

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
(ADJUDICATION ORDER No.: Order/KS/VC/2019-20/5497-5498)

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) RULES, 1995.

In respect of:

- 1. Mr. Chetan S Kothari**
(PAN – AAFPK8568A)
- 2. Mrs. Chetna Kothari**
(PAN – AIXPK4898H)

In the matter of

Tricom Fruit Products Ltd.

FACTS OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') had initiated adjudicating proceeding against Mr. Chetan S Kothari (hereinafter referred to as '**Noticee 1**' / '**Chetan**') and Mrs. Chetna Kothari (hereinafter referred to as '**Noticee 2**'/'**Chetna**') and hereinafter collectively referred to as '**Noticees**'/'**You**') for the alleged violations of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as '**PIT Regulations**') read with SEBI (Prohibition of Insider Trading) Regulations, 2015 in relation to their trading in the scrip of Tricom Fruit Products Ltd. (hereinafter referred to as '**Company**'/'**TFPL**').
2. In connection with the said adjudication proceedings, Show Cause Notice dated June 01, 2016 (hereinafter referred to as '**SCN**') was issued to the Noticees

pursuant to which an Adjudication Order dated February 22, 2018 (hereinafter referred to as '**AO Order**') was passed by the erstwhile Adjudicating Officer (**AO**) in the said matter. By the said AO order, the Noticees were held liable for the violation of Regulation 3(i) of PIT Regulations and a penalty of Rs. 15,00,000/- (Rs. Fifteen Lakhs only) was imposed on each of them. Further, the Noticee 1 was also found to have violated the provisions of Clauses 3.2-2 and 3.2-5 of Model Code of Conduct contained in Part A of Schedule I under Regulation 12(1) of PIT Regulations and a separate penalty of Rs. 8,00,000/- (Rs. Eight Lakhs only) was imposed on him. Thus, a total penalty of Rs. 38,00,000/- (Rs. Thirty Eight Lakhs only) was imposed on the Noticees.

3. Thereafter, aggrieved by the above mentioned adjudication order, the Noticees filed an appeal before the Hon'ble Securities Appellate Tribunal (**SAT**). Hon'ble SAT passed an order dated September 24, 2019 in the matter wherein it gave the following directions:

"3. We find from a perusal of the paragraph 32 of the impugned order that personal hearing was conducted by the Adjudicating Officer (hereinafter referred to as, 'AO') on February 1, 2018 and thereafter the matter was reserved. Written submission according to the appellants was filed on February 8, 2018. It seems that the AO has considered an email of the broker dated February 16, 2018 wherein the broker has said that the shares were sold on the instruction of the appellants. This is a vital fact which if considered by the AO was required to be forwarded and accosted to the appellants. Considering such material without giving an opportunity to the appellants is violative of the principles of natural justice.

- 4. Thus, on this short ground, the impugned order cannot be sustained and is quashed. The matter is remitted to the AO to redecide the matter after providing a copy of the e-mail of the broker to the appellants and after giving an opportunity to the appellants to file an appropriate reply. Proceedings will commence from that stage onwards and the AO will decide the matter afresh within six weeks thereafter."*

APPOINTMENT OF ADJUDICATING OFFICER

4. In light of the abovementioned SAT Order, vide order dated October 01, 2019, the undersigned was appointed as the AO under Section 19 read with Section 15-I(1) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**') read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as '**Adjudication Rules**') by SEBI in the matter for the first time to decide the matter afresh under Section 15G and 15HB of the SEBI Act.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING:

5. A letter ref. no. SEBI/HO/EAD-8/KS/VC/26242/2019 dated October 04, 2019 was sent to the Noticee along with the copy of the SCN and the copies of Emails dated February 16, 2018 received from the Brokers of the Noticees namely Seema Securities Pvt. Ltd., Guinness Securities Ltd. and KGR Securities Pvt. Ltd. (hereinafter collectively referred to as '**Brokers**'). The Noticees were advised to submit their replies, if any, to the allegations levelled against them in the SCN, by October 11, 2019.
6. The details of the allegations levelled against the Noticees in the SCN are as given below:
 - a. *SEBI conducted Investigation in trading activities in the scrip of TFPL. During investigation it observed that Noticee 1 (promoter and director of TFPL) and his spouse, Noticee 2 (Chetna Kothari) were trading during window closure period i.e. during August 12, 2012 to August 16, 2012 (hereinafter referred to as 'examination period'), which was in the nature of insider trading. The shares of the company are listed on Bombay Stock Exchange (BSE). The details of alleged irregularities / violations by the Noticees are mentioned below:*
 - b. *During examination, it was observed the chronology of events, finally leading to the official announcement of quarterly results of quarter ending June 30, 2012 to the market as provided by company vide letter dated July 10, 2015:*

Sr. No.	Nature of events	Time	Date	Persons Involved
1	Preparation of Financial Results		From end of June Qtr till the date of Meeting	Directors
2	Dispatch of Notice of Board Meeting (regarding declaration/discussion of financial results of company for the quarter ending June 2012) to all concerned persons		03/08/2012	All Directors, Auditors
3	Intimation of Notice of Board Meeting to Stock Exchange		03/08/2012	Company Secretary
4	Publication of Notice in News paper		10/08/2012	Company Secretary, News paper Agency
5	Conduction of Audit Committee Meeting	08:00AM	14/08/2012	Audit Committee Members, Director, Company Secretary
6	Conduction of Board Meeting	07:30PM	14/08/2012	Board of Directors, Company Secretary
7	Sending Outcome to stock exchange	08:18PM	14/08/2012	Company Secretary
8	Publication of results in news paper		15/08/2012	Company Secretary, News Paper Agency

c. Further, as submitted by company vide letter dated February 22, 2014, the Trading Window was closed for the period August 12, 2012 to August 16, 2012 for declaration of financial results on August 14, 2012.

d. Price sensitive Information (PSI) has been defined in Regulation 2(ha) of PIT Regulations, which reads as:

Reg. 2(ha) "price sensitive information" means any information which relates directly or indirectly to a company and which if published is likely to materially affect the price of securities of company.

Explanation.—the following shall be deemed to be price sensitive information:—

(i) Periodical financial results of the company;

e. Therefore, corporate announcement related to financial results for the period ending June 2012 made by the company has been considered as PSI.

f. *From the chronology of events tabulated at Para b above, it is observed that notice of board meeting regarding declaration/discussion of financial results of company for the quarter ending June 2012 was sent to all directors on August 03, 2012. Therefore it is alleged that, the Unpublished Price Sensitive Information (UPSI) came into existence on August 03, 2012. Company informed BSE on August 14, 2012 at 20:52 hrs about the Financial Results & Limited Review of the company for the period ended June 30, 2012. Therefore the PSI became public on August 14, 2012 at 20:52hrs.*

g. *The term "Insider" is defined in PIT Regulations, is as follows:*

As per Regulation 2(e) of PIT regulations "Insider" means any person who,

(i) "is or was connected with the company or is deemed to have been connected with the company and who is reasonably expected to have access to unpublished price sensitive information in respect of securities of a company, or

(ii) has received or has had access to such unpublished price sensitive information.

Further, in terms of Regulation 2(h) of PIT Regulations, "person is deemed to be a connected person" if such person -

.....

viii) is a relative of connected person;

Further, as per Regulation 2(i) "relative" means a person, as defined in section 6 of the Companies Act, 1956.

According to section 6 of Companies Act 1956, a person shall be deemed to be a relative of another if, and only if,

(a).....

(b) they are husband and wife;

Further, in terms of Regulation 2(c) of PIT Regulations, "connected person" means any person who-

(i) is a director, as defined in clause (13) of section 2 of the Companies Act, 1956 (1 of 1956), of a company, or is deemed to be a director of that company by virtue of sub-clause (10) of section 307 of that Act; or

(ii) occupies the position as an officer or an employee of the company or holds a position involving a professional or business relationship between himself and the company whether temporary or permanent and who may reasonably be expected to have an access to unpublished price sensitive information in relation to that company.

- h. It is observed that the notice for the Board Meeting of August 14, 2012 was sent on August 03, 2012 to all the Board Members. Since notice of board meeting regarding quarterly financial result was sent to all concerned persons after finalizing the books of accounts and same was finalized by directors while in discussion with auditors, they were in possession of UPSI. Therefore it is alleged that, as per Regulation 2(e) of PIT Regulations all directors of company and their relatives were insiders since they were in possession of UPSI regarding financial results of company which were to be discussed in the Board Meeting held on August 14, 2012.*
- i. During investigation trades of entities who were in possession of UPSI during UPSI period were analysed. It was observed that, director, Noticee No. 1 / Chetan Kothari and his wife Noticee No. 2 / Chetna Kothari had traded in the scrip of TFPL. Details of trades of Noticees No. 1 and 2 during the investigation period are as under:*

Noticee No. 1 Chetan Kothari (Promoter / Director of TFPL)		
Date of transaction	No. of shares	Type of Transaction
13-Aug-12	15,400	Sell

Noticee No. 2 / Chetna Kothari (Wife of Chetan Kothari)		
Date of transaction	No. of shares	Type of Transaction
13-Aug-12	55,879	Sell

- j. In view of above, it is observed that on August 13, 2012, i.e., during the period of UPSI, Noticee No. 1, promoter / director of company sold 15,400 shares and his wife Noticee No. 2 sold 55,879 shares. Thus, it is alleged that both the Noticees No. 1 and 2 have traded in the shares of TFPL while in possession of the Price Sensitive Information before it was disseminated to the public, and thereby, the Noticee No. 1 had allegedly violated*

regulation 3(i) of PIT Regulations r/w regulation 12(2) of SEBI (PIT) Regulations, 2015 and clause 3.2-2 & 3.2-5 of Model Code of Conduct contained in Schedule I of Part A r/w Regulation 12(1) of PIT Regulations r/w regulation 12(2) of SEBI (PIT) Regulations, 2015 and Noticee No. 2 had allegedly violated regulation 3(i) of PIT Regulations r/w regulation 12(2) of SEBI (PIT) Regulations, 2015.

7. In response to the SCN, the Noticees, vide their separate letters dated August 01, 2016, had submitted their detailed replies. The majority of the submissions made by the Noticees were common in nature.
8. The key submissions/ reply of the Noticees in their replies dated August 1, 2016, towards the SCN are being reproduced below:-

A. Reply of Noticee No. 1 / Mr. Chetan S Kothari:-

- i) I am a law abiding citizen. Currently I am the promoter and Managing Director of Tricom Fruit Products Ltd. (hereinafter referred to as 'TFPL'). I have extended my full co-operation to SEBI and, to the best of my abilities; I have diligently answered all the queries raised by SEBI prior to the issue of the said SCN.*
- ii) With reference to para 4 to7, I say that the actual facts and figures of the financial results for the quarter ended June 2012 were not finalized until the board meeting dated 14th August, 2012 at 07:30 PM. Also it is pertinent to mention that the recommendation of the said financial results by the Audit committee was not received until 14th August, 2012 at 08:00 AM. Therefore the corporate announcement of the said financial results purported to be price sensitive information cannot be alleged as 'UPSI' in retrospect before 14th August, 2012.*
- iii) With reference to para 8, I say that, the notice dated 3rd August, 2012 sent to all the directors on 3rd August, 2012 ,did not contain the details of the financial results for the quarter ended June 2012 in any manner what-to-ever. Further the mere indication in the said notice for declaring / discussing the said financial results of the company at the board meeting which was to be held on 14th August, 2012 cannot be considered as UPSI. Therefore it cannot be said that the UPSI came into existence on 3rd August, 2012.*
- iv) With reference to para 9 and 10, I reiterate that the financial results were finalized on 14th August, 2016 at 07:30 PM during the board meeting and after the*

recommendation from the Audit committee on the same date at 08:00 AM: Therefore it cannot be said that UPSI came into existence on 3rd August, 2012.

- v) With reference to para 9 and 10, I deny that the notice dated 3rd August, 2012 that was sent to the directors on 3rd August, 2012 was dispatched after finalization of the financial results for the quarter ended June 2012 and nor is it shown in the said SCN. Therefore in the absence of the UPSI itself it cannot be alleged that I being one of the directors of TFPL was in possession of any UPSI as per Regulation 2(e) of PIT Regulations 1992 as purported in the said para or otherwise.*
- vi) With reference to para 11 to 13, I say that the said sale transactions on 13th August, 2012 were executed by my brokers in order to recover my outstanding dues on their own volition before the purported UPSI came into existence i.e. before 14th August, 2014 and cannot be alleged as a violation of PIT Regulations 2015 as more specifically set out in para 13 of the SCN.*

B. Reply of Noticee No. 2 / Mrs. Chetna Kothari:-

- i) I say that at the time of the alleged investigation period I was not the director of Tricom Fruit Products Ltd. (hereinafter referred to as 'TFPL') and therefore I was not in any way involved in the day-to-day management of the company at the relevant time. I am making the present reply based on the available records.*
- ii) With reference to para 4 to 7, I say that I was not privy to the actual facts and figures of the financial results for the quarter ended June 2012 at the relevant time as I was not involved in the affairs of the company in any manner whatsoever. It is pertinent to mention the said financial results were finalized by the board of directors during their meeting on 14th August, 2012 at 07:30 PM and only after the recommendation given by the Audit committee which was received earlier on the same date at 08:00 AM. The said financial results were thereafter sent to BSE Ltd. (herein after referred to as 'BSE') and were made public on 14th August, 2012, at 20:52hrs (08:52pm). Therefore the corporate announcement of the said financial results purported to be price sensitive information cannot be alleged as 'UPSI' in retrospect before 14th August 2012.*
- iii) With reference to para 8 to 10, I say that at the relevant time, I was not a director of Tricom Fruit Products Ltd therefore and neither was the said notice, which was purportedly sent to all the directors on 3rd August, 2012, nor any purported financial results for the quarter ended June 2012 of TFPL were received by me*

at the relevant time. Moreover it is not shown as to how the alleged UPSI came into existing purportedly on 3rd August, 2012.

- iv) Further as set out in para 4 of the SCN, the financial results for quarter ended June 2012 were finalized on 14th August, 2012 at 07:30 PM during the board meeting and after the recommendation from the Audit committee on the same date at 08:00 AM. I further reiterate that I was not present for any of the aforementioned meetings as I was not a Director of the Company at the relevant time and I was not privy to the facts and figures of the said financial results before they were made public on BSE on 14th August, 2012 at 20:52hrs (08:52pm).*
- v) With reference to para 9 and 10, I reiterate that the notice which was purportedly sent to all the directors on 3rd August, 2012 was not received by me as I was not the Director of the Company at the relevant time and I was not privy to any alleged finalization of the financial results for the quarter ended June 2012 and nor is it shown in the said SCN that how the alleged UPSI came into existence before 14th August, 2012. Therefore in the absence of the UPSI itself it cannot be alleged that I being the wife of one of the director of TFPL viz. Mr. Chetan Kothari, was in possession of any alleged UPSI as per Regulation 2(e) of PIT Regulations 1992 as purported in the said para or otherwise.*
- vi) With reference to para 11 to 13, I say that the sale transactions on 13th August, 2012 were executed by my brokers before the alleged UPSI came into existence i.e. on 14th August, 2012. The said sale were executed in order to recover my outstanding dues on the brokers own volition and cannot be alleged as a violation of PIT Regulations 2015 as more specifically set out in para 13 of the SCN.*

9. Consequently, personal hearing was conducted on February 1, 2018 by the erstwhile AO which was attended by Mr. Ravi Ramaiya and Ms. Megha Trivedi as the authorized representatives (**ARs**) of the Noticees. ARs of the Noticees reiterated the submissions made by the Noticees in their replies dated August 1, 2016 and requested additional time to make post hearing submissions. Accordingly the Noticees were given time till February 8, 2018 by the erstwhile AO. Thereafter, the Noticees made separate additional submissions vide letters dated February 8, 2018.

10. The key additional submissions/ replies of the Noticees vide letter dated February 8, 2018 towards the SCN are being mentioned below;

A. Reply of Noticee 1 / Chetan S Kothari:-

- i) *Tricom Fruit Products Ltd was a fruit processing company that processes and exports a variety of fruits in the form of puree, puree concentrate and frozen clear juice concentrate. It is important to note that due to financial loss the Company's property, assets taken over by the Edelweiss Asset Reconstruction Company Limited (EARC).*
- ii) *I further state that at the relevant time the Company was under financial stress and many of my shares were pledged for raising necessary loans to meet the liabilities of the Company. As submitted in the earlier letter and the documents annexed thereto I had a debit balance in the trading account maintained with the brokers. The declining financial status of the company had put me under tremendous stress and mental duress.*
- iii) *The transaction under question pertains to sale of shares by the brokers who sold these shares without my knowledge to recover the debit balance. At the time of sale I was completely unaware of the transaction, but since it was to recover the debit balance, I did not raise any dispute thereafter as I understand that the brokers have a primary lien on shares of their clients and can sell the same to recover the outstanding. Copies of ledgers reflecting that the sale was for recovery of debit balance are already furnished to your good self.*
- iv) *Further the delivery of these shares was never given from my demat account and the shares were delivered from earlier retained shares in the demat account of the brokers as there was a debit balance. The shares were delivered to the Exchanges from the "client beneficiary account" maintained by the Brokers, where they are authorised to retain such shares if the clients have a debit balance. Copy of the Demat statements of August month is enclosed herewith representing that shares were not delivered from my Demat account.*
- v) *I say that there was no ill intention to carry out insider trading using the alleged UPSI which is evident beyond doubt from the fact that I was holding stake of 651587 shares in TFPL on 30th September, 2017 which representing approx 6.12% which is a date later to the alleged insider trades executed by me. If I had intentions to earn from insider trading, I would have sold huge quantity of*

shares rather than selling only 15400 shares that are under question in the SCN.

vi) Though I reiterate that the trades were carried out without being in possession of UPSI, assuming but not accepting that I was in possession of UPSI of financial results, it is submitted that no undue advantage has been gained by me because the price of the shares increased after my sale and I could have got better price if I sold at a later date. The bhav copy reflects that the price was at the lowest level on the day of my sale and had increased thereafter. The price volume data of BSE for the month of august is given hereunder.

Date	Open	High	Low	Close	No. of Shares	No. of Trades	Total Turnover	Deliverable Quantity	% Deli.
1/08/12	41.45	41.50	39.75	41.05	26,796	92	10,91,939	14,614	54.54
2/08/12	41.95	41.95	40.05	40.50	39,993	67	16,45,774	27,718	69.31
3/08/12	41.00	41.30	32.45	32.45	48,588	290	18,39,873	22,935	47.20
6/08/12	35.50	35.50	26.00	26.00	19,047	87	5,01,118	18,723	98.30
7/08/12	23.45	23.45	23.45	23.45	17,080	32	4,00,526	17,061	99.89
8/08/12	21.15	21.15	21.15	21.15	440	11	9,306	436	99.09
9/08/12	19.05	19.05	19.05	19.05	5,385	9	1,02,584	5,385	100.00
10/08/12	18.10	18.10	18.10	18.10	2,050	5	37,105	2,050	100.00
13/08/12	17.20	18.00	17.20	17.35	2,17,434	195	37,52,839	1,71,456	78.85
14/08/12	17.30	18.20	16.75	18.20	3,778	21	67,424	3,635	96.21
16/08/12	18.95	19.10	18.85	19.10	8,416	24	1,60,308	8,416	100.00
17/08/12	20.00	20.05	19.05	20.00	15,382	39	3,07,066	15,382	100.00
21/08/12	21.00	21.00	21.00	21.00	12,240	19	2,57,040	12,240	100.00
22/08/12	22.05	22.05	21.05	22.05	15,075	36	3,31,563	14,223	94.35
23/08/12	23.05	23.15	23.05	23.15	13,464	38	3,11,566	12,436	92.36
24/08/12	24.30	24.30	23.90	24.30	19,890	40	4,81,167	16,116	81.03
27/08/12	24.30	25.50	23.10	25.00	14,461	85	3,45,982	10,394	71.88
28/08/12	25.00	25.90	24.30	24.50	2,567	19	63,056	2,537	98.83
29/08/12	25.50	25.50	23.50	23.50	3,315	19	78,439	3,020	91.10
30/08/12	24.25	24.25	22.50	22.95	6,143	21	1,42,078	5,842	95.10
31/08/12	23.00	23.90	23.00	23.60	229	5	5,404	229	100.00

vii) Further it may also be noted that though SEBI alleges that UPSI came into existence on August 3, 2012 and was made public on August 14, 2012 (which I dispute), the sale was done only on 1 day i.e. August 13, 2012 and if I was interested in carrying out insider trading I would have traded and sold shares daily and in much larger quantities, which is not the case. This shows that the

sale was done by the broker without my knowledge and I have not derived any benefit out of it as price was higher both before and after the sale as seen from the bhav copy.

- viii) I also most humbly draw your kind attention to the fact that I have been under severe financial difficulty after the financial crises in my Company. So much so that I today stay in a rented house at "Flat No. 1502, 15th Floor; Rasraj Height, Rokadia Lane, Borivali-West, Mumbai-400092" as my own house situated at 907-908, Raj Madhur, I.C. Colony Layout, Devidas Lane, Borivali (West), Mumbai - 400 103 was been taken over by SBI for non- repayment of loans availed by Tricom. I reiterate that my extremely difficult financial position makes me completely incapacitate to bare any further burden of penalty and my case be viewed with kind and merciful sight. It is therefore prayed that a lenient view may be taken in this matter.*
- ix) I am already victim of the circumstances and have lost my home, my shares and my wealth accumulated over years and have not received any financial benefit at all.*
- x) I submit that I have not gained anything out of the trades nor have caused any loss to other investors because of the sale. Further this is a one off case that happened inadvertently due to the aforesaid reasons and I am not a habitual insider trader.*

B. Reply of Noticee 2:- Noticee 2 made the following submissions in addition to the submissions of Noticee 1-

- i) I state that I was a housewife at that point in time and was completely oblivious of the specific results of the company or its day to day operations. Though I had a knowledge that the company was in difficult situation, I was never abreast with the results, notices, resolutions etc. of the company.*
- ii) I further state that at the relevant time the Company was under financial stress. As submitted in the earlier letter and the documents annexed thereto I had a debit balance in the trading account maintained with the brokers. The declining financial status of the company had put me under tremendous stress and mental duress.*
- iii) The transaction under question pertains to sale of shares by the brokers who sold these shares without my knowledge to recover the debit balance. At the*

time of sale I was completely unaware of the transaction, but since it was to recover the debit balance, I did not raise any dispute thereafter as I understand that the brokers have a primary lien on shares of their clients and can sell the same to recover the outstanding. Copies of ledgers reflecting that the sale was for recovery of debit balance are already furnished to your good self.

- iv) Further the delivery of these shares was never given from my demat account and the shares were delivered from earlier retained shares in the demat account of the brokers as there was a debit balance. The shares were delivered to the Exchanges from the "client beneficiary account" maintained by the Brokers, where they are authorised to retain such shares if the clients have a debit balance.*
- v) I say that there was no ill intention to carry out insider trading using the alleged UPSI which is evident beyond doubt from the fact that I was holding stake of 10000 shares in TFPL on 30th September, 2017 which is a date later to the alleged insider trades executed by me. If I had intentions to earn from insider trading, I would have sold these shares also.*
- vi) Though I reiterate that the trades were carried out without being in possession of UPSI, assuming but not accepting that I was in possession of UPSI of financial results, it is submitted that no undue advantage has been gained by me because the price of the shares increased after my sale and I could have got better price if I sold at a later date. The bhav copy reflects that the price was at the lowest level on the day of my sale and had increased thereafter.*
- vii) Further it may also be noted that though SEBI alleges that UPSI came into existence on August 3, 2012 and was made public on August 14, 2012 (which I dispute), the sale was done only on 1 day i.e. August 13, 2012 and if I was interested in carrying out insider trading I would have traded and sold shares daily and in much larger quantities, which is not the case. This shows that the sale was done by the broker without my knowledge and I have not derived any benefit out of it as price was higher both before and after the sale.*
- viii) I also most humbly draw your kind attention to the fact that due to financial distress, I have been under severe financial difficulty after the financial crises in my husband's Company. So much so that I, along with my husband, today stay in a rented house at "Flat No. 1502, 15th Floor, Rasraj Height, Rokadia Lane, Borivali-West, Mumbai-400092" as my own house situated at 907-908,*

Raj Madhur, I.C. Colony Layout, Devidas Lane, Borivali(West), Mumbai - 400 103 was been taken over by SBI for non-repayment of loans availed by Tricom. I reiterate that my extremely difficult financial position makes me completely incapacitate to bare any further burden of penalty and my case be viewed with kind and merciful sight. It is therefore prayed that a lenient view may be taken in this matter.

- ix) I am already victim of the circumstances and have lost my home, my shares and my wealth accumulated over years and have not received any financial benefit at all.*
- x) I submit that I have not gained anything out of the trades nor have caused any loss to other investors because of the sale. Further this is a one off case that happened inadvertently due to the aforesaid reasons and I am not a habitual insider trader.*

11. Subsequent to the Letter dated October 04, 2019, the Noticees, vide their separate letters dated October 09, 2019, requested for extension of time to submit their replies. Accordingly, vide letter dated October 15, 2019, the Noticees were given time till October 25, 2019 to submit their replies. Pursuant to this, the Noticees, vide letter dated October 24, 2019, submitted their common reply. In their reply, the Noticees contended that:

- i) The Noticees grossly deny having given any direction to the brokers as recorded in the Order or as recorded in the emails of the Brokers, which are perused for the first time by the Noticees. It appears that they have merely denied the same to rescue themselves in anticipation of further proceedings. The brokers have failed to produce any evidence of placement of order by the Noticees and therefore the same cannot be taken into account.*
- ii) Attention of SEBI is drawn to the regulations of the Exchanges that quote as under Regulation 3.2.1 of National Stock Exchange of India Limited Regulations - Part A (Capital Market Segment)*

"Trading Members shall ensure that appropriate confirmed order instructions are obtained from the constituents before placement of an order on the system and shall keep relevant records or documents of the same and of the completion or otherwise of these orders thereof."

As per the above requirement, the Brokers were under the obligation to maintain records or documents of order placement, which has not been submitted by them. The submission of the Brokers cannot be taken at face value.

- iii) *Further your kind attention is drawn to Para 30 of the Adjudication Order No. EAD-9/AO/SM/3628-3629/44-45/2019-20 dated July 15, 2019 wherein similar allegations were case upon the Noticees related to their trades in "Tricom India Limited".*
- iv) *In Para 30 and 31 of the said order dated July 15, 2019 the Hon'ble AO of SEBI Records as under:*

"Noticees have claimed that shares sold during UPSI period were sold by their brokers owing to debit balance in their ledger maintained with them. Noticees were advised to demonstrate whether shares sold by brokers not done only during UPSI period, however it was done otherwise also and pursuant to an agreement between the parties. It was also ascertain whether this was an alibi created by the noticees to deal in the shares of Tricom during existence of UPSI. Noticees have demonstrated that their brokers had sold shares of TIL owing to debit balances in the ledger account of the Noticees. The details are as under:

KGR Securities- Chetan Kothari				
Date	Debit Balance	Shares sold	Number of shares sold	Amount Recovered
29/06/2012	3,03,833	TIL	20,000	1,11,800
		Tricom Fruits	5000	2,05,500
01/08/2012	3,53,064	TIL	21,900	1,48,263
		TFPL	4,950	2,03,494
08/08/2012	3,46,896	TIL	3,600	21,492
		TFPL	2,878	74,568
09/08/2012	2,51,048	TIL	27,301	1,55,069

Amrapali Aadhya Trading and Investment Private Limited- Chetan Kothari				
Date	Debit Balance	Shares sold	Number of shares sold	Amount Recovered
07/06/2012	7,76,812	TIL	74,995	5,94,496
11/06/2012	6,83,694		13,000	1,02,391
12/06/2012	11,66,150		1,20,000	9,51,150
13/06/2012	18,75,154		1,77,893	14,08,186
14/06/2012	4,68,932		65,500	5,16,694
20/06/2012	19,66,946		36,000	2,78,177
21/06/2012	16,89,213		1,29,000	10,03,257

22/06/2012	4,80,109		12,000	95,725
04/07/2012	12,38,152		53,531	3,57,257
13/07/2012	3,66,692		50,000	3,24,864
16/07/2012	3,71,136		50,000	3,19,864
19/07/2012	3,74,893		50,000	2,81,362
20/07/2012	3,76,555		49,850	2,74,985
23/07/2012	3,51,786		48,862	2,87,173
31/07/2012	3,32,305		42,007	2,89,383
09/08/2012	3,02,434		23,683	1,36,822

Guiness Securities Limited- Chetna Kothari				
Date	Debit Balance	Shares sold of	Number of shares sold	Amount Recovered
31/07/2012	10,02,690	TIL	70,550	4,85,685
03/08/2012	5,15,403		24,000	1,58,878
16/08/2012	5,23,021	TIL	40,000	1,86,800
		TFPL	49,379	8,49,900
17/08/2012	-	TIL	5,509	25,251

Amrapali Aadya Trading and Investment Private Limited- Chetna Kothari				
Date	Debit Balance	Shares sold of	Number of shares sold	Amount Recovered
06/08/2012	6,07,260	TIL	2,100	13,581
07/08/2012	5,96,379		42,181	2,73,331
08/08/2012	5,46,849		6,502	38,295
09/08/2012	5,08,554		69,767	4,00,884

It was observed from the above details that there were frequent sale of shares of TIL apparently by the brokers owing to the debit balance in the ledger account of both the Noticees. Sale of shares during the UPSI period by the brokers was one of the several transactions which were executed prior and post UPSI period as well, hence it cannot be concluded that these transactions were inspired due to availability of UPSI with the Noticees, if any. Moreover since there were several transactions prior and post UPSI period also, it cannot be concluded that Noticees have done these transaction as afterthought or for creating an alibi.”

- v) *The Hon'ble AO has decided the matter in favour of the Noticees and the facts and circumstances of the current matter are similar to those in dealt in SEBI Order dated July 15, 2019 where sale of shares of Tricom Fruit Products Ltd. is also recorded to check whether the sale was to recover the debit balance or was voluntarily done by the Noticees to avail benefit of UPSI.*

- vi) *It is humbly submitted by the Noticees that since SEBI has already decided the matter of Tricom India Ltd. wherein it also records transactions of Tricom Fruits to arrive at a conclusion that the sale of shares was not influenced by UPSI the same conclusion should follow in the current matter.*
- vii) *The Noticees therefore request your good self to set aside the allegations in the SCN of Tricom Fruit Products Ltd without any adverse inference against the Noticees and oblige.*

12. Further, in the interest of natural justice, an opportunity of hearing was provided to the Noticees on November 06, 2019 vide letter dated October 15, 2019. The ARs appeared on behalf of the Noticees. The ARs reiterated the submissions made by the Noticees in their replies dated August 01, 2016, February 08, 2018 and October 24, 2019. Further, the Noticees were advised to submit relevant documents concerning their holding in various securities, by November 07, 2019.

13. Thereafter, the Noticees made the post-hearing submissions on November 07, 2019 wherein they contended that:

- (i) *It was reiterated and explained that these shares were sold by the Brokers to recover the debit balance and not sold by the Noticees. Further the delivery of these shares was not given from the demat account of the Noticees but was given by the brokers from their demat accounts as these were held by them against debit balance.*
- (ii) *The holding as per Beneficiary Position issued by RTA [Sharex Dynamic (India) Pvt. Ltd.] on a weekly basis reflects that the Noticees had the following shares:*

Date	Name of Noticee	Quantity
10-Aug-12	Chetan Kothari	681962
10-Aug-12	Chetna Kothari	10000
17-Aug-12	Chetan Kothari	681962
17-Aug-12	Chetna Kothari	10000

- (iii) *The Noticees further contended that the Brokers were holding only the shares of TIL and TFPL in their pool account and shares of both these companies were sold by them to recover the debit balance.*
- (iv) *The Noticees also requested for cross-examination of the Brokers in light of their contention that the trading was done by the Noticees.*

CONSIDERATION OF ISSUES AND FINDINGS:

14. I have taken into consideration the facts and circumstances of the case and the material available on record. I note that the allegations levelled against the Noticees are that the Noticees had traded in the scrip of TFPL while being in possession of UPSI. Further, it is also alleged that the Noticee 1 had also traded during trading window closure period and has thereby violated the provisions of Model Code of Conduct, as enumerated in Part A of Schedule I of PIT Regulations. In view of the above, the issues for consideration before me are:-

- a. Whether the UPSI was existing at the time of trading and further it had any impact on the price of the scrip?
- b. Whether the Noticees are “insider” of Tricom Fruit Products Limited in terms of PIT Regulations?
- c. If yes, then, whether trading by ‘insider’ during the UPSI period as alleged in the SCN, is in violation of regulations 3(i) of the PIT Regulations?
- d. If yes, then, whether the Noticees are liable for monetary penalty under section 15G of SEBI Act?
- e. Whether Noticee No. 1 had traded during window closure period as alleged in the SCN, is in violation of clauses 3.2-2 & 3.2-5 of Model Code of Conduct contained in Part A of Schedule I under regulation 12(1) of PIT Regulations r/w regulation 12(2) of SEBI (Prohibition of Insider Trading) Regulations, 2015?
- f. If yes, then, whether the Noticee No. 1 is liable for monetary penalty under section 15HB of SEBI Act?
- g. What would be the monetary penalty that can be imposed upon the Noticee No. 1 & 2 under section 15G of SEBI Act and Noticee No. 1 under Section 15HB of SEBI Act, taking into consideration the factors stipulated in section 15J of the SEBI Act?

15. Before moving forward, the relevant extracts of the provision of the PIT Regulations, allegedly violated by the Noticee, is mentioned as under-

PIT Regulations, 1992

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

3. No insider shall—

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

Code of internal procedures and conduct for listed companies and other entities.

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 45[without diluting it in any manner and ensure compliance of the same].

(3) All entities mentioned in sub-regulation (1), shall adopt appropriate mechanisms and procedures to enforce the codes specified under sub-regulations (1) and (2).

(4) Action taken by the entities mentioned in sub-regulation (1) against any person for violation of the code under sub-regulation (3) shall not preclude the Board from initiating proceedings for violation of these Regulations.

SCHEDULE I

Under regulation 12(1)

PART A

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

3.2 Trading window

3.2-2 *When the trading window is closed, the employees/directors shall not trade in the company's securities in such period.*

3.2-5 *All directors/officers/designated employees of the company shall conduct all their dealings in the securities of the Company only in a valid trading window and shall not deal in any transaction involving the purchase or sale of the company's securities during the periods when trading window is closed, as referred to in para 3.2.3 or during any other period as may be specified by the Company from time to time.*

a. Whether the UPSI was existing at the time of trading and further it had any impact on the price of the scrip?

16. Quarterly financial results for the quarter June 2012 is considered to be the UPSI in this case. It is alleged in the SCN that the Quarterly Financial Results for the quarter ended June 2012 had been discussed in the Audit Committee meeting at 08.00 AM on August 14, 2012. Thereafter, the same were finalized in the meeting of Board of Directors of TFPL held at 07.30 PM on the same day.

17. I note that TFPL, in its letter dated July 10, 2015, had mentioned that the Notice of Board meeting regarding declaration/discussion of financial results of the company for the quarter ending June 2012 were circulated to Directors on August 03, 2012 and the same were discussed on August 14, 2012.

18. In this regard, I note that, as per the explanation to definition of 'Price Sensitive Information' as prescribed under Regulation 2(ha) of PIT Regulations, periodical financial results of a company *per se* are deemed to be price sensitive information. Further, I also note that the quarterly financial results under consideration were disclosed to BSE only at 08.52 PM on August 14, 2012.

Therefore, till that time, the information regarding the quarterly financial results can be characterized as an “Unpublished” PSI.

19. In this regard I note the contention of Noticee 1 that the actual facts and figures of the financial results for the quarter ended June 2012 were not finalized until the board meeting held at 07:30 PM on 14th August, 2012 and the recommendation of the said financial results by the Audit committee was not received until 08:00 AM on August 14, 2012; thereby the financial results were not PSI before August 14, 2012.
20. In regard to the contention of Noticee 1 as brought out above, I note that the notice of Board Meeting dated 3rd August, 2012 sent to all the directors carried the agenda item (item No 4 of the Notice of Board Meeting) on the financial results for the quarter ended June 2012. I am of the view that preparation of financial results is a long drawn process and it cannot be said that the financial results had come into existence just before the meeting of Board of Directors. As a director of the company Noticee 1 would certainly know what kind of financial results would be placed for discussion in the ensuing board meeting. In this regard I find it relevant to note and refer to the Secretarial Standards-I (SS-1) issued by the Institute of Company Secretaries of India (ICSI) as per which every company is required to send a notice of meeting of Board of Directors along with the documents and records related to the agenda. Thus, it is a secretarial practice guidelines issued by the ICSI, complying with which later became mandatory as per Section 118(10) of the Companies Act, 2013. Therefore the contention of the Noticees that the financial results were not received until 08:00 AM on August 14, 2012 is not acceptable. I find such arguments to be unprofessional and unethical for a director to depend upon in a proceeding like the present one. I further note that TFPL had closed the trading window on August 12, 2012 and the same remained closed till August 16, 2012. In light of the above I hold that, in any case, the UPSI had come into existence on August 12, 2012. Therefore, I am of the view that the UPSI was

very much in existence before the day when the Noticees had traded in the scrip of TFPL viz. August 13, 2012.

21. As already mentioned above, the quarterly financial result for the quarter ended June 2012 was technically a UPSI. Having ascertained that UPSI was in existence at the time of trading, I find it necessary to ascertain the market impact of the PSI more so when the Noticees have replied that the properties of the company were taken over by an Asset Reconstruction Company due to its financial loss. The Noticees have also mentioned that due to financial stress of the company the shares were pledged for raising necessary loans to meet its liabilities.

22. In this regard, I note that the details of the financial results for certain quarters close to quarter ended June 2012 was as below:

Description	Quarter Ended (figs. in millions rupees)			
	March 2012	June 2012	September 2012	December 2012
Net Sales	47.83	61.93	47.80	57.65
Other Income	0.27	0.52	-0.03	0.09
Total Income	48.10	62.45	47.77	57.74
Profit after sales	-08.96	-34.91	-36.48	-71.47

23. I further note from the Annual Report of the company for the financial year 2011-2012 that the Company was in loss for the whole financial year. Further, the same had continued in financial year 2012-13 also. From the above, I note that the company was continuously incurring losses for the quarters before and even after the quarter ended June 2012. Further, I note that the net sales as well as loss had increased during the quarter ended June 2012 and, thereafter, the loss had remained almost the same for the quarter ended September 2012. At the same time, the trading in the scrip of TFPL on the days before and after the PSI was made public was as follows:

Date	Open (Rs.)	High (Rs.)	Low (Rs.)	Close (Rs.)	No. of Shares	No. of Trades	Total Turnover	Deliverable Quantity	% Delivery
10/08/12	18.10	18.10	18.10	18.10	2,050	5	37,105	2,050	100.00
13/08/12	17.20	18.00	17.20	17.35	2,17,434	195	37,52,839	1,71,456	78.85
14/08/12*	17.30	18.20	16.75	18.20	3,778	21	67,424	3,635	96.21

16/08/12	18.95	19.10	18.85	19.10	8,416	24	1,60,308	8,416	100.00
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** (as mentioned elsewhere in this order the results were made public at 08.52 pm on August 14, 2012)*

From the above tables, I note that the price of the scrip had gone up to a closing price of Rs. 19.10 after the disclosure of financial loss from the previous day closing price of Rs. 18.20; thus contrarily resulting in a mild positive movement in the price of the scrip even after declaration of financial results indicating losses. All these only show that the market had already been aware of financial status of the company made public through various quarterly results and annual report. In the backlight of the fact that the company has already been incurring losses, I do not find from records any justification for selecting one quarterly financial results as UPSI other than for two reasons viz., the impugned transactions had taken place before publication of the results for the said quarter and corporate results is a deemed UPSI. I, thus, find it to be too naïve to hold that only the financial results pertaining to the quarter ended June 2012 alone served as a PSI in disregard to the earlier financial results more so when the company had been consistently incurring and declaring losses. Therefore, I am not convinced that the financial results of one quarter could have served as an UPSI in the present circumstance.

b. Whether the Noticees are “insider” of Tricom Fruit Products Limited in terms of PIT Regulations?

24. I note that the violation of Regulation 3(i) can only be committed by an insider.

Therefore, before examining whether the Noticees have violated the provisions of Regulation 3(i) of PIT Regulations, it is imperative to understand whether the Noticees were “insider” within the meaning of Regulation 2(e) of PIT Regulations. The relevant provisions are reproduced hereunder:

2(e) “insider” means any person who,

“is or was connected with the company or is deemed to have been connected with the company and who is reasonably expected to have access to unpublished price sensitive information in respect of securities

of a company, or has received or has had access to such unpublished price sensitive information.

25. Arising out of the definition of insider as mentioned above, the term “connected person” has been defined in Regulation 2(c) of the PIT Regulations which reads as under:-

Reg. 2 (c) “connected person” means any person who,-

is a director, as defined in clause (13) of section 2 of the Companies Act, 1956 (1 of 1956), of a company, or is deemed to be a director of that company by virtue of sub-clause (10) of section 307 of that Act; or occupies the position as an officer or an employee of the company or holds a position involving a professional or business relationship between himself and the company whether temporary or permanent and who may reasonably be expected to have an access to unpublished price sensitive information in relation to that company:

Explanation :—For the purpose of clause (c), the words “connected person” shall mean any person who is a connected person six months prior to an act of insider trading;

26. Similarly, Regulation 2(h) of PIT Regulations defines “deemed to be connected person” as under-

Reg. 2(h) “person is deemed to be a connected person”, if such person—

viii) relatives of the connected person;

Reg. 2(i) “relative” means a person, as defined in section 6 of the Companies Act, 1956 (1 of 1956);

In this regard, Section 6 gives a list of relations wherein a person will be considered a relative of other. I note from the entry (b) of the list given thereunder that husband and wife are considered relative.

27. In view of the definitions as brought out above, I now examine whether the Noticees fall under the definition of “insider”. I note from the SCN that the

investigation in relation to the allegations mentioned in the SCN was conducted for the period of August 12, 2012 to August 16, 2012 (hereinafter referred to as '**Investigation Period**'/'IP'). I note from the shareholding pattern of TFPL, as available on the website of Bombay Stock Exchange (**BSE**), that the Noticees were Promoters of the Company during the IP. Further, as per the reply of TFPL dated February 22, 2014 to SEBI as well as from the Annual Report of the Company for Financial Year 2012-13, I note that Noticee 1 was the Chairman cum Non-Executive Director of the Company during the IP. Further, TFPL, in its letter dated July 10, 2015, has mentioned that the Notice of Board meeting regarding declaration / discussion of financial results of the company for the quarter ending June 2012 was circulated to Directors on August 3, 2012 and same was discussed on August 14, 2012. It is also not under dispute that the said meeting was attended by the Noticee 1 and the relevant Board minutes also buttresses this fact. Further, the Company, vide its letter dated July 10, 2015, has submitted that Noticee No. 1 was the person involved in the finalization of Financial Results for the quarter ending June 30, 2012. Noticee No. 1 was also the member of Audit committee and persons who had accessed to the financial results for quarter ending June 30, 2012 prior to official announcement, which was made public on August 14, 2012.

28. Therefore, on a bare perusal of Regulation 2(c), I am of the opinion that Noticee 1, being the director in TFPL, is a 'connected person' with the company. Further, based on the information provided by the Company to SEBI, I am also of the view that the Noticee 1, being the person involved in the preparation of Financial Results for the quarter ended June 2012, was in possession of the said UPSI. Therefore, Noticee 1 falls within the definition 'insider' within the meaning of PIT Regulations. Moreover, the concept of 'reasonably expected to have access to UPSI' is not applied to Director, because, the Director is part of the company's board and hence responsible for all the deeds/ acts of the company during the period when he is a Director.

29. Here, it is relevant to mention that the Hon'ble SAT in case of *SRSR Holdings Private Limited & Ors. vs. SEBI (decided on August 11, 2017)* at para 11 held that - *"It is relevant to note that the concept of 'reasonably expected to have access to UPSI' is not applied to Director/deemed Director, because, unlike other connected persons, Director/ deemed Director constitute part of the company's board and hence responsible for all the deeds/ acts of the company during the period when they were Director/ deemed Director'...."*

30. Further, I note that Noticee 2 has contended that she was not an insider and was not aware of the UPSI during the IP as she was merely a promoter and not involved in the affairs of the Company. However, I note that, the Noticee 2 is the wife of Noticee 1 and was a promoter of TFPL during the IP. In terms of Regulation 2(h)(viii) read with 2(i) of PIT Regulations read with Section 6 of Companies Act, 1956 further read with Section 2(60) of Companies Act, 2013, Noticee 2, being the wife of Noticee 1 and therefore a relative under the definition given under Section 6 of Companies Act, is "deemed to be connected person" within the definition and, therefore, squarely fits in the definition of an "insider" as per Regulation 2(e) of PIT Regulations.

c. If yes, whether trading by 'insider' during unpublished price sensitive information (UPSI) period as alleged in the SCN, is in violation of regulations 3(i) of the PIT Regulations?

31. Since, it is established that the Noticees are the 'insider' within the meaning of PIT Regulations, therefore, next issue to be examined is whether their trading during the UPSI period, is in violation of regulation 3(i) of the PIT Regulations, is being examined as under.

32. The SCN alleges that the Noticees had traded when in possession of UPSI viz. quarterly results for the period ending June 30, 2012. It has already been established that the Noticee No. 1 and 2 were 'insider' as per the definition given under PIT Regulations and Noticee 1 was involved in finalization of quarterly result.

33. I note that 15,400 shares and 55,879 shares of the company were sold in the trading accounts of Noticee 1 and 2 respectively on August 13, 2012. However, the Noticees have contended that the said sale transactions were executed by their stock brokers without informing them or without their permission in order to recover their outstanding dues as the Noticees were having debit balance with the Brokers. The Noticees have further mentioned that at the time of sale of shares the Noticees were completely unaware of the transactions and did not raise any dispute as the brokers were well within their powers to sell the shares to recover the outstanding.

34. I note that, during the earlier adjudication proceedings, stock brokers of the said Noticees viz. Seema Securities Pvt. Ltd., Guinness Securities Ltd. and KGR Securities Pvt. Ltd., through whom the impugned transactions were done on August 13, 2012, were advised to confirm if the said shares were sold upon instructions of the Noticees in normal course of trading and if the Noticees had debit balance in their accounts. I note from records, that the said stock brokers vide their emails dated February 16, 2018, have admitted that the Noticees were having debit balance in their respective accounts as detailed below:-

Name of the Broker	Noticee	Debit Balance as on August 12, 2012
Seema Securities Pvt. Ltd.	Chetan	Rs. 7,73,816.97/-
KGR Securities Pvt. Ltd.	Chetan	Rs. 87,118/-
Guinness Securities Ltd.	Chetna	Rs. 15,36,193.38/-

35. The brokers have also confirmed that the sale transactions were executed upon the instructions of the Noticees. However, the Noticees, in their reply dated October 24, 2019, have contended that the Brokers had failed to submit any evidence regarding their submissions that the transactions had been executed on the instructions of the Noticees. The Noticees have also argued that in terms of Regulation 3.2.1 of the Capital Market Segment of National Stock Exchange of India, a Broker is required to keep relevant records or documents of order instructions obtained from a client.

36. In this regard, I note the argument of the Noticees that, as per Regulation 3.2.1 of Regulations of the Capital Market Segment of National Stock Exchange of

India, whereby a Broker is required to maintain relevant records or documents of order instructions obtained from a client. In this regard I note that M/s Guinness Securities Ltd and M/s Seema Securities Private Ltd had contended before the erstwhile AO that the shares were sold by the Noticees. However, M/s KGR Securities Ltd, another trading member through whom certain trades were carried out by the Noticees, could not give any useful information citing reasons that it had applied for surrender of membership and change in management. Therefore, vide Emails dated November 06, 2019, M/s Guinness Securities Ltd and M/s Seema Securities Private Ltd were advised to submit evidence, if any, regarding placing of the orders by the Noticees. However, the said brokers have failed to provide any evidence in this regard.

37. I further note from the material available on record that there was continuous buying and selling by the Noticees in the scrip of TFPL between June 2012 and August 2012. In this regard, the trade details of the Noticees in the scrip of TFPL are as under-

Chetan Buy (No of shares)		Chetan Sell (No of shares)	
04/06/2012	7081	19/06/2012	4600
05/06/2012	5962	20/06/2012	9210
06/06/2012	10700	26/06/2012	4750
07/06/2012	10585	27/06/2012	5000
08/06/2012	35701	29/06/2012	17700
13/06/2012	21000	02/07/2012	3600
20/06/2012	14300	24/07/2012	8737
21/06/2012	19320	26/07/2012	7300
27/06/2012	4793	30/07/2012	4950
28/06/2012	5000	31/07/2012	8000
18/07/2012	10	01/08/2012	2000
19/07/2012	7000	03/08/2012	7400
25/07/2012	8300	06/08/2012	2878
27/07/2012	8150	08/08/2012	436
31/07/2012	1800	13/08/2012	15400
01/08/2012	2000		
02/08/2012	11200		
Grand Total	172902	Grand Total	101961

Chetna Buy (No of shares)		Chetna Sell (No of shares)	
19/07/2012	24250	03/08/2012	1521
20/07/2012	14379	10/08/2012	1050
24/07/2012	4700	13/08/2012	55879
25/07/2012	4700	30/08/2012	700
30/07/2012	24350		
02/08/2012	2400		
03/08/2012	1500		
Grand Total	76279	Grand Total	59150

38. Further, the Noticees have drawn my attention to an adjudication order in a similar matter concerning the Noticees in regards to their trading in the scrip of Tricom International Ltd. (**TIL**). In the said order the Learned AO had accepted the arguments of the Noticees that the trades were executed by the brokers on their own volition without the approval of the Noticees and had disposed of the matter accordingly. In this regard, the Learned AO had also taken cognizance of the trades in the scrip of TFPL while there was continuous debit balance in the account of the Noticees with their respective brokers.
39. The Noticees have also submitted that there was no ill intention to carry out insider trading using the alleged UPSI. If they had intention to earn from insider trading, they would have sold huge quantity of shares. The Noticees further contended that, assuming but not accepting that they were in possession of UPSI of financial results, no undue advantage had been gained by them because the price of the shares increased after their sale and they could have got better price if they had sold at a later date.
40. Further I note from the price-volume data of TFPL for the month of August, as obtained from BSE Website, that there was highest volume in the scrip of TFPL on August 13, 2012 when the Noticees had allegedly traded with UPSI in hand and the scrip of TFPL had closed at lowest price (emphasis supplied) for the month on that day.
41. I further note that the Noticees have submitted that shares sold from the accounts of the Noticees were not delivered from their demat accounts; rather

the shares were lying with the pool accounts of the brokers and securities settlements had taken place from the pool accounts only. In this regard, on perusal of the demat statements as submitted by the Noticees I find that on the date of impugned transactions there was no debit of shares of TFPL from the demat accounts of the Noticees. Therefore, I am inclined to accept the contention of the Noticees.

42. I further note that the Noticees have contended that they were having large shareholding in the scrip of TFPL and if they had wanted to leverage the UPSI, they would have sold large number of shares of the Company rather than selling in small quantity. In this regard, I note from the shareholding pattern of TFPL for quarter ending September 2012, as available on the website of BSE, that Noticee 1 was still holding 6,51,587 shares of TFPL and Noticee 2 was still holding 10,000 shares of TFPL. Therefore, I cannot disregard the argument that if the Noticees would have traded in the scrip of TFPL from their trading account, they would have sold more shares than only 15,400 shares and 55,879 shares only more so when they were put together having more than 6,60,000 shares of TFPL.

43. In light of above discussions, I find no apparent market impact, whatsoever, of the UPSI in the price of TFPL stands established on records. Further, it has not been established on records that the impugned trades on August 13, 2012 were done by the Noticees on their own volition with the UPSI in hand.

44. Therefore, I, on the ground of balance of probabilities, am inclined to hold that the Noticees have not indulged in insider trading as the trading was apparently done by Brokers who were not alleged to be in possession of the said UPSI, in the accounts of the Noticees.

45. Further I am of the view that the whole intention behind framing of PIT Regulations is that the person, who is in possession of UPSI, should not benefit by using it in comparison to a general investor. The same ratio can also be observed from the provisions of Regulation 3B(1) of PIT Regulations as well as Regulation 4(1)(ii)(a) of SEBI (Prohibition of Insider Trading) Regulations, 2015

wherein it was not considered insider trading by a company wherein the person who was in possession of UPSI was not the same person who had taken decision regarding entering into a transaction on behalf of the company. I am of the view that the same ratio would be equally applicable here wherein the transactions were entered into by the brokers of the Noticees who were not alleged to be in possession of UPSI.

46. In view of the totality of the matter, as the alleged violations have not been established on records, no penalty under Section 15G can be imposed on the Noticees.

d. Whether Noticee No. 1 had traded during window closure period as alleged in the SCN, is in violation of clauses 3.2-2 & 3.2-5 of Model Code of Conduct contained in Part A of Schedule I under regulation 12(1) of PIT Regulations r/w regulation 12(2) of SEBI (Prohibition of Insider Trading) Regulations, 2015?

47. It has already been established in the previous paragraphs that the trading in the account of the Noticees was done by the brokers of the Noticees. I note that the provisions of Model Code of Conduct mentioned under Part A of Schedule I under regulation 12(1) of PIT Regulations applies only on the Designated persons. In this regard, the brokers of the Noticee 1 do not fall under the category of Designated persons and, therefore, the said provisions of Model Code of Conduct do not apply on them.

48. As it has not been established that the trading was done by the Noticee 1, I do not find any violation of Model Code of Conduct by him. Therefore, I hold that no penalty can be imposed on the Noticee 1 under Section 15HB of SEBI Act.

ORDER

49. After taking into consideration the facts and circumstances of the case, material/facts on record and replies of the Noticees, 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, do not impose any penalty on the Noticees under Sections

15G and 15HB of the SEBI Act for his violation of relevant provisions of PIT Regulations.

50. In terms of the provisions of Rule 6 of the Adjudication Rules, a copy of this order is being sent to the Noticees viz. Mr. Chetan S Kothari and Ms. Chetna Kothari and also to the Securities and Exchange Board of India.

Place: Mumbai
Date: November 14, 2019

K SARAIVANAN
CHIEF GENERAL MANAGER &
ADJUDICATING OFFICER