during investigation for retrieval and backup of the data from the instruments/devices seized, vide email dated 12th March, 2018 it was informed that their forensic tools generate zero G.M.T. timing by default, so add +5.30 hours as our Indian G.M.T in all the report generated”.

2. Accordingly, SEBI carried out an investigation in the matter of circulation of UPSI through WhatsApp messages with respect to Mindtree Ltd., to ascertain any possible violation of the provisions of the Securities and Exchange Board of India Act, 1992 (*hereinafter referred to as “SEBI Act”*) and SEBI (Prohibition of Insider Trading) Regulations, 2015 (*hereinafter referred to as “SEBI (PIT) Regulations”*) during the period December 16, 2016 to January 25, 2017 (*hereinafter referred to as “Investigation Period”*).
3. It was noticed that Mindtree Limited made announcement on BSE and NSE on January 19, 2017 (BSE and NSE website) with respect to its quarterly results for the quarter ended December 2016 as under:

Date, Exchange & Time	Announcement/News	Price Impact/Shares Traded (BSE)				Price Impact/Shares Traded (NSE)			
19/01/2017 BSE @ 16:07:35 NSE @ : 16:07	Announces Q3 results (Standalone & Consolidated), Auditors' Report (Standalone & Consolidated), Results Press Release & Earnings release for the Quarter ended December 31, 2016: MindTree Ltd. has announced the following results for the quarter ended December 31, 2016: The Audited Standalone results for the Quarter ended December 31, 2016 The Company has posted a net profit of Rs. 1184 million for the quarter ended December 31, 2016 as compared to Rs. 1404 million for the quarter ended December 31, 2015. Total Income has increased from Rs. 11237 million for the quarter ended December 31, 2015 to Rs.	19/01/2017 (BSE)				19/01/2017 (NSE)			
		O	H	L	C	O	H	L	C
		500	500	482	484.85	498.55	500	483	485.10
		No. of shares traded: 51288				No. of shares traded: 508958			
		20/01/2017 (BSE)				20/01/2017 (NSE)			
		O	H	L	C	O	H	L	C
		483	483	471.45	474.85	481	483	470.50	475.25
		No. of shares traded: 96621				No. of shares traded: 960247			
		Remarks:							
		<ul style="list-style-type: none">The scrip closed on 20/01/2017 at 2.06% below its previous day closing price on BSE and 2.03% below its previous day closing price on NSE.The trading volume on 20/01/2017 increased by 88.39% as compared to previous day trading at BSE and increased by 88.67% as compared to previous day trading at NSE.							

	<p>11871 million for the quarter ended December 31, 2016.</p> <p>The Consolidated Results are as follows:</p> <p>The Audited Consolidated results for the Quarter ended December 31, 2016</p> <p>The Group has posted a net profit of Rs. 1031 million for the quarter ended December 31, 2016 as compared to Rs. 1407 million for the quarter ended December 31, 2015. Total Income has increased from Rs. 12174 million for the quarter ended December 31, 2015 to Rs. 13065 million for the quarter ended December 31, 2016.</p>	
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4. As mentioned at para above, on January 19, 2017 (at 16:07), Mindtree Limited announced results (Standalone & Consolidated) for the quarter ended December 31, 2016 on BSE and NSE after the meeting of Board of Directors of the Company held on January 19, 2017. Therefore, January 19, 2017 had been taken as the date when the Company had made the aforesaid price sensitive information public.
5. It was observed that vide SEBI letter dated August 14, 2018, Mindtree Ltd. was, *inter-alia*, asked about the detailed chronology of events w.r.t announcement of quarterly results on January 19, 2017 for QE December 2016, the details of persons involved in preparation of financial results / having access to financial information at various stages / persons who attended the corresponding Board Meeting, details of trading window closure period etc.
6. The Company vide letter dated August 23, 2018 and email dated May 17, 2019 provided the requisite details and inter-alia submitted the following information:-

“Chronology of events are as follows:

<i>Date</i>	<i>Particulars of Events</i>
<i>Dec 14, 2016</i>	<i>Intimation of trading window closure to stock exchanges by the Company Secretary Team (CS Team): For Designated employees, trading window was closed from December 16, 2016 till two days after the declaration of financial results (i.e. January 21, 2017) (both the days inclusive) For other employees, trading window was closed from January 01, 2017 till two days after the declaration of financial results (i.e. January 21, 2017) (both the days inclusive)</i>
<i>Jan 3, 2017</i>	<i>Intimation of Board meeting to consider Financial Results to stock exchanges under Regulation 29 of LODR by the CS team.</i>
<i>Jan 4, 2017</i>	<i>Soft book closure by all the teams – accounts payable, fixed assets, accounts receivable, treasury and payroll (Accounting Team). Activities include each of the teams reviewing and ensuring all required accounting entities including payments and accruals are put through in SAP and verifies before book closure for the quarter.</i>
<i>Jan 4, 2017 – Jan 9, 2017</i>	<i>Preparation of financial results by the management reporting team, review and discussion of financial results by the Investor relations/management reporting team/Executive Board members.</i>
<i>Jan 10, 2017 – Jan 14, 2017</i>	<i>Submission of full-fledged financial statements by the reporting team to the auditors and audit of financial results.</i>
<i>Jan 11, 2017</i>	<i>Circulation of Agenda of Board and Audit committee meeting to the Board and Audit members</i>
<i>Jan 15, 2017</i>	<i>Finalization of results by the reporting team post review by auditors.</i>
<i>Jan 16, 2017</i>	<i>Circulation of results to the board and audit committee members by CFO and CS team.</i>

Jan 16, 2017	Sharing of financial results with the marketing team for designing the artwork for newspaper publication
Jan 18, 2017	Review of financial results in the audit committee meeting.
Jan 19, 2017	Meeting of Board of Directors of the Company inter alia to review and approve quarterly financial results of the Company
Jan 19, 2017	Announcement of financial results to the stock exchange by the CS team, uploading of financial results on Mindtree's website and subsequent media briefing and analyst calls by Investor relations team.
Jan 19, 2017	As part of our regular internal communication to Mindtree Minds (employees), every quarter post announcement of financial results to the stock exchanges, an extract of the results is circulated to the all employees in Mindtree

7. The details of communication of WhatsApp message related to Mindtree Ltd. as observed from WhatsApp chats retrieved from SV's device were tabulated as below:

Entity from whom SV received the WhatsApp message		Date and Time of receipt of message by SV (After adding 5.30 hours)		Entities to whom SV communicated the message		Date and Time of communicating of message by SV	
Name	Tel. Number	Date	Time	Name	Tel. Number	Date	Time
Shailendra Mehta	9820393691	17/01/2017	11:50:00	Govind Agarwal	9819018325	17/01/2017	11:55:41
				Omkar Hadkar	9930930334	17/01/2017	11:55:47
				Divesh Kumar	9833532366	17/01/2017	11:55:58
				Rajatdeep Singh Anand	8527233880	17/01/2017	11:58:54
				Sunil Kumar	9820808438	17/01/2017	11:56:22
				Jay Shah	9619400247	17/01/2017	11:58:35

8. It was observed from the WhatsApp chats retrieved from the SV's device that the aforesaid message "Mindtree revenue 1295cr Pat 103 Pbit 128" was received by SV from Shailendra Mehta on January 17, 2017 at 11:50:00. The said WhatsApp message "Mindtree revenue 1295cr Pat 103 Pbit 128" was then communicated by SV on January 17, 2017 during the time period 11:55:41 till 11:58:54 to several entities viz; Govind Agarwal, Omkar Hadkar, Divesh Kumar, Rajatdeep Singh Anand, Sunil Kumar and Jay Shah on one-one-one chats.
9. It was also observed from the WhatsApp chats retrieved from the SV's device that Shailendra Mehta had communicated the referred message on WhatsApp group (in which SV was also a member) comprising of following entities:

Name	Tel. Number
Samrat Dasgupta	9820606224
Shailendra Mehta	9820393691
Subhankar Ojha	9830038138
Ankit Chaudhary	9899899989
Varun Khandelwal	9971905678; 9971605678
Gaurav Balkishan Bissa	9833518471
Savio Shetty	9324696279
Margaje Amar Vitthal	9930845181
Vignesh Eswar	9820645654
Dhiraj Prayagdatt Papnai	9870122178
Miraj Bipin Vora	9820436506
Ritesh Badjatya	9167877796
Rikesh Vinod Parikh	9820289152
Ravikant Kishan Lal Sharma	9833496993
Naveen Kumar Champalal	9845011001

10. As per the following table, financial figures communicated on WhatsApp pertaining to Mindtree Ltd. were compared with actual figures for QE December 2016 disclosed subsequently on exchange to gauge the deviation between two sets of figures.

Abbreviations format used:

Figure1 in WhatsApp (F1W)

Figure1 in Actual (F1A)

Figure1 Deviation (F1Dev)

Date and time of WhatsApp message	Figures in WhatsApp message	Date and time of disclosure on Exchange	Actual figures disclosed on Exchange	F1W	F1A	F2W	F2A	F3W	F3A	%ge Deviations observed in Figures		
										F1Dev	F2Dev	F3Dev
17/01/2017 11:50:00	Revenue 1295 cr Pbit 128 Pat 103	19/01/2017 16:07:35	Income 1295.3 PBIT 128.1 PAT 103.1	1295	1295.3	128	128.1	103	103.1	0.02	0.08	0.10

11. It was observed from the table at para above in respect of Mindtree Ltd as under:

- The financial figures of Mindtree Ltd. were communicated through WhatsApp prior to their announcement on stock exchanges
- The financial figures of Mindtree (viz; Revenue, PAT and PBIT) communicated through WhatsApp closely matched with those disclosed subsequently by Mindtree on exchanges. The deviation in financial figures was miniscule i.e within a range of 0.02% to 0.10%.

12. The definition of ‘unpublished price sensitive information’ as provided under Regulation 2 (1) (n) of PIT 2015 is as follows:

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

(i) financial results;

(ii) ...”

13. In light of the above, the aforesaid WhatsApp message related to Mindtree Ltd. was observed to fall under unpublished price sensitive information and such circulation of financial figures of the Company through WhatsApp has been considered as communication of UPSI.

14. Vide email and letter dated May 20, 2019, Ms. Shruti Vora inter-alia had submitted the following:

“... I work as Vice President- Institutional Equity Sales team at Antique Stock broking. I have been associated with the company in various roles since September 2008 and since January 2016 in the equity department. My work profile entails me acting as an intermediary between our in-house equity research team and various clients of Antique Stock Broking, who are largely various Indian Mutual Funds and Insurance companies. My job profile further includes arranging meetings between our Research Analysts and various fund houses to discuss various fundamental research reports prepared by them.

In addition to above I am expected to keep track of the various news, views, recommendations, research reports from other brokerage houses, media reports and financial intermediaries. Such information also helps me and my team to form an opinion on various companies and also serves as a check on the in-house research reports, analysis and financial modelling undertaken by the research analysts of our organization. Reuters Trading India platform was an Information sharing platform, the members comprised of various analysts, fund managers and traders of reputed brokerage firms/fund houses. I was asked to join the platform by request of one of employees of Reuters team. The discussion in the group would vary from stocks, indices, crude, economy, brokerage reports, current affairs, specific stocks-fundamental and technical views, results estimates from various brokerages, etc. For ease of communication, the members from the group formed a WhatsApp group and one of the members asked me to join the same. The primary intention of being a part of this group was sharing of views/ reports/analysis/estimates. Such analysis and estimates I presume are on the basis on extrapolation of the current and past financial information in respect of various listed companies on the basis of financial modelling. A few members of the same group later formed another group called ‘Only trades, no bakwaas’ ; this was to reduce lengthy messages (sometimes newspaper links, research reports) and only communicate strictly on stocks and market views.

The aforesaid message (Mindtree revenue 1295cr Pat 103 Pbit 12) was received by me on 17th January 2017 at around 11:50 AM from a Whatsapp group named “Only Trades No Bakwass” shared by Mr. Shailendra Mehta.

a. Shailendra Mehta was working as trader for a fund house. He was a member of the aforesaid group and would frequently exchange various news/views of stocks/indices fundamentally and technically. He would also share research reports and result estimates on the stocks. The said information was received as a part of such general market exchange.

Details of Mr. Shailendra Mehta are below:

	Address	Telephone Number	Email ID
Shailendra Mehta	NA	9820393691	NA

b. Medium of receiving this information: WhatsApp communication. The same was part of general market exchange to understand the varied estimate the analysts are expecting.

c. Regarding Mindtree- Name of entities and details to whom the said information has been communicated between 11.55-11.58 am whose details are mentioned below:

Name	Addresses	Telephone Number	Email ID	Employment details
Govind	NA	9819018325	govind.agarwal@antiquelimited.com	Analyst, Antique Stock Broking Limited.
Omkar	NA	9930930334	(No longer working at Antique)	Ex-Analyst, Antique Stock Broking Limited.
Divesh Kumar	NA	9833532366	divesh.kumar@sbilife.co.in	Analyst, SBI life.
Rajatdeep Singh Anand	NA	8527233880	No longer working at the firm.	Analyst, Canara HSBC Life Insurance
Sunil Kumar	NA	9820808438	sunil.kumar@sbilife.co.in	Fund Manager, SBI Life
Jai Kothari	NA	9619400247	NA	Work acquaintance.

d. Purpose of Sending information: I had sent the above estimates highlighting the varied estimates that market was looking at in anticipation of the forthcoming results to analysts tracking the stock/sector. It is pertinent to note that it is a common practice that various brokerage houses and news agencies like Bloomberg, CNBC release consensus analyst estimates which are in circulation prior to results this being one of them.

e. Neither me nor my family members have traded in cash or derivatives segment while in possession of the said information.

f. Neither me or my family members as mentioned above were or are in any manner associated/related/connected etc, ever, in any manner, either directly/indirectly, in any capacity whatsoever, whether in past or present, with the three companies as mentioned at point(1)above/their promoters/directors/employees."

15. Vide an email dated July 01, 2019, Shruti Vora was asked to provide all the screenshots of the WhatsApp message “Mindtree revenue 1295cr Pat 103 Pbit 128” received by her from various entities and communicated by her to various entities. In this regard, vide an email dated July 03, 2019, Ms. Shruti Vora replied the following:

“Sorry but I am unable to access my data currently and hence request you to please refer to the phone data available with you which your team has already taken in January 18.”

16. Vide email and letter dated May 30, 2019 Shailendra Mehta, inter-alia, replied the following:

“It is a common practice to exchange publicly available information (events, estimates, views and news) among individuals and WhatsApp groups. Since the matter is quite old, it is difficult for me either to recall on my own or to trace each message received by me on WhatsApp or other media. At this point of time I am unable to recollect or trace the chat group in which I received the chat message.

I believe Shruti Vora working with Antique Ltd. during that time, as a technical analyst. I know her as she was active member in a Reuters community. I may have seeker her view on stocks based on her technical views. I remember knowing her for few years in professional capacity. ...I may have forwarded the chat message received by me from another WhatsApp chat group to the whatsapp group termed as “Only Trades No Bakwsas.” However, since the matter is quite old it is difficult for me to either recall on my own or to trace each message received by me on WhatsApp or other media. At this point, I am unable to recollect or trace the chat group in which I received the chat message.

Purpose: It was a regular practice to exchange publicly available information, inferences, and/or expectations/estimates between members of various groups. This informal sharing of information was between traders/analysts and such other persons and can at best be called peer to peer sharing of information related to market purely for academic purpose and not to be acted upon till released by the verified agencies.

No trades were carried out by me in cash or derivative segment in Mindtree Ltd. during the said period.”

17. Antique vide an email dated June 21, 2019 replied the following:

“Shruti Vora has been working in the Institutional team at Antique Stock Broking Ltd. from September 2008.

She used to cater to our institutional clients on the technical Analysis from 2008 to 2015. From Jan 2016 she was moved to Equity Sales.

Her work Profile includes the following:

- Speak to Fund managers and Analyst and share our In House Research View.*
- Arranging meetings between our in house research and various Institutional investors, to discuss various research products prepared by them.*
- Cater to any specific Research/Technical/ Quantitative requirements from the clients.”*

18. Vide an email dated June 07, 2019, name and address of Shruti Vora and Shailendra Mehta (persons communicating the referred WhatsApp message) were shared with the Company and the details of relationship/association/connection of persons involved in preparation of financial results / having access to financial information at various stages / persons who attended the corresponding Board Meeting/ promoters / directors, if any, with Shruti Vora and Shailendra Mehta were sought.

19. In this regard, the Company vide an email dated June 11, 2019 replied the following:

"Pursuant to receipt of your email, we did an internal examination regarding association of the two persons mentioned in your email, with our company, or our promoters/directors, etc. Following are our findings in this regard:

1. The Company's list of employees during the period between December 01, 2016 and January 31, 2017 (being the relevant period under investigation) does not reflect the name of these two individuals.

2. All the persons mentioned in our reply to SEBI letter dated August 14, 2018 (not including the persons who have left our organization as on date), have given an undertaking that they do not know / knew, are/were ever associated, related, or connected, etc., in any capacity whatsoever, directly and/or indirectly, with the two individuals."

20. In light of the above, it is observed that from the WhatsApp chats retrieved from the device of Shruti Vora that the financial figures of Mindtree (viz; Revenue, PAT and PBIT) Mindtree for QE December 2016 communicated by Shailendra Mehta and Shruti Vora through WhatsApp messages closely matched with those disclosed subsequently by Mindtree Ltd on exchanges. Therefore, the aforesaid message related to Mindtree Ltd. would fall under unpublished price sensitive information and such circulation of financial figures through WhatsApp has been considered as communication of UPSI. The entities viz. Shailendra Mehta and Shruti Vora were in possession of the UPSI. Hence, Shailednra Mehta and Shruti Vora were allegedly Insiders as per Regulation 2(1)(g) of PIT 2015, which is reproduced below for reference:

In terms of Regulation 2 (1) (g) of SEBI (PIT) Regulations, 2015,

"Insider" means any person who is:

- (i) a connected person; or*
- (ii) in possession of or having access to unpublished price sensitive information;"*

21. Further, Regulation 3(1) of PIT 2015, states that:

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

22. It was observed *inter alia* that Noticee as insiders had communicated the unpublished price sensitive information related to Mindtree Ltd. viz; Revenue, PAT and PBIT of Mindtree Ltd. for QE December 2016 to other person(s) through WhatsApp messages. In the message communicated by Shruti Vora, no mention of the brokerage firm or institution who estimated / forecasted such financial figures of Mindtree Ltd. was present. It was also observed that the same was not the outcome of internal research of organization where she worked and that the UPSI was communicated to a WhatsApp group to certain entities other than clients of Antique (by SV).

23. In view of the above, it was *inter alia* alleged that Shruti Vora have violated Section 12A (d) and (e) of SEBI Act, 1992 and Regulation 3(1) of PIT 2015.

APPOINTMENT OF ADJUDICATING OFFICER

24. The undersigned has been appointed as the Adjudicating Officer (*hereinafter referred to as “AO”*) vide Order dated October 22, 2019 under Section 19 read with Sub-section (1) of Section 15-I of the SEBI Act, 1992 and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (*hereinafter referred to as “SEBI Adjudication Rules”*) to inquire into and adjudge under section 15G of the SEBI Act, 1992 for the alleged violations of provisions of section 12A(d) and 12A(e) of SEBI Act, 1992 and Regulation 3(1) of SEBI (PIT) Regulations, 2015, committed by the Noticee.

SHOW CAUSE NOTICE, HEARING AND REPLY

25. A Show Cause Notice dated November 20, 2019 bearing ref No. bearing ref No. EAD-7/BD/BM/30793/2/2019 (*hereinafter referred to as ‘SCN’*) was served on the Noticee under Rule 4 of the SEBI Adjudication Rules, calling upon to show cause as to why an

inquiry should not be held against her in terms of Rule 4 of the SEBI Adjudication Rules read with Section 15-I of SEBI Act, 1992 and why penalty should not be imposed on her in terms of Section 15G of SEBI Act, 1992 for the aforesaid alleged violations. In reply, Noticee vide her letter dated December 13, 2019 sought for the additional documents in support of the allegation made against her, besides seeking inspection of the documents. With respect to the aforesaid request by the Noticee, it was communicated to her vide email dated December 18, 2019 that all the documents that were relied upon with respect to the alleged charges against her were provided along with the SCN and no additional document were relied upon in the matter apart from the documents supplied along with the SCN. Further, upon the request of the Noticee, an opportunity of inspection was granted, which was carried out and thereafter the Noticee was given an opportunity to file her reply on merits by January 24, 2020 and also to avail an opportunity of personal hearing on January 28, 2020.

26. The Noticee vide email dated January 13, 2020 contended that the inspection of documents remained incomplete and sought all the documents that were collected during the investigation by SEBI whether or not they are actually annexed to the SCNs. In support of her contention, the Noticee placed a compilation of 13 judgments of Hon'ble Supreme Court and various High Courts.
27. Vide her reply, while refuting the contentions raised by the Noticee; it was informed to the Noticee that the inspection and supply of documents relied upon for the proceedings have already been granted in consonance with the principles of natural justice. Accordingly, the Noticee was once again informed to furnish her reply by January 24, 2020 and also to avail the opportunity of personal hearing on January 28, 2020.
28. Aggrieved with the decision the AO, the Noticee preferred an Appeal before the Hon'ble Securities Appellate Tribunal (*hereafter referred to as "Hon'ble SAT"*) on January 16, 2020. The matter was heard at length by the Hon'ble SAT on January 29, 2020. Pursuant to the hearing, the matter was adjourned and since there was no Order granting interim stay on the Adjudication proceedings, the Noticee was provided with another opportunity to submit her reply on merits latest by February 14, 2020.

29. The Noticee vide email dated February 10, 2020 submitted that since the Hon'ble SAT has already seized of the matter and is deciding on the issue of inspection and keeping due reverence to the fact that the Order has been reserved by the Hon'ble Tribunal, requested to await for the decision of the Hon'ble SAT and once the same is passed, further directions to file the reply within a reasonable time and fixing of a date of hearing, can be given by the Ld. Adjudicating Officer.
30. Vide email dated February 10, 2020 it was reiterated to the Noticee that all the relevant and relied upon documents in support of the charges have already been made available to her along with the SCN and therefore filing of reply on merits does not suffer from any constraint/ prejudice. Accordingly, the Noticee was given time till February 20, 2020 to furnish its reply.
31. The Hon'ble SAT vide Order dated February 12, 2020 (Appeal {L} No. 28 of 2020) while upholding the decision taken by the AO on inspection and supply of documents, made the following observations, which are summarized hereunder:

"We are of the opinion that concept of fairness and principles of natural justice are in-built in Rule 4 of the Rules of 1995 and that the AO is required to supply the documents relied upon while serving the show cause notice. This is essential for the person to file an efficacious reply in his defence"

"The contention that the appellant is entitled for copies of all the documents in possession of the AO which has not been relied upon at the preliminary stage when the AO has not formed any opinion as to whether any inquiry at all is required to be held cannot be accepted. A bare reading of the provisions of the Act and the Rules as referred to above do not provide supply of documents upon which no reliance has been placed by the AO, nor even the principles of natural justice require supply of such documents which has not been relied upon by the AO. We are of the opinion that we cannot compel the AO to deviate from the prescribed procedure and supply of such documents which is not warranted in law. In our view, on a reading of the Act and the Rules we find that there is no duty cast upon the

AO to disclose or provide all the documents in his possession especially when such documents are not being relied upon."

32. As per the directions of the Hon'ble SAT, the Noticee submitted her reply dated February 28, 2020, which is summarized hereunder:

- a. No Connection established between company and me or the sender of the message: No connection has been established between the company, its promoters /directors /employees/ auditors with either me or the person who forwarded the said HOS to me.
- b. No leak established from the Insiders: SEBI has relied on the declarations given by the said company/promoters/directors/employees/auditors who had access to the financial results prior to the date of announcement of the same. They have declared and SEBI has accepted that they have not leaked any UPSI. SEBI has investigated and found no leak in this matter or the other matters covered by SCNs issued to me.
- c. Without establishing even a remote connection and without leak there cannot be UPSI: Thus, if there was no connection with the company and there was no leak from the insiders it is humbly submitted that the concerned estimate cannot change its nature from being a market guess to a full proof UPSI. Admittedly, individuals who have sent me the HOS messages alleged to be UPSI have also on numerous instances sent me HOS messages which were not closely matching and therefore not UPSI. While choosing whether a particular message is UPSI or gossip, the holistic view of the entire evidence, including the exculpatory evidence is required to be taken. The entire evidence if taken into consideration would give the reason to any judicial mind that I have the benefit of doubt and that the messages were not UPSI.
- d. Without the guarantee about the source that the information is from the company there cannot be UPSI: There is no information/allegation that the source of the estimate is the company or any person who was factually in possession of the UPSI. In fact, HOS means that the estimate is not from the company and, therefore, estimate received by me was from an unknown source and such estimate whose origin is not known cannot be regarded as UPSI. UPSI necessarily means estimates whose origin is definitely the company and/or a person who is in possession of UPSI. It is second nature to participants in the securities market to keep on guessing about estimates and the same is not a prohibited activity.
- e. HOS forwarded by me just closely matching with the actual numbers does not make it UPSI. The SCN fails to consider numerous instances where estimates did not match: While the SCN has cherry picked a few instances, it clearly ignores the more evolved analysis of my messages which establish that closely matching of numbers was a rare occurrence and more of an aberration than the rule. In any event, I have never been the originator of any of the alleged messages and have merely received and forwarded the same. The person sending the message to me is not even alleged to be a person who could reasonably be in possession of the UPSI.
- f. Cherry picking of HOS which have closely matched: SEBI has admittedly analysed thousands of messages from my phone. SEBI has also analysed my husband's phone. SEBI has not found a single

instance where I forwarded the HOS to any family member. There are several instances where the HOS turned out to be preposterously incorrect, however SEBI has cherry picked only those HOS which have closely matched with the actual numbers and issued the SCN. All HOS were speculative in nature. Any post facto analysis done post result declaration is useless. In this background of estimates, the nature of a HOS estimate cannot change to UPSI retrospectively once the actual numbers match as there is no benefit of hindsight.

- g. I forwarded HOS/Estimate/speculation and not UPSI: The SEBI PIT Regulations prohibit sharing of price sensitive information which has not been published. By its very definition, information is something that is accurate, certain or based on facts. An analysis of the messages on WhatsApp would reveal HOS was sent and clearly understood as market gossip and the same cannot be treated as “information”. Admittedly, there was no source-based credibility to any of such HOS.
- h. Forwarding of HOS to various persons including non-clients: Since I did not deem the said HOS to be UPSI, I merely forwarded the same to clients/market groups/acquaintances who actively track the securities market) without application of mind. Had the information been UPSI, I would not have widely circulated the same.
- i. No nexus/no definite pattern of access to UPSI: There has been no pattern / no arrangement established from my phone available with SEBI which suggests that any insider kept sharing any UPSI with me or that I was soliciting the same from any person. There has been no trading or quid pro quo arrangement established or alleged. The HOS received by me were random / sporadic in nature and did not follow any quarterly pattern. If I would have had access to UPSI for one Quarter then I would reasonably have access to UPSI on a continuing basis. There is no such pattern established even with respect to any one company. On the contrary, there have been instances when the HOS matched for one quarter and for another quarter it did not match.
- j. No mens rea: There is no allegation in the SCN that there was a wilful attempt to source UPSI and then share the same. On the contrary, all the information received was without solicitation and all the information shared did not result in insider trades. All the messages were intact on my phone and there has never been an intent to evade questions or escape the investigation for two years.
- k. No breach of law established: The SCN, on a plain reading, does not establish any breach of law / rules / regulations by me and merely makes a bald allegation. The SCN is contrary to the SEBI PIT Regulations, that mandates SEBI to prove that I had access to UPSI.

33. Further, with respect to the charges, the Noticee also submitted a brief Background of her work profile with Antique Stock Broking Limited (“**Antique**”) as under:

- a. *I am currently working in the institutional sales and cater to institutional clients for the firm like Mutual Funds, Insurance companies etc.*
- b. *I act as the bridge between my company’s research team and the clients and my job also involves sending updates to such institutional clients on various aspects including:*

- *Indices and expected technical analysis of the same;*
- *Calls and recommendations on scripts;*
- *News about events in the market;*
- *Analysing reports from other brokerage house on several scripts;*
- *Market intelligence in the form of news items, news appearing on TVs etc., heard on street estimates.*

- c. *I have been employed in the said role since 2016 and prior to the same I was in the Derivatives Sales Department and prior to that I worked as a technical analyst. I have been working with Antique since 2008.*
- d. *As you would appreciate, it is part and parcel of my daily job to accumulate information about movements in the market, possible stock prices, news about important elements in the financial world and communicate the same to the institutional clients of Antique."*

34. Further, the Noticee contended that the nature of information forming part of the allegation against her was that of *Heard on Street (HOS)* and made the following submissions in support of the same:

Concept of Heard on Street (HOS)

- a. *Heard on Street or HOS is a common practice within traders, market analysts, institutional investors etc. whereby unsubstantiated gossips are widely shared and the said gossips are clearly understood as speculation / rumours in the market. In fact, reputed journals in the USA like the Wall Street Journal also have an entire page dedicated to such speculations. In fact, the Wall Street Journal runs a twitter handle @WSJHeard (Title: Heard on the Street) and the said handle shares "The first word on what Wall Street is talking about.". Even in India, the Economic Times carried an entire column dedicated to such market chatter. Leading news channels like CNBC, ETNOW also regularly have talk show hosts citing anonymous sources on probable results, developments etc.*
- b. *The Street expectation is the average estimate of a public company's quarterly earnings and revenues that is derived from forecasts of research analysts who provide research coverage on the company. The Street expectation is a closely-watched number that becomes prominent during the period when most public companies report their results. The term is derived from the fact that analysts of the biggest brokerages are typically based on Wall Street in the U.S., Bay Street in Canada and Dalal Street in India.*

- c. *HOS used to be shared by the way of newspaper articles earlier and with the advancement of technology, HOS estimates started floating across instant messaging platforms like WhatsApp. It is a well-known fact that nobody gives undue weightage to HOS while making investment decisions as it is pure speculation / gossip from unverified sources. However, a lot of traders and investors rely upon HOS to get a pulse of market and make their decisions on the basis of several factors, one of which is HOS. HOS functions like a grapevine whereby the said is shared by news agencies (like CNBC / Reuters), analysts with broking houses, traders, active investors etc. News agencies typically are a part of such groups for sourcing their news and also share news on such groups. It is common knowledge that HOS cannot be a sole factor for making a trade decision, however, traders consider awareness about the same as important to understand market sentiment. Every element that a trader uses has some level of probability attached to it as the price of a scrip is not a direct function of any one factor. The market sentiment around a scrip is affected by several factors (technical charts, volumes in F&O Segment, general economy news, sector specific news, news about any Key Managerial Person, HOS about results etc.,). Therefore, any person trading has to factor in several elements and then plan his trades accordingly.*

.....

- d. *It is a common practice that the analysts of various brokerage houses come out with a preview report and estimate the results across all coverage companies. These estimations are based on several factors including financial modelling, management guidance, global factors, meetings with management of listed companies etc. Once the official results are declared, the estimated numbers are compared with the actuals and an analysis is done as to whether the numbers **"in line with estimates"** / **"beats estimates"** / **"misses estimates"**. The entire trading community / active investors use these estimates to plan their trades. Even the comment board on popular websites like "moneycontrol.com" / "ET poll" are used frequently by investors / traders to get a sense of the market.*

35. In addition to the above, the Noticee denying the allegation that the information shared by her was in the nature of UPSI, further submitted as under:

"....

- a. *Despite the fact that such a detailed search was conducted, there is no allegation that I forwarded the said HOS to any of my family members or that I have gained any money from the said forwards. Further, the SCN is completely silent on any arrangement between me and any other person / persons for forwarding of such alleged UPSI. The SCN is completely silent on any quid pro quo arrangement for sharing the information. The same is only attributable to the fact that I always believed the information being forwarded was to be HOS / speculative in nature and not UPSI as alleged or at all.*

- b. *SEBI has analysed the entire data on my phone and would appreciate that the nature of my messages shows that there is widespread conversation on stock charts, fundamentals, historical behaviours, analysis and pattern, estimates-in house and external, market talk, market intelligence. It would be appreciated that as an employee working in the institutional sales team, it was my role and responsibility to provide the clients all such information. While the SCN has cherry picked a few messages, it conveniently ignores the pattern whereby the larger role of coordination and knowledge sharing as a part of sales function and sharing HOS information being a very small element of it.*
- c. *Analysing a pattern of WhatsApp Chats, it would be evident that the same HOS/Market Gossip was shared at times by more than one person clearly signifying that I was not the sole person who had the said market gossip and this I believed that said information was widely and generally available to several parties. I had no idea or any reason to believe that the said information was confidential. Also, since the information never came from a person who is connected to the Company, I further had no reason to ever believe that the same was UPSI;*
- d. *All the messages were forwarded to clients / market chatter groups instantly, without any specific thought applied to the same and it therefore shows that there was no reason for me to believe that the information was confidential; no message ever came from a connected person.*
- e. *There was not a specific entity/person who would regularly send me HOS every quarter of company in question and the information, the HOS information was sent to me by different entities for different quarters. The pattern of receiving information and forwarding the same is sporadic and therefore belies the evidence of a larger conspiracy to communicate UPSI.*
- f. *Neither me nor my family members have ever traded on the basis of the alleged UPSI or have had any arrangement that would give us any monetary gain for sharing this UPSI. Further, the alleged HOS / UPSI was never shared with any family member. Further, it must be appreciated that the information was shared on WhatsApp chats/groups, which had several members including journalists from reputed financial news channels. If the intention was to communicate UPSI to select entities, I would have never shared information with larger groups of people. There was no reason for me to hoard the message for myself or my company alone or even delete any such evidence as these HOS numbers had no special significance for me. The very fact that journalists also use such HOS information clearly belies the allegation that the information so shared was UPSI.*

Annexures to the SCN do not make out any charge against me

- g. *Annexure III is a copy of WhatsApp chat extracted from my phone. It is pertinent to note that the said document is an incomplete document and only select few pages have been annexed to the SCN. It is submitted that reliance on an incomplete document is bound to give an incorrect picture and incomplete documents extracted from a report cannot be relied upon to frame a charge.*

An analysis of the messages would reveal that:

- l. I had received the message along with several others on the group “Only trades, no bakwaas” and the said group contained several market participants and journalists including the journalist who published the article annexed at Annexure II. Therefore, there was no reason to believe that the information was any secret.*
- m. A perusal of my chat with Divesh Kumar and Sunil Kumar (from SBI Life Insurance) would show that I sent him information about Mindtree as Divesh was an analyst analysing the IT sector and Sunil is a fund manager of SBI Life Insurance, which is a client of Antique;*
- n. A perusal of my chat with Govind and Omkar (from Antique) would show that I sent him information about Mindtree as they were my colleagues at Antique. An analysis of my chat with Omkar would show that I asked him to analyse the HOS numbers to which he responded that the same were in line with the consensus estimate;*
- o. A perusal of my chat with Jai would show that there was no reaction from him after he received the message from me, clearly ignoring the same as HOS / market rumour;*
- p. A perusal of my chat with Rajatdeep Singh (who works for Canara HSBC Mutual Fund) would show that there was no reaction from him after he received the message from me, clearly ignoring the same as HOS / market rumour. At the same time, I also shared the Axis Bank results, which turned out to be completely wrong;*
- h. Annexure IV to the SCN is the result of Mindtree Limited. It is a common feature for brokers and analysts to predict the probable numbers in the next result. For the quarter in question, CIMB had predicted the revenue to be 1297 Crores and the PAT to be 103 Crores and therefore the said numbers were already doing rounds of the street. As per Kotak Securities, the probable PAT for the quarter in question was Rs. 103 Crores and the estimated revenue was Rs. 1302 Crores. Annexed hereto as Annexure 1 are copies of the CIMB and Kotak Sec estimates.*

- i. *A perusal of above provisions makes it abundantly clear that the SCN makes out no case of violation of the SEBI Act, 1992 or the PIT Regulations, 2015. The only case against me is that I have received certain WhatsApp forwards about estimates of a company's result, from a person who is in no manner a "connected person" (within the meaning of the PIT Regulations or otherwise) with the Company and I forwarded the information to several clients and some market chatter groups on an "as is where is" basis without any specific application of mind. Therefore, it is submitted that the rumour shared with me and the rumour that I forwarded, was not UPSI as the said rumour was in the nature of mere speculation about the results. Since the information was mere gossip and market speculation forwarded by people, the same was generally available information and not UPSI.*

The PIT Regulations apply to "Information" and not "rumours"

- j. *The Merriam Webster Dictionary defines the term "information" as "a collection of factual knowledge about something" and states that the synonyms to the term "information" are "data, facts". On the other hand, a rumour is defined to mean "talk or opinion widely disseminated with no discernible source", "a statement or report current without known authority for its truth". An analysis of the messages on my phone would show that the messages I received and forwarded were in the nature of rumours received from unverified sources and not a piece of information, which by its definition, is required to be factual in nature. Therefore, forwarding WhatsApp messages received about rumoured result estimates of a company cannot be termed as "information" and therefore the message cannot be said to be UPSI.*
- k. *The PIT Regulations entail a prohibition on trading by insiders in securities when in possession of UPSI, thus obtaining an unfair advantage. They also entail outlawing communication of UPSI by any insider except where such communication is legitimately necessary for performance of duties or discharge of legal obligations. It is humbly submitted that the information available with me was market rumours and therefore fall within the realm of generally available information about the company. The very fact that the information shared by me was titled "HOS" clearly proves that the same was a mere speculation and not actual financial results of the company.*
- l. *Essentially, information that is accessible to the public on a non-discriminatory basis would be considered generally available information. Analysis and research based on generally available information would also be generally available information. Information that is capable of being accessed by any person without breach of any law would be considered generally available. It is submitted that in the facts of the present case, the information that was forwarded to me was in the nature of market gossip and I*

have given several other examples to show that it is common practice among market participants to keep on predicting future events and the said market gossip is not prohibited under any law. The HOS messages received by me and forwarded by me were clearly understood to be mere speculative estimates and nothing more. Further, it is evident that more often than not, in fact, in more than 90% of the cases, the news did not turn out to be true.

- m. The High-Level Committee to Review the SEBI (Prohibition of Insider Trading) Regulations, 1992 under the Chairmanship of Mr. Justice N K Sodhi ("**Justice Sodhi Committee Report**") made it abundantly clear that while defining the terms "insider" and "generally available information", due care was taken. The Committee concluded that the term – "insider should be defined to mean all – connected person|| and those in possession of UPSI leaving it to the definitions of – generally available information|| to safeguard against an over-reach of the prohibition being read as a ban on – informed trading as opposed to – insider trading. The Committee has also provided robust defences against bringing a charge without satisfying the essential ingredient and rationale behind the prohibition on insider trading.
- n. While determining the fine nuances as to what constitutes to be generally available information and how the same information could be both UPSI and generally available information, the Justice Sodhi Committee Report discusses several illustrations as the difference between the same forms the backbone of Regulation 3. At para 25 to 33, the Justice Sodhi Committee Report discusses:

"
..... "

- o. A perusal of the aforesaid paragraphs would clearly show that whether a piece of information is UPSI or generally available information is a mixed question of fact and law. In the facts of the present case, the SCN only states that I received the information from two individuals who work within the same organisation as me and the SCN does not even attempt to allege that the said individuals had any contact or could have been in a position to procure the alleged UPSI. What is also curious to consider is that although SEBI has information about every single individual who has received the UPSI from me, the SCN is completely silent as to whether any one of them has ever traded on the basis of the alleged UPSI or forwarded the information to anyone who has traded on the basis of the alleged UPSI. As the Justice Sodhi Committee Report rightly concludes, "it is settled law that such regulations ought to be purposively construed and if two views were possible, the view that furthers the legislative objective would need to be adopted over a view that makes a mockery of the legal provisions". While dealing with the present SCN, the sight of the fact that primary objective of the PIT Regulations is to entail a prohibition on trading by

insiders in securities when in possession of UPSI, thus obtaining an unfair advantage. Given the fact that:

- *None of the senders of the messages are even remotely connected to the Company or any person who may be in possession of the UPSI;*
 - *Despite the information being forwarded to several parties, not one of them has alleged that the said information was UPSI; and*
 - *The SCN also does not allege that anyone traded on the basis of the alleged UPSI;*
 - *The correct interpretation of law would be that the said WhatsApp messages are merely market gossip and generally available information and not UPSI as alleged in the SCN.*
- p. Even in cases where it was proved beyond doubt that the tipper had shared information leading to trades by relatives of the tipper, the same lead to profits by such tippees, SEBI decided not to impose any monetary penalty on the said Noticee.*
- q. An analysis of the bare provisions of the law and the Justice Sodhi Committee Report would clearly signify that I was not an “insider” or a “connected person” and the information that I have forwarded is merely speculation about the probable results of the company, it cannot be alleged that I have violated the SEBI Act, 1992 and the PIT Regulations.*
- r. I repeat and reiterate that neither I am the originator of any of the messages nor have I ever traded on the basis of such messages. Merely because an estimate closely matches the actual number does not change the fact that the same was a gossip / speculation and converts itself into UPSI. Annexed hereto as Annexure “7” is a compilation of WhatsApp messages received and / or shared by me with several clients / groups which contain such HOS information which did not match the actual numbers.*

36. Further, the Noticee appeared for the hearing on March 18, 2020 and reiterated the submission made above and was given additional time to make submissions on her job profile during the period of allegation. Further, vide her email dated March 25, 2020, the Noticee submitted the same *inter alia* stating as under:

- a. I was working at the relevant period and continue to work with the Institutional Sales team to cater to the needs of Institutional Clients at Antique. I have been employed in the said role since 2016. I am associated with Antique since 2008 in different roles as a Technical analyst and Derivatives Sales Department. I act as the bridge between my*

company's research team and the clients who are various mutual funds, Insurance Companies, Hedge funds etc.

b. My job during the relevant period and presently involves sending updates to such institutional clients on various aspects including:

- Calls and recommendations –fundamental/technical/quantitative parameters on scrips;
- News about events in the market;
- Sector reports published by Antique research analysts team from time to time. Arrange calls and set up meetings between Antique research team and fund representatives from time to time to discuss these research reports. “

37. Further, the Noticee also submitted that CIMB preview report dated January 04, 2017 for 3QFY17 and Kotak preview report dated January 02,2017 which released virtually as soon as the Quarter ended well before the financial results were put together by the company mentioned Revenue as 1297 crs, PAT 103 crs and Kotak (Revenue 1302, PAT 102.5 crs. Referring to the same, Noticee stated that PAT number matched in both with that of the SCN and the Revenue figures matched with slight deviation.

38. Subsequently Noticee also made additional submissions vide her email dated May 23, 2020 inter alia submitting:

- a) that all the said numbers in the WhatsApp messages were in fact closely matching with estimates given by brokerages in their report preview (released prior to result announcement).
- b) That the Bloomberg terminal had all such broker estimates complied and upon finding; we have observed that the alleged messages in fact match the broker estimates and other publicly available information and submitted a copy of the screenshot of the website stating the report as under:

Company	Financials	Broker estimates (Rs. Cm)	Whatsapp message (Rs. Cm)	Actual Results as per SCN (Rs.Crs)	Deviation between the Whatsapp message and Broker estimate (%)	Deviation between WhatsApp message and Actual Results from SCN (%)	Broker estimate available on Bloomberg	Date of Broker estimate as per bloomberg	Date of Whatsapp message	Date of published Results
Mindtree	Revenue	1295	1295	1295.3	0.00	-0.02	IIFI/Ambit	12'Jan 17	17'Jan 17	19'Jan 17
	PBIT	128.2	128	128.1	-0.16	-0.08	Bloomberg consensus	12'Jan 17	17'Jan 17	19'Jan 17
	PAT	103	103	103	0.00	0.00	IDFC/Kotak/SBI Caps/CIMB*	12'Jan 17	17'Jan 17	19'Jan 17

- c) That the SCN is completely silent as to how did these senders of the messages get the information. Since the senders of the message were market participants (i.e. analysts, brokers etc.), the general source of such information for them is from brokerage reports on companies, Bloomberg estimates, CNBC Polls or some other market participant collating these estimates and sending the same to them from such publicly available platforms.
- d) That the very fact that there were several groups where information was circulated suggested that the HOS messages were widely circulated and not restricted among a few individuals.
- e) That there were several broker and consensus estimates floating in the market which closely matched the actual results. Such broker / Bloomberg / CNBC poll estimates are available on a non-discriminatory basis and are not based on any UPSI but are based on generally available information. Consequently, the said reports also are generally available information. Thus, it gave me no suspicion about the WhatsApp message I received/forwarded of being UPSI and I always thought that the same were mere estimates sourced from such legitimate platforms. As part of my job, we regularly send our research estimates and discuss other broker/consensus estimates with Institutional clients. This is a universal practise of all brokers/funds. The persons who sent me the messages are not people who have access to UPSI and I had no reason to believe otherwise.

CONSIDERATION OF ISSUES AND FINDINGS

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

- I. Whether the Noticee has violated the provisions of Section 12 A (d) & 12 A (e) of the SEBI Act, 1992 and Regulation 3 (1) of SEBI (PIT) Regulations, 2015?***
- II. Whether the Noticee is liable for monetary penalty under Section 15G of the SEBI Act, 1992?***

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

FINDINGS

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

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

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

Section 12 A (d) of SEBI Act, 1992

No person shall directly or indirectly engage in insider trading

Section 12 A (e) of SEBI Act

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

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

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

42. After due consideration of the submission of the Noticee, I prima facie note that there is no dispute as to the communication of the information through WhatsApp messages between the Noticee as alleged and the same has been admitted by both the Noticee. However it is the primary case of the Noticee that such information was not in the nature of UPSI and was a HOS, the circulation of which is a regular practice as contended by Noticee. Further, it has been contended that she, as a part and parcel of her job, that involved institutional sales had to accumulate information about movement in the markets, possible stock prices, news about important elements in the financial word etc. Apart from the above, the Noticee has also made submissions stating that:

- a) no Connection was established between company and her or the sender of the message;
- b) no leak was established from the Insiders;
- c) without establishing a connection and without leak there cannot be UPSI;
- d) without the guarantee about the source that the information is from the company there cannot be UPSI;
- e) the information forwarded by her was in the nature of HOS/Estimate/speculation and not UPSI and the same matching with the actual numbers does not make it a UPSI and that the SCN failed to consider numerous instances where estimates did not match;
- f) there was no nexus/no definite pattern of access to UPSI;
- g) there is no *mens rea* established;

43. After considering the submissions of the Noticee and the documents available on record, I note my findings on the Noticee's major submissions as under:

i) No Connection among the Noticee or with the Company and disputing the existence of UPSI without establishing leak:

44. I note from the record that Mindtree vide its letter dated August 23, 2018 and email dated May 17, 2019 submitted the chronology of events leading to the quarterly disclosure on January 19, 2017 for QE December 2016 which is noted in the preparas above. From the same, I further note that period of alleged UPSI in the matter started from January 4, 2017 when Soft book closure by all the teams – accounts payable, fixed assets, accounts receivable, treasury and payroll (Accounting Team) was started. and existed till January

19, 2017 when the financial results were disclosed to the stock exchanges. Admittedly the message with respect to the same viz., “*Mindtree revenue 1295cr Pat 103 Pbit 128*” was received by Shruti Vora from one Shailendra Mehta on January 17, 2017 at 11:50:00. The said WhatsApp message was forwarded by Shruti Vora on January 17, 2017 between 14:55:41 to 11:58:54 to several other entities namely, Govind Agarwal, Omkar Hadkar, Divesh Kumar, Rajatdeep Singh Anand, Sunil Kumar and Jay Shah on one-one-one chats. While I note that the investigation has not revealed any material directing to the source of the UPSI, however I note that the significant fact is that the content of the message that was communicated between the Noticee exactly matched with that of the later announced financial results of Mindtree. I am of the opinion that such information which was in the nature of price sensitive information and remained unpublished, was in the possession of the Noticee. I do not find merit in the submission of the Noticee claiming that, in the absence of proof of leak and the source of UPSI, the information does not stand to qualify as a UPSI. In this regard, I find it pertinent to refer to the peculiar facts and circumstances involved in the instant case where the mode of circulation of information has been by way of WhatsApp messages. I note from the record that efforts were made to track back to the source of the message; however severe technological constraints were faced in this regard owing to the end-to-end encryption of WhatsApp messages. I note that WhatsApp itself communicated to SEBI stating that WhatsApp users are protected with end-to-end encryption protocol, third parties and WhatsApp cannot read such messages or search for such messages and that WhatsApp does not store information regarding the sender and recipient of a message, the same could not be tracked despite all the efforts. Besides, in the instant case, the information has not been claimed as received from any direct source other than the whatsapp communications.

45. As noted above, it is not the case of the Noticee that the information shared through the WhatsApp in the instant case were generated by her through market research or by any other data and in fact, apart from denying the connection to the source, the Noticee has stated that the information was passed on generally and she was part of the chain that carried on the information. However, it is the contention of the Noticee that the information was the outcome of the estimates from the brokers which was already in the public domain.

Such being the case, I deem it relevant to examine the content of the information to ascertain its nature.

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

Abbreviations format used:

Figure1 in WhatsApp (F1W)

Figure1 in Actual (F1A)

Figure1 Deviation (F1Dev)

Date and time of WhatsApp message	Figures in WhatsApp message	Date and time of disclosure on Exchange	Actual figures disclosed on Exchange	F1W	F1A	F2W	F2A	F3W	F3A	%ge Deviations observed in Figures		
										F1Dev	F2Dev	F3Dev
17/01/2017 11:50:00	Revenue 1295 cr Pbit 128 Pat 103	19/01/2017 16:07:35	Income 1295.3 PBIT 128.1 PAT 103.1	1295	1295.3	128	128.1	103	103.1	0.02	0.08	0.10

47. While it is evident that the information related to the financial results were sensitive in nature, I note that the financial figures matched almost exactly with that circulated through the WhatsApp messages. I also find it very pertinent to note that the information relating to financial results that included Revenue, PBIT and PAT were not even stated in any approximate range of values but were stated as a definite amount in the messages and exactly matched with that of the subsequently announced results. In addition, I also note from the chronology of events with respect to the preparation of accounts during the UPSI period, on January 18, 2017 a review of the financial results in the audit committee meeting was carried out. In spite of the fact that the source of leak of information could not traced back due to the technological constraints owing to deletion of whatsapp messages, in the circumstances as above, I note that it is reasonably possible that the information that was communicated by the Noticee had already come into existence on January 17, 2017, the date when Mr. Shailendra Mehta forwards the messages to Noticee and the Noticee forwarded further. In view of the above, I am of the opinion that Noticee' submission claiming that the aforesaid information did not constitute UPSI for the reason of non-establishing the leak and connection with the source is devoid of any merit.

48. Further, with respect to the main contention of the Noticee that the information constituting the whatsapp messages were the outcome of the estimates from the brokers which was already in the public domain. In support of the aforesaid contention, the Noticee has produced before me the screenshots from the Bloomberg indicating the estimates from the broker with respect to Mindtree, which were published on Bloomberg much before the whatsapp messages were forwarded by the Noticee.

49. In this regard, I have carefully perused the aforesaid documents produced before me. The Noticee have submitted before me the several screenshot of such estimates consensus of brokerage firms appearing on bloomberg, one of which is reproduced hereunder:

MTCL IN INR ↑ 879.55 +27.40 879.55 / 879.60 11x25
At 16:38 Vol 1,680,018 0 854.60S H 882.35B L 846.90S Val 1.462B

MTCL IN Equity Alert Export Earnings & Estimates: Analyst Distribution
Mindtree Ltd Cslid C Period 2017 - Q3 Source Standard Cur INR

Earnings & Estimates Next Announcement (C) 10/15/20
Measure Revenue

Firm	Analyst	Estimate	Date	Deviation From Consensus
1) BEst Standard		13.039B	01/12/17	
2) Religare Capital Markets	Rumit Dugar	13.279B	01/02/17	1.84%
3) Spark Capital Advisors	Soumitra Chatterjee	13.102B	01/09/17	0.48%
4) HDFC Research	Amit Chandra	13.100B	01/09/17	0.47%
5) ICICIdirect.com	Deepak Purswani	13.073B	01/06/17	0.26%
6) ICICI Securities	Kuldeep Koul	13.042B	12/29/16	0.02%
7) Systematix Shares & Stocks	Rahul Jain	13.038B	01/03/17	-0.01%
8) Kotak Securities (Institution...	Kawaljeet Saluja	13.026B	01/02/17	-0.10%
9) IDFC Securities Ltd	Shashi Bhusan	13.020B	01/10/17	-0.15%
10) Prabhudas Lilladher Pvt Ltd	Govind Agarwal	13.014B	01/12/17	-0.19%
11) Reliance Securities	Harit Jatish Shah	13.000B	01/05/17	-0.30%
12) Anand Rathi Securities Pvt. L...	Mohit Jain	12.996B	01/06/17	-0.33%
13) Motilal Oswal Securities Ltd	Ashish Chopra	12.995B	01/11/17	-0.34%
14) Emkay	Manik Taneja	12.990B	01/09/17	-0.38%
15) SBICAP Securities	Dipesh N Mehta	12.972B	01/09/17	-0.51%
16) Ambit Capital Pvt Ltd	Sagar Rastogi	12.944B	01/05/17	-0.73%
17) IIFL	Sandeep Muthangi	12.942B	11/24/16	-0.74%
18) Deutsche Bank	Aniruddha Bhosale	--	01/11/17	
19) Investec	Nitin Padmanabhan	--	10/23/16	
20) Credit Suisse	Anantha Narayan	--	01/02/17	
21) JM Financial Institutional Se...	Pankaj Kapoor	--	01/02/17	
22) BNP Paribas Equity Research	Abhiram Eleswarapu	--	01/04/17	

Suggested Functions BRC Research Portal: Single Security GPC Spot price trends in a candle chart

50. The Noticee has submitted that the source of the information of her whatsapp messages dated January 17, 2017 was the estimates of broker firm/analysts as available on

Bloomberg which was in public domain and thus could not be considered as a UPSI. She contended that such message was merely forwarded by her as received. I note from the snapshot that there were about 22 estimates of analysts of various broking firms regarding estimated Revenue of Mindtree till January 19, 2017. I note that there was no reports attached except for the details of the analyst and the broking firm representing. As already noted, it is the primary submissions of the Noticee that the information forming part of Whatsapp was in essence arising from aforesaid estimates mentioned in Bloomberg. However, considering that there were several estimates given out by several analysts of the broker firms on several days for Mindtree Ltd for the quarter ending on March 2017, the onus is on the Noticee to demonstrate as to on what basis the specific estimates have been claimed to be the source distinguishing that from the rest of the estimates. Further, the Noticee has referred to the estimates from Sagar Rastogi, analyst of Ambit Capital dated January 5, 2017 and Sandeep Muthangi, analyst of IIFL dated November 24, 2016, which closely matched with her whatsapp message and was in public domain. However, I note that in the snapshot submitted by the Noticee which is reproduced above, there were as many as 20 more estimates that were published after the aforesaid estimate by IIFL and as many as 11 more estimated after estimate by Ambit Capital and the Noticee has not stated any basis for referring to the said estimates (one of which is published nearly 2 months before her whatsapp messages) as the source. Similarly, the Noticee has referred to the estimates of Best Standard dated January 6, 2017 for the PBIT and IDFC Securities dated January 10, 2017, Kotak Securities dated January 2, 2017 and SBICAP Securities dated January 9, 2017 for the PAT information of her whatsapp message. I am of opinion that if Noticee had in fact relied upon any specific research estimates or her forwarded messages had originated the information from such estimates, it should be demonstrable, verifiable trail of well documented and laid down process in consonance with the job profile or description. In the instant case, I note that Noticee was associated as sales team handling equity sales in a broking firm and therefore as per job profile would be primarily on liaisoning between its broking firms research team and clients, if necessary. I note that noticee instead of seeking inputs from its internal research team, which is part of her job description, had submitted totally unrelated estimates in Bloomberg without any demonstrable and verifiable trail of events for relying on any specific research report. I

note that Noticee has failed to demonstrate the basis in above lines and merely produced some estimates which were appearing in Bloomberg. If Noticee had relied upon such estimates, it would have been communicated only to clients of its broker as part of her job and not to share with other unconnected entities as noted from the closed whatups groups, some of whom were admittedly participants of Reuters trading platform, as per her own submissions.

51. From all the above, I am of the opinion that the submissions of the Noticee that the information shared through the whatsapp messages was of generally available nature by referring to the estimates consensus of broker firms on Bloomberg as the source is far-fetched and clearly an afterthought. Therefore, based on the facts above, the information circulated among the closed group through whatsapp by the Noticee which accurately matched with the subsequently announced results ought to have originated from the closed group.

ii) The information shared was of the nature – “Heard on Street” (HOS) and not UPSI

52. The Noticee has also argued that the information as in the instant case are in the nature of HOS i.e. Heard on Street as noted at para 34 above. I note that the said submission is in effect contending that the information was in the nature of an unsubstantiated gossip that was being forwarded as speculation or rumours. The Noticee has contended that such information was of the same nature that were published in the newspaper estimating/speculating the results of the public companies and that the same were being shared over WhatsApp due to the advancement of technology. Further that it is a common practice that the analysts of various brokerage houses come out with a preview report and estimate the results across all coverage companies and such estimations are based on several factors including financial modelling, management guidance, global factors, meetings with management of listed companies etc., which are used by the entire trading community/active investors to plan their trades. In light of the aforesaid contention by the Noticee before me, I primarily note that the information of the nature of HOS that is published in the newspaper or by the brokerage houses estimating the results are in the

public domain and there is generally no disparity in the access to such information. However, such information when being circulated among a closed group as in the instant case, such group and the people forming part of the information communication chain alone become privy not only to the content of the information, but also to the knowledge of very existence of such information. Further, as submitted by the Noticee herself, it is a common practice that the broking houses arriving at an estimate on results based on several factors including financial modelling, management guidance, global factors, meetings with management of listed companies etc. I am of the opinion that such information generated as above by the brokerage houses may not constitute UPSI even if the same subsequently matches with the result announced. However, in the instant case before me, the information communicated by the Noticee is neither being claimed as arising from the market research nor was it the estimates/predictions of Noticee herself. In fact, the Noticee has stated that such information was received by Neeraj Agarwal from a third party and the same was forwarded to Noticee.

53. At this juncture, it is pertinent to note that the investigation in this case was initiated pursuant to the news article published in Financial Chronicle (sourced from Reuter's article by Mr. Rafael Nam) dated November 17, 2017 whereby it was reported that unpublished financial results of some major Companies were posted in private whatsapp group prior to Companies announcements stock exchanges. In this regard, the Noticee vide her email and letter dated May 09, 2019 had stated that she was part of the Reuters Trading India Platform which comprised of various analysts, fund managers and traders of the reputed brokerage firms/fund houses and the member of the said group had formed a whatsapp group which she had admittedly was part of. Therefore, the Noticee had always been an active participant in the whatsapp groups of the nature reported in the aforementioned News article.

54. Further, considering the fact that the shared information matched exactly with the subsequently published financial results, the submissions of the Noticee that such information was in the nature of HOS would be to say that the financial results of the said company were already become public and being discussed openly among the general

investors. In the absence of any document or evidence on record to signify such fact even remotely, I am not inclined to accept such a contentious argument by the Noticee that the access to accurate financial results was available to larger public in the form of HOS. Further, in the instant case, a few closed set of people including the Noticee were in possession of such UPSI and they alone had been privy to the information albeit all of them could not be tracked back due to the constraints, due to deletion of whatsapp messages, as stated above. With regard to the communication of the messages by the Noticee, I have also perused the job profile of the Noticee during the period the messages were communicated which are as under:

Noticee:

- Calls and recommendations –fundamental/technical/quantitative parameters on scrips;
- News about events in the market;
- Sector reports published by Antique research analysts team from time to time. Arrange calls and set up meetings between Antique research team and fund representatives from time to time to discuss these research reports.

55. From the above, it is evident that Noticee was not required to share such information to various other unconnected entities as a part of her job description prior to the announcement of results. I am of the opinion that the circumstances and arrangement as observed above, where the source of the information could not be traced back due to deletion of the messages in whatsapp by sender, gives a scope for transmission of UPSI through a chain of forward messages to various other entities/ closed groups thereby granting an undue advantage to them.

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

57. The Noticee has also vehemently argued that the information claiming to be in the nature of HOS had never been forwarded to any of her family members or was taken advantage

by them. In this regard, as already noted, due to the technological challenges, the trail of the messages (which were deleted) could not be made out so as to identify the actual source or the complete list of persons who were part of the communication trail and therefore it is not entirely acceptable that no gain was made by any investor being privy to such information shared through WhatsApp messages. Due to the same, I am also not inclined to accept Noticee's submission that the information lacked the credibility of the source and hence cannot be qualified as a UPSI. Furthermore, irrespective of the factors whether the information was originated from the Noticee or that her families had traded based on such information, the charge against the Noticee sustain to be considered as the same is concerned with whether the Noticee was in possession of UPSI and had shared it further. At this stage, I note that I am primarily of the opinion that it is against the interest of the investors to encourage any sharing of sensitive information within a closed group to the exclusion of general public especially when the source of such information cannot be traced back. If the same is allowed to continue in the pretext of sharing of HOS as stated by the Noticee, the insiders having access to the UPSI would be granted themselves with an unfettered mode of transmitting such information without having to be concerned about being tracked back to the source of the information. Considering the extent of impact, such UPSI involving financial results hold on the price of the securities, I am of the opinion that a lenient view cannot be warranted so as to consider such information qualifying to be an UPSI as a mere HOS.

58. It is also the submission of the Noticee that she did not believe the information to be a UPSI and therefore forwarded to clients/market groups/acquaintances without application of mind. In the established facts of the case, the Noticee who is reasonably expected to be well acquainted with the working of the securities market and the nature of sensitive information that an unpublished financial results cannot claim ignorance of the nature of information. I am of the opinion that such category of persons who are well aware of the sensitive nature of UPSI has an ethical obligation on their part to inform the regulators in case of coming across an accurate details regarding UPSI from a suspicious source rather than taking care of the interest of their acquaintances by forwarding the same. However, in the instant case, I note that admittedly there have been several communications which

happened frequently with respect to the financial results of the companies between the personals who are closely associated with the market. I note that the Noticee in all probability must have observed that some of the information she received had very closely matched with the subsequently announced financial results. Especially considering that she was not aware of the source of the UPSI that she had received, it was to alarm the Noticee or give rise to a suspicion on the source of the information. Surprisingly, it has not been the case and the Noticee had chosen to accept the information and further communicate the same ignoring the material nature of the information.

iii) No breach of law on the part of the Noticee

59. In this regard, I note that the Noticee has been alleged to have violated the provisions of Sections 12A(d) and 12A(e) of the SEBI Act, 1992 and Regulation 3 of the PIT Regulations, 2015. While Section 12 (d) and (e) inter alia prohibits any person from communicating any material or non-public information to any other person, in a manner that is in contravention of the provisions of SEBI Act or the Rules or the regulations made thereunder. In addition, Section 3(1) of the PIT Regulations, 2015 prohibits any insider from communicating any unpublished price sensitive information, relating to a company or securities listed or proposed to be listed, to any person including other insiders except where such communication is in furtherance of legitimate purposes, performance of duties or discharge of legal obligations. In this connection, I also refer to the provisions of Regulation 2 (1) (g) of SEBI (PIT) Regulations, 2015, which state as under:

“insider” means any person who is:

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

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

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

- a) Whether the information constituted UPSI?
- b) Whether the Noticee was an insider within the definition under Regulation 2(1)(g) of the PIT Regulations, 2015?
- c) Whether the Noticee being an insider further communicated the UPSI?

a) Whether the information constituted UPSI

61. Firstly, it is the contention of the Noticee that the information forming part of the WhatsApp messages were generally available and was in the nature of market gossip/rumour/ HOS. In this regard, as already opined above, I do not find that the information stated in the WhatsApp messages qualify to be regarded as HOS in the instant case and the information published on Bloomberg could not be reasonably accepted as the source for the Noticee whatsapp messages. Further, contending that the information did not constitute UPSI, the Noticee has further stated that she had forwarded the information relating to estimates of financial results on several occasions and that in only a few instances as in the instant case, the details had closely matched with that of the actual results announced. She has contended that merely the fact that the results exactly matched cannot be enough to allege the information to be a UPSI, when she herself was not the originator of message as well. The Noticee further argued that the information in the instant case was generally available and thus could not be treated as UPSI. In this regard, referring to the report of High-Level Committee to Review the SEBI (Prohibition of Insider Trading) Regulations, 1992 under the Chairmanship of Mr. Justice N K Sodhi (hereinafter referred to as "**Justice Sodhi Committee Report**") the Noticee submitted that whether a piece of information is UPSI or generally available information is a mixed question of fact and law and that in the instant case, she receiving the information from an individual who is not shown to be connected to Mindtree or source or the information cannot be treated as receipt of UPSI.

62. In this regard, I note that the committee deliberating upon the issue of what information constitutes UPSI and what is to be regarded as generally available information and how the

information of same nature may be UPSI in some case and generally available in others recorded various illustrations which the Noticee has presented before me in contending that the information in her case is of generally available nature and not UPSI. In this regard, I note that UPSI is essentially an information that is not generally available but on becoming generally available materially affects price of securities. The committee laying down the principles on how such general availability needs to be ascertained stated that any information that is accessible to the public on non-discriminatory basis would qualify to be generally available. Further, in the light of facts of the instant case, I also find it relevant to refer to the following paragraphs of the Report:

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

....

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

30. A piece of research work that is available on a discriminatory basis but is based entirely on generally available information would not change the character of the research work from

being —generally available// to being —UPSI. The Committee is conscious that generally available information well analyzed by an insightful mind would not be transformed into UPSI. Therefore, the regulation explicitly provides that conclusions, deductions and analyses of generally available information too would be regarded as generally available information.

.....

33. To conclude, whether or not a piece of information is generally available or is unpublished would necessarily be a mixed question of fact and law. A bright line indicating the types of matters that would ordinarily give rise to UPSI are listed to give illustrative guidance. It could well also be possible that information from such events could be routine in nature and consistent with a long history. Information about the repetition of the same event on predictable lines would not render it to be UPSI unless deviated from. For example, the declaration of dividend at the same rate at which a company has declared dividend for the several years as per publicly stated dividend policy.

”

63. Having noted the above, I further note that the Noticee has *inter alia* contended before me that “Analysis and research based on generally available information would also be generally available information. Information that is capable of being accessed by any person without breach of any law would be considered generally available. It is submitted that in the facts of the present case, the information that was forwarded to me was in the nature of market gossip and I have given several other examples to show that it is common practice among market participants to keep on predicting future events and the said market gossip is not prohibited under any law.” In this regard, while I note that whether or not a piece of information is generally available or is unpublished would necessarily be a mixed question of fact and law, the statement that the information was an outcome of the research does not by itself make it generally available. I note that the test to ascertain an information to be UPSI or not is its non-discriminatory nature of availability. In the instant case, the Noticee while referring to one of the estimates of CIMB and Kotak published on Bloomberg which matched with her information related to Revenue and PAT claimed that the information was already generally available. However, as noted in the preparas, she has failed to exhibit how one specific estimate (that matched her information) out of several

estimates published on Bloomberg in one month before the sharing of her whatsapp message made the whatsapp information already generally available. As already noted, I am of the opinion that such argument without any explanation on the nexus between her message and the aforesaid estimates published on Bloomberg is clearly farfetched, afterthought and does not merit consideration in her favour. Further, the Noticee has not placed before me any evidence to indicate that the information was derived from any research work of her own or any other specific report. Furthermore, as stated at paragraph 26 of the Committee Report, an illustration where a research work that is priced at *a level not in line with market practice such that only some identified persons may be able to acquire it was opined to be of discriminatory nature*. Therefore even if the information is said to be have been formed based on the research, firstly the research should have been based on the generally available information and secondly the research work should have been accessible on a non-discriminatory basis. However, in the instant case, even if the information is to be accepted as based on the research, there is no evidence brought on record by the Noticee to show that the research information emerged based on the generally available information. Further, the said information has been circulated between the closed groups of entities including the Noticee through the WhatsApp messages which by its very nature make it a discriminatory access to the selected few. Therefore the information in this case fails the test to be called generally available information as contended by the Noticee.

64. Furthermore, with respect to the submissions of the Noticee, I also note from the job description of the Noticee, it was not a requisite task arising from her duty to forward the messages of the nature as in the instant case. Yet, the Noticee have been admittedly been continuously involved in sharing such information being an active chain in the transmission of information. While I note that the information shared/forwarded by the Noticee had not matched with that of the actual results on several occasions, the fact it matched so accurately in a few instances also cannot be viewed leniently. Especially when the information included the exact details with respect to crucial part of financial results such as Revenue, PBIT and PAT. I cannot ignore the fact that such information have been shared with a closed set of people and the general public had no knowledge of such

information being shared on the WhatsApp platform to even have any access to the same. Further, the Noticee being financially literate person who has been associated with the securities market by holding significant position noted at paras above, it was well within a reasonable expectation out of her to be triggered alarm when the information that were being circulated through WhatsApp messages so accurately matched with the subsequently announced actual figures of the company, even if such occurrence happened with respect to selected few messages out of several messages as stated by the Noticee. However, the Noticee has allowed herself to continue to be an instrument in the chain of communication of such sensitive information through WhatsApp messages. From the summary of aforesaid findings, I am of the considered view that the messages about the financial results were circulated prior to the official announcement made by the Companies, is UPSI. In my opinion, the disclosure of this information violates the rule of parity of information and perpetuated information asymmetry. The prohibition against insider trading helps in ensuring fairness, achieving information symmetry and ultimately market efficiency.

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

&

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

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

66. In her defense against being alleged as the insiders in the instant case, the Noticee has based her contentions on the argument that the information contained in the WhatsApp messages were in the nature of market rumor/gossip/HOS and hence cannot be regarded

as UPSI and thus she did not act as insider in the instant case. However, from the conclusions arrived in the paras of this Order, it has been already been noted that the financial results that were part of the WhatsApp messages constituted UPSI as on January 17, 2017 for the reasons mentioned above. Further from the admitted fact that Noticee had forwarded the said message to several individuals, it is imperative that the Noticee was in possession of UPSI and consequently she is considered as insider with respect to the UPSI she possessed.

67. Further with respect to the circulation of the aforesaid UPSI by the Noticee, it is contended by the Noticee that despite the information being forwarded to several parties, none of them alleged that the said information was UPSI and in spite of the communication of the information, there is no evidence as to anyone has traded on the basis of the UPSI. In this regard, I note that the Regulation 3(1) of PIT Regulations, 2015 prohibits communication of UPSI from an insider in any mode. I note that the regulation does not exempt the person from the guilt of communicating merely on the fact that no trades had taken place based on the UPSI thus communicated. The main problem in case of dissemination of information through WhatsApp is the end to end encryption system of transfer of information because of which the data cannot be accessed by third party except receiver and sender. Furthermore, I again take note of the fact that the technological constraint arising in the peculiar facts and circumstances of circulating messages through WhatsApp, the complete trail of messages could not be discovered though the message was admittedly circulated among several market associated personals. Therefore, I am of the opinion that in order to safeguard the interest of the investors and the integrity of the securities market, one cannot import a liberal interpretation of the aforesaid provision so as to warrant the Noticee, who has been involved in the circulation of UPSI on a routine basis over the WhatsApp, with a benefit of doubt. Considering the same, as evident from the record, the Noticee being an insider for having the UPSI in possession on January 17, 2017 had forwarded such UPSI through WhatsApp messages to several other. In view of the same there is no reasonable doubt in concluding the Noticee as an insider under the provisions of Regulation 2 (1) (g) of SEBI (PIT) Regulations who as in possession of UPSI and that she communicated the same further.

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

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

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

70. A basic premise that underlines the integrity of securities market is that persons connected with the market conform to the standards of transparency, good governance and ethical behavior prescribed in securities laws and do not resort to fraudulent and deceptive activities like insider trading. Such activities are detrimental to the interests of the investors as well as the securities market. No person can be allowed to enrich himself/herself by way of wrongful or ill-gotten gains or avoidance of potential loss made on account of such activity. SEBI has been entrusted with the important mandate of protecting investors and safeguarding the integrity of the securities market. In this regard, necessary powers have been conferred upon SEBI under the securities laws. The

SEBI (PIT) Regulations have put in place a framework for prohibition of insider trading in securities. The prohibitions provided in the Regulations ensure a level-playing field in the securities market and safeguard the interest of investors and integrity of securities market. I am of the view that the object and spirit of the SEBI (PIT) Regulations would get defeated if the alleged violators of the said Regulations are not made to face the consequences.

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

Penalty for insider trading

15G.If any insider who,—

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

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

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

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

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

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

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
- (b) the amount of loss caused to an investor or group of investors as a result of the default;*
- (c) the repetitive nature of the default.”*

73. I note that on the basis of data available on record, it is difficult, in cases of such nature, to quantify exactly the disproportionate gain or unfair advantage enjoyed by the Noticee and the consequent losses suffered by the investors. Further the amount of loss to an investor or group of investors also cannot be quantified on the basis of available facts and data. Even though the monetary loss to the investors cannot be computed, unauthorized circulation of UPSI such as financial results holds a scope to pose a greater threat to the integrity of the market. The technological advancements may also equip the manipulators with innovative ways to flout and bypass the regulations that are put in place to protect the interest of the innocent investors. Today, developments in technology, information flow and access to markets have enabled new market structures to evolve and impact the way in which market manipulation occurs and new methods of market manipulation have emerged. The instant case before me is one such example where the information constituting UPSI has been circulated through WhatsApp messages, which conveniently wipes out any trace of the insider leaking the UPSI when the messages are deleted and manages to reach the selected group of targets. Such acts which are essentially in the form of making UPSI available on a discriminatory basis, if legitimized in the garb of routine sharing of market gossips/rumors will compromise the confidence of this kind of activity has a serious impact on the price of the securities where the limited set of people having access to UPSI stand to gain at the expense of the innocent gullible investors. I am of the opinion that the peculiar

nature of such communication of UPSI as in the instant case has to be strictly dealt with, in order to curb and discourage any future attempts at the same.

ORDER

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

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

ENFORCEMENT → Orders → Orders of AO →PAY NOW

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

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

77. In the event of failure to pay the said amount of penalty within the timelines as mentioned in Para 75 above, recovery proceedings may be initiated under Section 28A of the Securities and Exchange Board of India Act, 1956 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

78. In terms of the provisions of Rule 6 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995, a copy of this order is being sent to Ms. Shruti Vishal Vora (Noticee) and also to the Securities and Exchange Board of India, Mumbai.

Date: May 29, 2020

Place: Mumbai

B J Dilip
Adjudicating Officer