BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

(ADJUDICATION ORDER NO: AO/SBM/EAD-3/ 144-146/2018)

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

In respect of:

1. **Unicon Securities Pvt. Ltd. (BSE Reg. No.: INB011282531 and PAN: AAPFS5325P)**
2. **Mr. Sunil Kumar Agarwal (PAN: ABKPA0059Q)**
3. **Mr. Pardeep Kumar Aggarwal (PAN: AAKPA1255B)**

In the matter of

Ashutosh Paper Mills Ltd.

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**'), during the course of investigations into the trading in the scrip of Ashutosh Paper Mills Ltd. (now known as Tridev Infraestates Ltd and hereinafter referred to as "**Company"/ "APML**"), during the period November 01, 2011 to July 25, 2012 (hereinafter referred to as "**examination period**") observed irregularities committed by certain persons/entities w.r.t their trading/dealings in the scrip of APML during the examination period. It was observed by SEBI that Unicon Securities Pvt. Ltd. (hereinafter referred to as "**Unicon/Noticee 1**") had allegedly violated the provisions of the Code of Conduct contained in SEBI (Stock Brokers and Sub-Brokers) Regulations, 1992 (hereinafter referred to as "**Stock Brokers Regulations**"). It was also observed by SEBI that Mr. Sunil

Kumar Agarwal (hereinafter referred to as "**Noticee 2"/"SKA"**) and Mr. Pardeep Kumar Agarwal (hereinafter referred to as "**Noticee 3"/ "PKA**") have allegedly violated the relevant provisions of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (hereinafter referred to as '**SAST Regulations, 1997**') and also SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as '**PIT Regulations, 1992**'). In view of the above, adjudication proceedings were initiated against Noticee 1, Noticee 2 and Noticee 3 (hereinafter also collectively referred to as "**Noticees**") under the following provisions of law

Entity	**Penal Provisions**
Noticee 1/Unicon	1. Section 15HB of the SEBI Act, 1992
Noticee 2/ SKA	1. Section 15HB of the SEBI Act, 1992 2. Section 15A(b) of the SEBI Act, 1992
Noticee 3/PKA	1. Section 15A(b) of the SEBI Act, 1992

2. APML was incorporated in November 1988 as a public limited company. The company is listed on the Bombay Stock Exchange (**BSE**). The Company is in the business of trading of various varieties of paper and related products. Besides, it was also engaged in negotiating advance licenses and machinery equipment on commission basis. During the examination period, the paid up share capital of the Company was Rs 6.52 Crores (represented by 65,25,200 shares of face value of Rs. 10/-).

APPOINTMENT OF ADJUDICATING OFFICER

3. The undersigned was appointed as the Adjudicating Officer, vide Order dated January 18, 2017 under Section 19 read with Section 15-I(1) of the SEBI Act, 1992 (hereinafter referred to as "**SEBI Act**") read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as '**Adjudication Rules'**) to inquire into and adjudge under the provisions of Sections 15HB and 15A (b) of the SEBI Act

against the Noticees for their alleged failure to comply with the relevant provisions of law, as mentioned above.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING:

4. A common Show Cause Notice ref. SEBI/HO/EAD/5176/2017 dated March 08, 2017 (hereinafter referred to as "**SCN**") was issued to the Noticees under Rule 4(1) of the Adjudication Rules, to show cause as to why an inquiry should not be held against them and why penalty, if any, should not be imposed on the Noticees under the provisions of sections 15HB and 15A(b) of the SEBI Act for their alleged violation of the relevant provisions of law, as mentioned in the SCN. The SCN issued to the Noticees, *inter alia*, mentioned the following:

Observations w.r.t Unicon Securities Pvt. Ltd. (Noticee 1)

a) *During the course of investigation, a complaint was received by the Bombay Stock Exchange (BSE) from Mr Pardeep Kumar Aggarwal -Noticee 3 wherein the complainant had alleged that the trading member 'Unicon Securities Pvt Ltd.' i.e. Noticee 1, through whom the said client was registered, had indulged in illegal trade practices in collusion with the promoter/director/shareholder of the 'Ashutosh Paper Mills Ltd'. It was alleged by Noticee 3 that Noticee 1 had carried out illegal/ unauthorized trading in the scrip of the Company from his client account without his permission and authority, which resulted in huge irrecoverable losses.*

b) *It is observed from the SEBI correspondence with Noticee 1 and Noticee 3 that large debit balance (more than one crore rupees) was existing in the ledger account of Noticee 3 since April 2011. The same was corroborated by the ledger account of Noticee 3, which was submitted by Noticee 1. It is alleged that Noticee 1 had sold the shares of the Company which were held in the account of Noticee 3 without obtaining the approval/ permission from Noticee 3.*

c) *It is observed from a reply dated June 19, 2013, submitted by Noticee 1 to SEBI, that Noticee 1 had claimed to have received Rs 52 lakhs from Noticee*

3 and thereafter, allowed its client i.e. Noticee 3 to trade further. It is also observed from the reply submitted by Noticee no 1 that the said amount of Rs 52 lakhs claimed to have been received by it from Noticee 3 was not posted by Noticee 1 in the client ledger/ledger account of Noticee 3. It is therefore alleged that Noticee 1 has failed to post the entries in the client ledger of Noticee 3 w.r.t Rs 52 lakhs received by it from Noticee 3.

d) *It is observed from the ledger account of Noticee 3, submitted by Noticee 1, that large debit balance (more than one crore rupees) was allowed by Noticee 1 since April 2011. It is alleged that despite the presence of the huge debit balance in the account of Noticee 3, Noticee 1 had allowed its client i.e Noticee 3 to trade in his account. It is further observed that Noticee 1 sold the shares of the Company which were lying in the account of Noticee 3 to cover up the debit balance. It was alleged that Noticee 1 sold the shares of the Company from the account of Noticee 3 without taking the specific approval/permission from Noticee 3.*

e) *In light of the above, it is alleged that the Noticee 1, by allowing Noticee 3 to trade in his trading account/demat account despite having large debit balance, not posting the entries in the client ledger, trading by Noticee 1 without obtaining the permission from its client have failed to exercise due skill, care and diligence which is expected from a Stock Broker registered with SEBI under the provisions of stock broker regulations. It is, therefore, alleged that Noticee 1 has violated Clause A(2) and A(5) of the Code of Conduct for Stock Brokers as specified under Schedule II read with Regulation 7 of Stock Broker regulation.*

Observations against Sunil Kumar Agarwal (Noticee 2)

f) *It is observed from the disclosures made by the Company to BSE that Noticee 2 was the Promoter and Managing Director of the Company during the examination period / investigation period. Further, the investigation revealed that following off-market transactions took place between Noticee 2 and Noticee 3:*

Table 1: Off market transactions between SKA i.e. Noticee 2 and Noticee 3 (PKA)

Date	Buyer	Seller	Quantity	Percentage of shareholding of the Company
Holding of Noticee 2 as on 10.01.2011			4,69,170	7.19%
11.01.2011	PKA (Noticee 3)	Noticee 2	4,00,000	6.13%
21.03.2011	SKA (Noticee 2)	PKA-(Noticee 3)	75,000	1.15%
22.03.2011	SKA-Noticee 2	PKA	35,000	0.54%
26.03.2011	SKA-Noticee 2	PKA	8700	0.13%
20.06.2011	SKA-Noticee 2	PKA	27,300	0.42%
05.07.2011	SKA-Noticee 2	PKA	97,800	1.50%
08.07.2011	SKA-Noticee 2	PKA	20,200	0.31%

It is observed from the above table that Noticee 2 sold 4,00,000 shares (amounting to 6.13% of total paid-up share capital of Company) in an off market transaction to Noticee 3 on January 11, 2011. This reduced the shareholding of Noticee 2 in the Company from 7.19% to 1.06%. It is observed that no disclosure regarding this change in shareholding was reported by Noticee 2 to the Company.

g) *It is therefore alleged that Noticee 2 has violated the provisions of Regulation 13(3) read with 13(5) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as 'PIT Regulation') which require a person, holding 5% or more voting rights, to disclose to the Company the change of 2% or more in its shareholding within 2 days of sale of shares.*

h) *It is also observed that Noticee 3 sold 2,64,000 shares (amounting to 4.05% of total paid-up share capital of Company) which were purchased by Noticee 2 in off market transactions between March 21, 2011 to July 08, 2011. Due to these off market transfers, the shareholding of Noticee 2 in*

the Company increased to 5.10% of the total paid up capital of the Company, thereby also crossing the threshold limit of 5% as on July 8, 2011. It is observed that no disclosures related to these transactions were made to the Company or BSE by Noticee 2.

i) *It is observed that Noticee 2 being a director/Managing director of the Company had allegedly failed to make disclosures w.r.t the change in shareholding exceeding 25,000 shares within 2 working days as on March 21 & 22, 2011, June 20, 2011 and July 05, 2011 (as mentioned in the Table above). This has allegedly resulted in Noticee 2 violating the provisions of regulation 13(4) read with 13(5) of PIT Regulation, which require any person, who is a director or an officer of a listed company, to disclose to the company and the stock exchange, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings of such person and his dependents (as defined by the company) from the last disclosure, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.*

j) *lt is further observed from the Table above that the total acquisitions of 2,64,000 shares of the Company by the Noticee 2 during the period March 21, 2011 to July 8, 2011, by way of off market transactions from Noticee 3, had resulted in the total shareholding of Noticee 2 in the Company going up to 3,33,170 shares (which was 5.11% of the paid up capital of the Company). It is alleged that Noticee 2 had failed to make the necessary disclosures of the same to the company and to the stock exchange, which was required to be made in terms of the SAST Regulations.*

k) *Therefore, it is alleged that the failure of Noticee 2 to make the disclosures w.r.t acquisition of 5% or more shares of the Company have resulted in violation of Regulation 13(1) of the PIT Regulations read with the provisions of Regulation 7(1) of SEBI (Substantial Acquisition of Shares and Takeover) Regulations, 1997 (hereinafter referred to as 'SAST Regulation') which*

require any person holding more than 5% shares of a company to disclose it to both the Company and Stock Exchange, the number of shares or voting rights, held by him.

l) *Further, as observed from the above table, Noticee 2 (being a director of the Company) had entered into opposite transactions within a period of 6 months of his entering into a sale transaction in the Company. It is alleged that Noticee 2 had bought 75,000 shares of the Company on March 21, 2011, after selling 4,00,000 shares of the Company on January 11, 2011. It is therefore alleged that Noticee 2 (being the Managing Director of the Company) has violated the provisions of clause 4.2 of Model Code of Conduct, mentioned under Schedule 1 of the PIT Regulation which prohibits all directors/officers/designated employees of the Company from entering in an opposite transaction within 6 months of buying or selling the shares of the Company.*

Observations against Pardeep Kumar Agarwal (Noticee 3)

m) *It is observed from the Table above that Noticee 3 bought 4,00,000 shares (amounting to 6.13% of total paid-up share capital of Company) in off market from Noticee 2 (the MD of the Company) on January 11, 2011. It is also observed that Noticee 3 sold 2,64,000 shares (amounting to 4.05% of total paid-up share capital of Company) back to Noticee 2 in off market transactions between March 21, 2011 to July 08, 2011. Due to these off market transfers, the shareholding of Noticee 3 in the Company increased from 0% to 6.13% as on January 11, 2011. Later, by virtue of the sale of shares by Noticee 3 to Noticee 2 (as can be seen from the Table above), the total shareholding of Noticee 3 in the Company gradually decreased to 2.08% and resulting in change in shareholding of 2% change in the shareholding as on June 20, 2011.*

n) *It is observed from the records of BSE that Noticee 3 had made the disclosure under Regulation 7(1) of the SAST Regulation to BSE regarding purchase of 4,00,000 shares on January 11, 2011. However, no disclosure*

has been made by Noticee 3 within 2 working days from the date of the said purchase in terms of regulation 13(1) read with 13(5) of PIT Regulations to the company, which require any person holding more than 5% shares of a company to disclose his shareholding to the company within 2 working days of crossing the 5% limit. It is, therefore, alleged that Noticee 3 has violated the provisions of Regulation 13(1) read with Regulation 13(5) of PIT Regulation.

o) *It is alleged that the subsequent sale of the shares of the Company by Noticee 3 (i.e 2,64,000 shares, 4.05% of total shareholding in the company) was also not disclosed by Noticee 3 within 2 working days from the date of the said sale, i.e. June 20, 2011 as required under regulation 13(3) read with 13(5) of PIT Regulation, which require any person holding more than 5% shares of a company to disclose to the company, the change in his shareholding if the change exceeds 2% of total shares of the company.*

p) *It is further alleged that Noticee 3 had failed to make the necessary disclosures required to be made by him to the Company and the Stock Exchange (BSE) in terms of the provisions of Reg 13(4) of the PIT Regulations in respect of the above mentioned transactions. It is therefore alleged that Noticee 3 has violated the provisions of Regulation 13(3) and 13(4) read with 13(5) of PIT Regulation.*

5. The SCN dated March 8, 2017 was served on Noticee 2 & 3. Thereafter, Noticee 2, vide his letter dated April 15, 2017, contended that the said transactions were not in the nature of sale transactions and the transfer of shares in favour of Noticee 3 were made by him in form of a security against a loan taken by him from Noticee 3. Further, Noticee 3, vide his letter dated April 28, 2017, submitted that he had extended a loan facility to Noticee 2 in the form of ICD and a fraud was played on him by Noticee 1 and Noticee 2 in collusion with each other. However, Noticee 3 did not make any fresh submissions thereafter in the said matter. The SCN issued to Noticee 1 returned undelivered and the same was served on Noticee 1 by way of affixture on August 18, 2017.

Copy of the affixture report, in terms of Rule 7(c) of the Adjudication Rules, is on record.

6. Thereafter, in terms of Rule 4(3) of the Adjudication Rules, opportunity of personal hearing was granted to Noticee 1 on September 07, 2017 vide letter dated August 08, 2017. The said letter dated August 08, 2017 was served on Noticee 1 by way of affixture on August 18, 2017, in terms of Rule 7 (c) of Adjudication Rules. Vide another letter dated August 08, 2017, Noticee 2 was provided with an opportunity of hearing on September 27, 2017. Mr Sudhir Kumar Agarwal (Authorised Representative–(**AR)** appeared on behalf of Noticee 2 on the stipulated date of hearing i.e on September 27, 2017. The AR made the following submissions on behalf of Noticee 2 :-

   a) *The AR admitted to the allegations, as mentioned in the SCN.*

   b) *AR submitted that there was no malafide intention behind the transactions and the Noticees' failure in making the disclosure and, accordingly, requested for leniency in imposition of penalty.*

7. Vide letter dated October 23, 2017, Noticee 3 was provided with an opportunity of personal hearing on October 26, 2017. On the stipulated date of hearing i.e on October 26, 2017, Noticee 3 made the following submissions:-

   a) *Noticee 3 mentioned that he had made the disclosure under Regulation 7(1) of SAST Regulations when his shareholding in the company crossed the threshold limit of 5% of the total shareholding of the company. However, by ignorance, he failed to make the disclosure under Regulation 13(1) of PIT Regulations. In light of this, the Noticee requested for a lenient view to be taken in the matter.*

   b) *Noticee 3 further submitted that he was not a director or officer of the company during the relevant period when the transactions took place. Therefore, Noticee 3 contended that Regulation 13(4) of PIT Regulations is not applicable to him in the present matter.*

c) *Noticee 3 requested for time to make additional submissions in the matter. Accordingly, he was granted time till November 0, 2017 to make additional submissions/reply /documents.*

8. I note that Noticee 3 had not made any further submissions/reply in the matter till date although he had filed his reply to the SCN vide his letter dated April 28, 2017. As regards Noticee 1, I am of the view that Noticee 1 was provided with ample opportunity to present its case and make its submissions in the matter. However, it is on record that Noticee 1 has not only failed to respond to the SCN but also failed to appear for the personal hearing fixed on the stipulated date. In this context, I would like to place reliance on the Order dated February 11, 2014 passed by the Hon'ble Securities Appellate Tribunal (SAT) in the matter of Sanjay Kumar Tayal and Ors vs SEBI (Appeal No 68 of 2013), wherein SAT had observed that "*..... As rightly contended by Mr Rustomjee, the learned senior counsel for respondents, appellants have neither filed any reply to the show cause notices issued to them nor availed opportunity of personal hearing offered to them in the adjudication proceedings and, therefore, appellants are presumed to have admitted the charges leveled against them in the show cause notices .....*"

   In view of the above, I am compelled to proceed with the matter *ex-parte* against Noticee 1 on the basis of facts/material on record.

CONSIDERATION OF ISSUES AND FINDINGS:

9. I have taken into consideration the facts and circumstances of the case, the material available on record and the reply submitted by Noticees 2 & 3 in the said matter. Briefly, the allegations leveled against the Noticees are mentioned in the Table as under :-

Entity	**Alleged Violations**
Unicon Securities Pvt. Ltd.- Noticee 1	Clauses A(2) and A(5) of the Code of Conduct for Stock Brokers as specified under Schedule II read with Regulation 7 of the Stock Broker Regulations

Sunil Kumar Agarwal- Noticee 2	Regulation 13(1) of PIT Regulations, 1992 and Regulation 7(1) of SAST Regulations, 1997; Regulation 13(3) r/w 13(5) of PIT Regulations, 1992; Regulation 13(4) r/w 13(5) of PIT Regulations, 1992; Clause 4.2 of Model Code of Conduct as specified under Part A of Schedule I r/w Regulation 12(1) of PIT Regulations, 1992
Pardeep Kumar Aggarwal- Noticee 3	Regulation 13(1) of PIT Regulations, 1992; Regulation 13(3) r/w 13(5) of PIT Regulations, 1992; Regulation 13(4) r/w 13(5) of PIT Regulations, 1992

10. Before moving forward, the relevant extracts of the provisions of the Stock Broker Regulations, PIT Regulations and SAST Regulations allegedly violated by the Noticees are mentioned as under-

Stock Broker Regulations, 1992

7. The stock-broker holding a certificate shall at all times abide by the Code of Conduct as specified at Schedule II.

SCHEDULE II

CODE OF CONDUCT FOR STOCK BROKERS

A. General

(2) Exercise of due skill and care : A stock-broker shall act with due skill, care and diligence in the conduct of all his business.

(5) Compliance with statutory requirements: A stock-broker shall abide by all the provisions of the Act and the rules, regulations issued by the Government, the Board and the Stock Exchange from time to time as may be applicable to him.

PIT Regulations, 1992

Code of internal procedures and conduct for listed companies and otherentities.

12. (1) All listed companies and organisations associated with securities markets including :

(a) the intermediaries as mentioned in section 12 of the Act, asset management company and trustees of mutual funds;

(b) the self-regulatory organisations recognised or authorised by the Board;

(c) the recognised stock exchanges and clearing house or corporations;

(d) the public financial institutions as defined in section 4A of the Companies Act, 1956; and

(e) the professional firms such as auditors, accountancy firms, law firms, analysts, consultants, etc., assisting or advising listed companies,

shall frame a code of internal procedures and conduct as near thereto the Model Code specified in Schedule I of these Regulations without diluting it in any manner and ensure compliance of the same.

SCHEDULE I

PART A

MODEL CODE OF CONDUCT FOR PREVENTION OF INSIDER TRADING FOR LISTED COMPANIES

4.2 All directors/ officers/ designated employees who buy or sell any number of shares of the company shall not enter into an opposite transaction i.e. sell or buy any number of shares during the next six months following the prior transaction. All directors/ officers/ designated employees shall also not take positions in derivative transactions in the shares of the company at any time.

In the case of subscription in the primary market (initial public offers), the above mentioned entities shall hold their investments for a minimum period of 30 days. The holding period would commence when the securities are actually allotted.

Disclosure of interest or holding by directors and officers and substantial shareholders in a listed companies - Initial Disclosure.

13. (1) Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company in Form A, the number of shares or voting rights held by such person, on becoming such holder, within 2 working days of :—

(a) the receipt of intimation of allotment of shares; or

(b) the acquisition of shares or voting rights, as the case may be.

Continual disclosure

(3) Any person who holds more than 5% shares for voting rights in any listed company shall disclose to the company in Form C the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below 5%, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this sub-regulation; and such change exceeds 2% of total shareholding or voting rights in the company.

(4) Any person who is a director or officer of a listed company, shall disclose to the company and the stock exchange where the securities are listed in Form D, the total number of shares or voting rights held and change in shareholding or voting rights, if there has been a change in such holdings of such person and his dependents (as defined by the company) from the last disclosure made under sub-regulation (2) or under this subregulation, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower.

(5) The disclosure mentioned in sub-regulations (3), (4) and (4A) shall be made within two working days of :

(a) the receipts of intimation of allotment of shares, or

(b) the acquisition or sale of shares or voting rights, as the case may be.

SAST *Regulations*, 1997

7.(1) Any acquirer, who acquires shares or voting rights which (taken together with shares or voting rights, if any, held by him) would entitle him to more than five per cent or ten per cent or fourteen per cent or fifty four per cent or seventy four per cent shares or voting rights in a company, in any manner whatsoever, shall disclose at every stage the aggregate of his shareholding or voting rights in that company to the company and to the stock exchanges where shares of the target company are listed.

11. I note that the disclosure requirements prescribed under Regulation 7(1) of the SAST Regulations and Regulation 13(1) of the PIT Regulations are triggered when the shareholding of an entity in a company crosses the threshold limit of 5% of the total share capital of the company. Upon crossing the threshold limit of 5% of the total share capital, in terms of Regulation 13(1) of the PIT Regulations, the entity is under an obligation to make the necessary disclosure to the company within two working days of the acquisition of shares, as per the prescribed reporting format. Similarly, in terms of Regulation 7(1) of the SAST Regulations, the entity is under an obligation to make the necessary disclosures to the company and to the stock exchange, within two working days of the acquisition of shares, as per the prescribed reporting format, when its shareholding crosses the threshold limit of 5% of the total share capital of a company.

12. I also note that the disclosure requirements under Regulation 13(3) of the PIT Regulations are triggered when there is a change in the shareholding of an entity, who is holding more than 5% shares of a company, and the change resulting in the entity's shareholding crossing the threshold limit of 2% of the total share capital of the company, irrespective of whether the change in shareholding has occoured as a result of fresh purchase of shares by the entity and/or due to the sale of shares by the entity. Upon change in the shareholding of an entity and the change crossing the threshold limit of 2% of the total share capital of the company, in terms of Regulation 13(3) r/w Regulation 13(5) of the

PIT Regulations, the entity is under an obligation to make the necessary disclosures in the prescribed reporting format to the Company within two working days of such change in shareholding.

13. On the basis of the above observations, I will now proceed to record my findings against the Noticees as under -

Noticee 1/Unicon- Observations/findings

(a) I observe that Noticee 1 was a registered stock broker of BSE and National Stock Exchange (NSE) during the aforementioned examination period. I also observe that, vide order dated May 26, 2014, Whole Time Member, SEBI, had restrained Noticee 1 from accessing the securities market and also prohibited Noticee 1 from buying, selling or dealing in the securities market, either directly or indirectly, or being associated with the securities market in any manner whatsoever. Subsequently, both BSE and NSE had also expelled Noticee 1 from the membership of the stock exchanges vide separate public notices dated September 10, 2014 and September 05, 2014.

(b) I note that based on the alerts generated in the IMSS system of SEBI w.r.t the scrip of APML hitting the lower circuit on a continuous basis during the period December 2011 to April, 2012, investigations were conducted by SEBI into the trading/dealings in the scrip of APML by various entities. During the examination period referred above, Noticee 1 was acting as a stock broker for Noticee 3 i.e Pardeep Kumar Aggarwal. It was observed during the course of investigation that Noticee 1 had allowed Noticee 3 to continuously trade in the market despite the fact that Noticee 3 was having huge unsettled debit balance in his books/ledger account for a prolonged period (debit balance of more than Rs 1 crore), which was maintained with Noticee 1 since April 2011. I am of the view that by allowing its clients to trade for such prolonged period with such huge debit balance, Noticee 1 had exposed itself to considerable market risk and also risk of possible client default. Further, the risk management procedures of Noticee 1 is also questionable as it had allowed the client to trade and expose further in the

securities market despite such unsettled debit balance. I am of the considered view that any prudent stock broker acting with skill, care and diligence would have taken appropriate cautionary steps/measures before allowing its clients to trade/expose further despite such outstanding debit balance. In light of the above, I am convinced that, Noticee 1, by allowing its client to trade further despite such huge debit balance in his trading account for more than a year has failed to exercise due skill, care and diligence, as expected from a responsible stock broker registered with SEBI, in terms of the provisions of the Stock Broker Regulations.

(c) It was further alleged in the SCN that Noticee 1 had failed to update the client ledger account of Noticee 3 to the extent of an amount of Rs 52 lakhs received from Noticee 3. In this regard, I observe that, vide its letter dated June 19, 2013, Noticee 1 had informed SEBI that it had received Rs. 52 lacs from Noticee 3 on March 01, 2011, however, Noticee 1 had also mentioned that the said amount was not posted against the ledger account of Noticee 3, as the said amount was received from third party sources. It is however observed that the said amount of Rs 52 lakhs was received by Noticee 1 in its bank account.

(d) I find that Noticee 1 had accepted Rs. 52 lakh in its bank account from Noticee 3 despite knowing very well that the said amount was received from third party sources, which is prohibited as per SEBI Circular No. SEBI/MRD/SE/Cir- 33/2003/27/08 dated August 27, 2003. In this regard, Hon'ble Securities Appellate Tribunal, in its order dated September 25, 2013 in the matter of Finquest Securities Pvt. Ltd. vs SEBI, had observed that -:

"*The appellant being a reputed broker for many years should have conducted its affairs with diligence and should not have indulged in such transactions by accepting payments from third parties even on a few occasions which is totally barred by circular dated August 27, 2003, issued by SEBI.*"

(e) I am of the view that Noticee 1 ought not to have accepted the said amount of Rs 52 lakhs in the first place when it was aware of the fact that the said amount was received from a third party source. Further, by allowing its client i.e Noticee 3 to trade further despite huge unsettled debit balance in his account, Noticee 1 has clearly failed to act with skill and prudence, which was expected from a stock broker. I also observe that when the aforementioned violations had taken place, Noticee 1 was a registered member of both BSE and NSE. Therefore, Noticee 1 was expected to follow the requirements of the Code of Conduct prescribed for stock brokers during the relevant period. In view of the above observations, Noticee 1 had clearly violated the provisions of clauses A(2) and A (5) of the code of conduct prescribed for stock brokers contained in Schedule II to Regulation 7 of the Stock Brokers Regulations during the relevant period when it functioned as a stock broker on behalf of Noticee 3 in the scrip of APML. I am of the view that Noticee 1 was expected to follow the provisions of the Code of Conduct when it was a registerd stock broker trading through BSE and NSE. Clearly, from the aforementioned observations, Noticee 1 had failed to act as a prudent stock broker and had failed to act with skill, care and diligence and thus, had violated the provisions of Clauses A(2) and A(5) of Code of Conduct prescribed for stock brokers under Schedule II read with Regulation 7 of the Stock Broker Regulations. Therefore, Noticee 1 is liable for penalty under the provisions of section 15 HB of the SEBI Act for the aforementioned violations committed by it during the relevant period when it had functioned as a registered stock broker of BSE and NSE.

Noticee 2/ SKA- Observations/findings

(f) From the material/facts on record, I observe that Noticee 2 is the Promoter and the Managing Director of APML. During the examination period, there were transactions undertaken in the scrip of APML between Noticee 2 and Noticee 3, details of which are mentioned as under:-

Table 1: Transaction between Noticee 2 and Noticee 3

Date	Buyer	Seller	Quantity	Shareholding of Noticee 2 post the transactions	Percentage of shareholding of Noticee 2 in the Company post the transaction
Holding of Noticee 2 as on 10.01.2011				4,69,170	7.19%
11.01.2011	PKA (Noticee 3)	SKA (Noticee 2)	4,00,000	69,170	1.06%
21.03.2011	SKA	PKA	75,000	1,44,170	2.21%
22.03.2011	SKA	PKA	35,000	1,79,170	2.74%
26.03.2011	SKA	PKA	8700	1,87,870	2.88%
20.06.2011	SKA	PKA	27,300	2,15,170	3.30%
05.07.2011	SKA	PKA	97,800	3,12,970	4.80%
08.07.2011	SKA	PKA	20,200	3,33,170	5.10%

(g) From the above table, I find that as on January 10, 2011, Noticee 2 was holding 4,69,170 shares of APML, which represented 7.19% of the total paid up share capital of the Company. On January 11, 2011, Noticee 2 transferred 4,00,000 shares of APML (amounting to 6.13% of total share capital of the Company) to Noticee 3 by way of an off-market transaction, which resulted in the percentage of the shareholding of Noticee 2 in the company decreasing from 7.19% to 1.06% (as on January 11, 2011).

(h) I note that Noticee 2 was already holding more than 5% of the total paid up capital of the Company as on January 10, 2011. Thereafter, the shareholding of Noticee 2 changed by more than 2% of the total paid up share capital of the Company when he transfered 4,00,000 shares of APML to Noticee 3 in an off-market transaction on January 11, 2011, which resulted in decrease in the shareholding of Noticee 2 to 69,170 shares i.e. 1.06% of the total share capital of the Company. Since there was a change in the shareholding of Noticee 2 by more than 2% of the total paid up capital of the company, Noticee 2 was obligated to make the necessary disclosures to the Company within two working days of such transactions, in terms of Regulation 13 (3) read with 13(5) of the PIT Regulations. However, I find that

Noticee 2 has failed to make these disclosures within the stipulated time period.

(i) I also observe from the above Table that Noticee 2 had subsequently purchased 2,64,000 shares of APML from Noticee 3 in off-market transactions in tranches on various dates between March 21, 2011 to July 8, 2011. These transactions resulted in an increase in the total shareholding of Noticee 2 in APML i.e from 69,170 shares i.e. 1.06% of total shareholding of the Company (as on January 11, 2011) to 3,33,170 shares i.e 5.10% of total shareholding of the Company (as on July 8, 2011).

(j) I note that the total shareholding of Noticee 2 in APML had crossed the threshold limit of 5% as on July 08, 2011, when he purchased 20,200 shares of APML from Noticee 3. This required Noticee 2 to make the necessary disclosures u/r 13(1) of the PIT Regulations to the Company within two working days of the acquisition of shares and to the Company and BSE in terms of Regulation 7(1) of the SAST Regulations, within two working days of the above mentioned acquisition of shares. I observe that, Noticee 2 had failed to make these disclosures in terms of the aforementioned Regulations.

(k) It is further noted that the disclosure requirements under Regulation 13(4) of the PIT Regulations are triggered when there is a change in the shareholding of an entity/person, who is a director or officer of a listed company, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower. In case the change in shareholding crosses the threshold limit, as mentioned above, the entity is under an obligation to make the necessary disclosures in the prescribed reporting format to the Company and to the Stock Exchange within two working days of such change in shareholding.

(l) I observe from the investigation report as well as from the information available on the BSE website that Noticee 2 is the Promoter & Managing Director of the Company. Therefore, he was obligated to make the necessary disclosures u/r 13(4) of the PIT Regulations w.r.t change in his

shareholding, which had exceeded Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower, to both the Company and Stock Exchange. I note that the shareholding of Noticee 2 had crossed the threshold limit of 25,000 shares on 5 different occasions viz. January 11, March 21, 22, June 20 and July 05, 2011, by virtue of his off-market transactions with Noticee 3. Therefore, Noticee 2 was required to make the necessary disclosures to the Company and BSE within two working days w.r.t these transactions executed on the above mentioned dates, in terms of Regulation 13(4) read with 13(5) of the PIT Regulations. However, it is on record that Noticee 2 has failed to make these disclosures within the stipulated time period.

(m) The SCN has also alleged that Noticee 2 has violated the provisions of clause 4.2 of the Model Code of Conduct as mentioned in Part A of Schedule I read with Regulation 12(1) of the PIT Regulations. In terms of clause 4.2 of the Model Code of Conduct as mentioned in Part A of Schedule I read with Regulation 12(1) of the PIT Regulations, all directors/officers/designated employees who buy or sell any number of shares of the company shall not enter into an opposite transaction i.e. sell or buy any number of shares during the next six months following the prior transaction. From the above table, I observe that Noticee 2 had sold 4,00,000 shares of APML in an off-market transaction to Noticee 3 on January 11, 2011. Thereafter, he purchased back 75,000 shares of APML from Noticee 3 in an off-market transaction on March 21, 2011. Therefore, I hold that Noticee 2 had entered into opposite transaction with Noticee 3 within a period of 6 months i.e. first selling and then buying the shares of the Company within a period of 6 months.

(n) In view of the above observations, I hold that Noticee 2 has violated the provisions of Regulation 7(1) of the SAST Regulations, Regulations 13(1), 13(3), 13(4) r/w Regulation 13(5) of the PIT Regulations and also Clause 4.2

of the Model code of conduct as mentioned in Part A of Schedule I read with Regulation 12(1) of the PIT Regulations.

Noticee 3/PKA- Observations/findings

(o) From the material/facts on record, I observe that the following table depicts the details of the transactions undertaken by Noticee 3 with Noticee 2 during the examination period:-

Table 2: Transactions between Noticee 2 and Noticee 3

Date	Buyer	Seller	Quantity	Shareholding of Noticee 3 post the transaction	Percentage of shareholding of Noticee 3 in the Company post the transactions
Holding of Noticee 3 as on 10.01.2011				0	
11.01.2011	**PKA (Noticee 3)**	**SKA (Noticee 2)**	**4,00,000**	**4,00,000**	**6.13%**
21.03.2011	SKA Noticee 2	PKA	75,000	3,25,000	4.98%
22.03.2011	SKA Noticee 2	PKA	35,000	2,90,000	4.44%
26.03.2011	SKA-Noticee 2	PKA	8700	2,81,300	4.31%
20.06.2011	**SKA-Noticee 2**	**PKA**	**27,300**	**2,54,000**	**3.89%**
05.07.2011	SKA-Noticee 2	PKA	97,800	1,56,200	2.39%
08.07.2011	SKA-Noticee 2	PKA	20,200	1,36,000	2.08%

(p) From the above table, I note that as on January 10, 2011, Noticee 3 was not holding any share of APML. On January 11, 2011, Noticee 3 purchased 4,00,000 shares of APML from Noticee 2 in an off-market transaction, which resulted in the percentage of the shareholding of Noticee 3 in the company increasing to 6.13% (as on January 11, 2011).

(q) In light of the requirement mandated under the SAST and PIT Regulations, as discussed above, Noticee 3 was under an obligation to make the necessary disclosures to the Company and BSE within two working days of his acquisition of the shares of APML, in terms of Regulation 7(1) of the

SAST Regulations and to the Company within two working days of his acquisition of shares, in terms of Regulation 13 (1) of the PIT Regulations. I find from the material made available that Noticee 3 had made the relevant disclosure under Regulation 7(1) of the SAST Regulations to the Company and BSE but, at the same time, he failed to make the disclosure under Regulation 13(1) of the PIT Regulations within the stipulated time period.

(r) I find that Noticee 3 was already holding more than 5% of the total share capital of the Company as on January 11, 2011 as a result of his purchase of 4,00,000 shares of the Company from Noticee 2. Thereafter, his shareholding in the company changed by more than 2% of the total share capital of APML as a result of an off-market transaction wherein Noticee 3 sold 27,300 shares of the Company to Noticee 2 on June 20, 2011. The said transaction resulted in the decrease in the shareholding of Noticee 3 in the company to 2,54,000 shares i.e. shareholding of Noticee 3 in the company decreased from 6.13% (as on January 11, 2011) to 3.89% (as on June 20, 2011). Therefore, in view of the above transaction, Noticee 3 was required to make the disclosures to the Company within two working days of his sale of shares in terms of Regulation 13(3) read with 13(5) of the PIT Regulations. However, I find that Noticee 3 has failed to make the disclosure within the stipulated time period.

(s) I find that the SCN has also alleged that Noticee 3 has violated Regulation 13(4) read with 13(5) of the PIT Regulations. I note that the disclosure requirements under Regulation 13(4) of the PIT Regulations are triggered when there is a change in the shareholding of an entity/person, who is a director or officer of a listed company, and the change exceeds Rs. 5 lakh in value or 25,000 shares or 1% of total shareholding or voting rights, whichever is lower. I observe from the reply submitted by Noticee 3 that he has contended that he was not a director or officer of the Company during the examination period/relevant period. Further, I also note that there is nothing on record either in the investigation report or in the

documents/records made available to indicate that Noticee 3 was a director on the Board of APML during the examination period/relevant period. Further, I have also perused the Annual Report of APML during the relevant period i.e FY 2011-12 and observe that Noticee 3 was not mentioned as a director of APML during the said period. Therefore, the allegation that Noticee 3 has violated the provisions of Regulation 13(4) read with Regulation 13(5) of the PIT Regulations is not sustainable.

(t) In light of above observations, I hold that Noticee 3 has violated the provisions of Regulations 13(1) and 13(3) r/w Regulation 13(5) of the PIT Regulations.

14. By failing to make the disclosures on time, Noticee 2 & 3 have failed to comply with the mandatory statutory obligation. The timely disclosure is mandated for the benefit of the investors at large. There can be no dispute that compliance of the regulations is mandatory and it is the duty of SEBI to enforce the compliance of these regulations. In this context, it may be noted that the Hon'ble SAT in Appeal no. 66 of 2003, in the case of Milan Mahendra Securities Pvt. Ltd. vs. SEBI, vide its order dated November 15, 2006, has observed that "*the Regulations were framed on the basis of the input provided by a committee headed by Justice P. N. Bhagwati which had recommended that substantial acquisition of shares and takeovers should operate principally to ensure fair and equal treatment to all shareholders in relation to substantial acquisition of shares and takeovers. The object of the Regulations is to give equal treatment and opportunity to all the shareholders and protect their interests. To translate these principles into reality measures have to be taken by the Board to bring about transparency in the transactions and it is for this purpose that dissemination of full information is required...*"

15. Further, the Hon'ble SAT in its Order dated September 30, 2014, in the matter of *Akriti Global Traders Ltd. Vs SEBI had observed the following:-*

"*Obligation to make disclosures under the provisions contained in SAST Regulations, 2011 as also under PIT Regulations, 1992 would arise as soon as*

there is acquisition of shares by a person in excess of the limits prescribed under the respective regulations and it is immaterial as to how the shares are acquired. Therefore, irrespective of the fact as to whether the shares were purchased from open market or shares were received on account of amalgamation or by way of bonus shares, if, as a result of such acquisition/ receipt, percentage of shares held by that person exceeds the limits prescribed under the respective regulations, then, it is mandatory to make disclosures under those regulations."

16. As the violations of the aforementioned provisions of the SAST Regulations and PIT Regulations by Noticee 2 & 3 have been established, I am of the view that it is a fit case to impose monetary penalty on Noticee 2 & 3 in terms of Section 15A(b) of the SEBI Act, which reads as under :

Penalty for failure to furnish information, return, etc

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

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

17. Further, it has been established in the pre-paragraphs that Noticee 1 has violated Clauses A(2) and A(5) of the Code of Conduct for stock brokers as prescribed in Schedule II read with Regulation 7 of the Stock Broker Regulations. I have also concluded that Noticee 2 has violated the provisions of Clause 4.2 of the Model Code of Conduct as prescribed under Part A of Schedule I read with Regulation 12(1) of the PIT Regulations by entering into opposite transactions in the scrip of APML within a period of 6 months of his sale of shares of the Company to Noticee 3. Therefore, in light of the above violations/observations, I am of the view that it is a fit case to impose monetary

penalty on Noticee 1 & 2 under the provisions of section 15HB of the SEBI Act, which reads as under :

Penalty for contravention where no separate penalty has been provided.

15HB. Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees

18. In this regard, the provisions of Section 15J of the SEBI Act and Rule 5 of the Adjudication Rules require that while adjudging the quantum of penalty, the adjudicating officer shall have due regard to the following factors namely; -

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

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

(c) the repetitive nature of the default.

19. With regard to the above factors, it may be noted that the examination report /investigation report has not quantified the profit/loss for the violations committed by the Noticees. I am of the view that by not complying with the relevant provisions of law, the Noticees have failed to comply with the mandatory statutory obligation. In this context, reliance is placed upon the order of The Hon'ble Supreme Court in the matter of *Chairman, SEBI Vs Shriram Mutual Fund { [2006]5 SCC 361 }* – wherein the Hon'ble Supreme Court of India held that *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant……..."*

20. Further, I also note that the Hon'ble Securities Appellate Tribunal (SAT), in the matter of Vitro Commodities Private Limited Vs SEBI, vide Order dated September 4, 2013, had observed that "*It may be noticed that provisions of*

Regulations 7(1) of Takeover Regulations, 1997 and Regulation 13(1) of PIT Regulations, 1992 are not substantially different, since violation of first automatically triggers violation of second and hence there is no justification for imposition of penalty for the second violation when penalty for first violation has been imposed. It may be seen that Regulation 7(1) of Takeover Regulations, 1997 and Regulation 13(1) of PIT Regulations, 1992 are not stand alone Regulations and one is corollary of other." In light of the above observations of Hon'ble SAT, I am of the view that the violation of the provisions of Regulation 13(1) of the PIT Regulations and Regulation 7(1) of the SAST Regulations committed by Noticee 2 are not substantially different. Therefore, these violations committed by Noticee 2 can be considered as a single violation for the purpose of imposition of penalty on Noticee 2, as violation of the first regulation would automatically trigger the violation of the second regulation.

21. I have also taken note of the fact that Noticee 3 had made the disclosure under Regulation 7(1) of the SAST Regulations w.r.t his transaction involving the purchase of 4,00,000 shares of APML but he had failed to make the necessary disclosure to the company, which was required to be made under Regulation 13(1) of PIT Regulations. In view of the Order dated September 4, 2013 of Hon'ble SAT in the matter of Vitro Commodities Private Limited Vs SEBI and keeping in mind the fact that Noticee 3 had made the disclosure u/r 7(1) of SAST Regulations , I am inclined to take a lenient view w.r.t the failure on the part of Noticee 3 to make the disclosure u/r 13(1) of the PIT Regulations to the company.

22. The details of the shareholding of the persons acquiring substantial stake or selling a part of his stake and the timely disclosures thereof, are of significant importance from the point of view of the investors, as such information received by them in a time bound manner would facilitate them immensely in taking a balanced investment decision as regards their holdings in the Company. In the instant matter, the Noticees having acquired more than 5% stake in the Company or selling a part of their stake, the timely disclosures of these

transactions by the Noticees under the relevant provisions of SAST Regulations and PIT Regulations, were of significant importance from the point of view of the investors. Further, the purpose of these disclosures is to bring about transparency in the transactions and to assist the Regulator to effectively monitor the transactions in the securities market.

23. I find that Noticee 2 has contended that the transactions with Noticee 3 in the scrip of APML were as a result of a loan facility extended to him by Noticee 3. I cannot accept the contentions of Noticee 2 as obligation to make the mandatory disclosures under SAST and PIT Regulations is a statutory obligation and Noticee 2 was duty bound to comply with the necessary disclosure requirements within the stipulated time period. The contentions raised by the Noticees that there was no malafide intention behind the non – disclosures, violations have occoured due to ignorance etc also cannot be accepted as these are not valid grounds to escape from the obligation to comply with the statutory provisions of law.

ORDER

24. After taking into consideration the facts and circumstances of the case, material/facts on record, the submissions made by Noticee 2 & 3 and also the factors mentioned in the preceding paragraphs, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, hereby impose penalties on the Noticees for their failure to comply with the relevant provisions of law, as under-

Entity	**Violations**	**Penal Provisions**	**Penalty**
Unicon Securities Pvt. Ltd.- Noticee 1	Clause A(2) and A(5) of the Code of Conduct for Stock Brokers as specified under Schedule II read with Regulation 7 of Stock Broker Regulation	Section 15HB of the SEBI Act	Rs. 1,50,000/- (Rupees One Lakh and Fifty Thousand Only)

Sunil Kumar Agarwal- Noticee 2	Regulation 13(1) of PIT Regulations, 1992 r/w Regulation 12 of SEBI (Prohibition of Insider Trading) Regulations, 2015 and Regulation 7(1) of SAST Regulations, 1997 r/w Regulation 35 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011; Regulation 13(3) r/w 13(5) of PIT Regulations, 1992 r/w Regulation 12 of SEBI (Prohibition of Insider Trading) Regulations, 2015 Regulation 13(4) r/w 13(5) of PIT Regulations, 1992 r/w Regulation 12 of SEBI (Prohibition of Insider Trading) Regulations, 2015	Section 15A(b) of the SEBI Act	Rs. 2,50,000/- (Rupees Two Lakh and Fifty Thousand Only)
	Clause 4.2 of Model Code of Conduct as specified under Part A of Schedule I read with Regulation 12(1) of PIT Regulations, 1992 r/w Regulation 12 of SEBI (Prohibition of Insider Trading) Regulations, 2015	Section 15HB of the SEBI Act	Rs. 1,00,000/- (Rupees One Lakh Only)
Pardeep Kumar Aggarwal- Noticee 3	Regulation 13(3) r/w 13(5) of PIT Regulations, 1992 r/w Regulation 12 of SEBI (Prohibition of Insider Trading) Regulations, 2015.	Section 15A(b) of the SEBI Act	Rs. 1,00,000/- (Rupees One Lakh Only)

I am of the view that the aforementioned penalties are commensurate with the defaults committed by the Noticees.

25. The amount of penalty shall be paid either by way of demand draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or by e-payment in the account of "SEBI- Penalties Remittable to Government of India", A/C No 31465271959, State Bank of India, Bandra Kurla Complex Branch, RTGS Code SBIN0004380 within 45 days of receipt of this order. The said demand draft or forwarding details and confirmation of e-payments made

(in the format as given in the table below) should be forwarded to The Division Chief, Enforcement Department (EFD), Securities and Exchange Board of India, SEBI Bhavan, C-4A, 'G' Block, Bandra Kurla Complex, Bandra (East), Mumbai 400 051

1. Case Name:	
2. Name of Payee:	
3. Date of payment:	
4. Amount Paid:	
5.Transaction No:	
6. Bank Details in which payment is made:	
7. Payment is made for: (like penalties /disgorgement/recovery/Settlement amount and legal charges along with order details)	

26. In terms of the provisions of Rule 6 of the Adjudication Rules, copy of this order is sent to the Noticees and also to Securities and Exchange Board of India.

Place: Mumbai
Date: 26.04.2018

SURESH B MENON
ADJUDICATING OFFICER