

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. EAD/BJD/VS/21-27/2018]

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

In respect of		
21) Amitabh Goenka, 110A, Southern Avenue, Kolkata 700029 (PAN: ADCPG1933D)	22) Bhanu Vyapaar Pvt. Ltd., 687, Anandapur, 2 nd Floor, EM Bypass, Kolkata 700107 (PAN: AABCB1334Q)	23) Diwakar Viniyog Private Ltd, 687, Anandapur, 2 nd Floor, EM Bypass, Kolkata 700107 (PAN: AABCD0860B)
24) Emami Highrise Private Limited, 687, Anandapur, 2 nd Floor, EM Bypass, Kolkata 700107 (PAN: AABCE8699P)	25) Suraj Viniyog Pvt Ltd, 687, Anandapur, 2 nd Floor, EM Bypass, Kolkata 700107 (PAN: AAHCS9799J)	26) Suntrack Commerce Pvt Ltd, 687, Anandapur, 2 nd Floor, EM Bypass, Kolkata 700107 (PAN: AAECs4157M)
27) Emami Enclave Makers Private Limited, 687, Anandapur, 2 nd Floor, EM Bypass, Kolkata 700107 (PAN: AABCE8702H)		

In the matter of Emami Limited

BACKGROUND

1. While examining the report submitted by NSE in the scrip of Emami Limited (hereinafter referred to as 'Emami'/'Company'), it was observed that there were certain suspected insider trading by 4 entities namely Bhanu Vyapar Pvt. Ltd.,

Suntrack Commerce Pvt. Ltd., Diwakar Viniyog Pvt. Ltd. and Vijay Agarwala who bought before announcement and continue to hold even 6 months after the announcement.

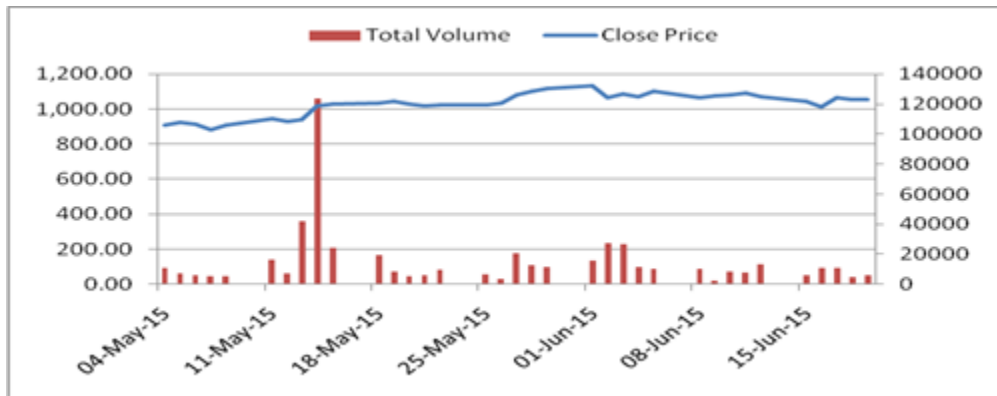
2. It was observed that Emami, the flagship company of the Group companies, is engaged in manufacturing and marketing of health, beauty and personal care products that are based entirely on Ayurvedic formulation. The company has over 30 brands under their portfolio.

Directors of the company are namely:

Sr No.	DIN/PAN	Full Name	Designation
1	ACTPJ1695F	Arun Kumar Joshi	Secretary
2	150089	Harsha Vardhan Agarwal	Whole-time director
3	150034	Mohan Goenka	Whole-time director
4	149916	Sushil Kumar Goenka	Managing director
5	152996	Radhe Shyam Agarwal	Whole-time director
6	149717	Aditya Vardhan Agarwal	Director
7	152880	Radhe Shyam Goenka	Whole-time director
8	1835	Rama Bijapurkar	Additional director
9	AEIPB8122N	Naresh Bhansali	CFO
10	703389	Prashant Goenka	Whole-time director
11	1804955	Devadas Mallya Mangalore	Director
12	20696	Kashi Nath Memani	Director
13	1879	Yogendra Premkrishna Trivedi	Director
14	1838353	Satya Brata Ganguly	Director
15	2107792	Amit Kiran Deb	Director
16	246043	Sajjan Bhajanka	Director
17	4821	Pradip Kumar Khaitan	Director
18	319256	Priti A Sureka	Whole-time director

3. Price volume Graph of the scrip of Emami is as under:

Price Volume Graph (04/05/2015 to 19/06/2015):



It was observed from the graph that Open price of the scrip on 04/05/2015 was Rs. 935 which increased to Rs. 1160 on 01/06/2015 and closing price of the scrip on 19/06/2015 is Rs. 1053.50.

Announcements:

4. It was noted that Emami had informed BSE on June 02, 2015 at 11.32 a.m., that the Company had entered into an agreement with Mr. Sanjeev Juneja to acquire his hair & scalp care business under the 'Kesh King' and allied brands. The transaction envisaged transfer of the business as a going concern on a slump sale basis and will include brand portfolio of ayurvedic medicinal oil, herbal shampoo & conditioner and ayurvedic capsules along with its respective formulations and all related assets, rights and liabilities including working capital for a total consideration of Rs. 1651 Crores. The acquisition process was expected to be completed in a month. Promoters / Promoter group / Group Companies did not have any interest in the above acquisition and the acquisition did not fall in related party transaction.
5. It was observed that the Market Cap of Emami calculated at the closing price on 01/06/2015 i.e. Rs. 1131.80 was Rs. 25,688 Crore. Further, as per an article

published in Economic Times on 03/06/2015 about the said acquisition, it was observed that the size of the transaction estimated to be Rs. 1,651 crores.

6. Shareholding pattern of the Emami is as under

Shareholding Pattern:

Category of Shareholder	Total No. of Shares	Total Share Holding %
Total shareholding of Promoter and Promoter Group (A)	165088855	72.74
Total Public shareholding (B)	61878764	27.26
Total (A)+(B)	226967619	100
(C) Shares held by Custodians and against which Depository Receipts have been issued	0	0
Total (A)+(B)+(C)	226967619	100

Financial Statement:

(in Cr.)	Dec-15	Sep-15	Jun-15	Mar-15	Dec-14	FY 14-15
Income Statement						
Revenue	732.28	520.09	541.5	495.74	626.76	2,030.64
Other Income	5.76	7.07	18.61	29.19	33.59	95.82
Total Income	738.04	527.16	560.11	524.93	660.35	2,126.46
Expenditure	-551.17	-440.39	-457.89	-367.75	-439.61	-1,513.10
Interest	-17.03	-19.02	-4.27	-0.92	-1.96	-4.9
PBDT	169.84	67.75	97.95	156.26	218.78	608.46
Depreciation	-9.07	-8.54	-8.19	-9.97	-9.34	-31.48
PBT	160.77	59.21	89.76	146.29	209.44	576.98
Tax	-30.4	-12.52	-2.95	-13.95	-47.03	-105.35
Net Profit	130.37	46.69	86.81	132.34	162.41	471.63
Equity	22.7	22.7	22.7	22.7	22.7	22.7
EPS	5.74	2.06	3.82	5.83	7.16	20.78

Price movement around the announcement:

Date	Open Price	High Price	Low Price	Close Price	Total Volume
04-Jun-15	1,083.00	1,101.35	1,067.65	1,073.05	11129
03-Jun-15	1,085.00	1,116.90	1,074.35	1,087.15	26821
02-Jun-15	1,133.00	1,146.00	1,044.00	1,066.15	27583
01-Jun-15	1,119.00	1,160.00	1,119.00	1,131.80	15855
29-May-15	1,105.00	1,146.00	1,105.00	1,117.60	11277

28-May-15	1,081.05	1,109.90	1,081.05	1,103.85	12727
27-May-15	1,030.00	1,088.00	1,025.00	1,080.70	20472
26-May-15	1,020.00	1,048.80	1,020.00	1,033.20	3762
25-May-15	1,027.00	1,032.00	1,016.50	1,022.95	6741
22-May-15	1,020.20	1,047.80	1,016.50	1,026.15	9495
21-May-15	1,033.00	1,048.00	1,006.70	1,017.15	5837
20-May-15	1,045.00	1,054.40	1,022.05	1,029.65	5145
19-May-15	1,041.40	1,054.70	1,026.85	1,044.95	8160
18-May-15	1,018.60	1,059.75	1,014.35	1,036.75	19071

Communication with the Emami Ltd.

7. Company was asked to furnish information like chronology of events, list of deemed to be connected entities and entities privy to abovementioned acquisition. In its reply to SEBI vide email dated 21/12/2015, company informed that on 30/04/2015 telephonic discussion held for finalizing agreement and last meeting for discussion on proposed transaction was held on May 31, 2015 before executing the agreement on June 02, 2015. Company also provided list of deemed to be connected entities and insiders. In view of above, the period from 30/04/2015 to 02/06/2015 is considered as preannouncement period for which information about deal existed.

A. Trading of NSE Shortlisted entities (04/05/2015 - 30/06/2015)- Emami Ltd.:

Transaction details in Terms of Numbers:

Date	Clnt Pan	Clnt Name	Gr Buy Vol	Gr Sell Vol	Net Trd Vol
15/05/2015	ACTPA8788J	Vijaya Agarwala	22073	2073	20000
21/05/2015	AABCB1334Q	Bhanu Vyapaar Pvt. Ltd.	12800	0	12800
21/05/2015	AABCD0860B	Diwakar Viniyog Private Limited	16000	0	16000
21/05/2015	AAECS4157M	Suntrack Commerce Private Limited	16000	0	16000

Transaction details in Terms of Value:

Date	Clnt Pan	Clnt Name	Net Trd Vol	Gr Buy Value	Gr Sell Value
15/05/2015	ACTPA8788J	Vijaya Agarwala	20000	2,28,00,294	21,41,366
21/05/2015	AABCB1334Q	Bhanu Vyapaar Private Limited	12800	131,23,840	0.00

21/05/2015	AABCD0860B	Diwakar Viniyog Private Limited	16000	164,06,400	0.00
21/05/2015	AAECS4157M	Suntrack Commerce Pvt. Ltd.	16000	164,08,000	0.00

On analysis of the Market Trading and Holding Statement for the period from 01/01/2015 to 31/12/2015, the following were observed-

- (i) Bhanu Vyapaar Pvt. Ltd. had traded in 36 scrips in the year 2015. Bhanu Vyapaar Pvt. Ltd. had traded between (05/01/2015 and 21/05/2015) in the entire year. It had bought 85,893 shares worth Rs. 7,79,84,956 and sold 1,22,250 shares worth Rs. 1,12,36,583 in the entire year across the market.
- (ii) As per NSE report net worth of Bhanu Vyapaar Pvt. Ltd. as on 31/03/2014 was Rs. 72.34 Crores. As per disclosures on BSE website for the quarter ending March, 2015 Bhanu Vyapaar Pvt. Ltd. was holding 2,71,33,761 (11.95%) shares of Emami Ltd.
- (iii) Diwakar Viniyog Private Limited had traded in 10 scrips in the year 2015. Diwakar Viniyog Private Limited had traded between (08/01/2015 and 21/05/2015) in the entire year. It had bought 1,03,210 shares worth Rs. 9,54,58,802 and sold 1,08,710 shares worth Rs. 85,34,674 in the entire year across the market.
- (iv) As per NSE report net worth of Diwakar Viniyog Private Limited, as on 31/03/2014 was Rs. 89.41 Crores. As per disclosures on BSE website for the quarter ending March, 2015 Diwakar Viniyog Private Limited was holding 3,33,10,237 (14.68%) shares of Emami.
- (v) Suntrack Commerce Pvt. Ltd. had traded in 09 scrips in the year 2015. Suntrack Commerce Pvt. Ltd. had traded between (08/01/2015 and 21/05/2015) in the entire year. It had bought 63,210 shares worth Rs. 5,84,75,067 and sold 53,982 shares worth Rs. 74,26,598 in the entire year across the market.
- (vi) As per NSE report net worth of Suntrack Commerce Pvt. Ltd. as on 31/03/2014 was Rs. 82.53 Crores. As per disclosures on BSE website for the quarter ending March, 2015 Suntrack Commerce Pvt. Ltd. was holding 3,26,75,366 (14.40%) shares of Emami .

- (vii) Further, it was observed that these 3 entities namely Bhanu Vyapaar Pvt. Ltd., Diwakar Viniyog Private Limited and Suntrack Commerce Pvt. Ltd. traded only on 25/03/2015 before 21/05/2015 in the scrip. Additionally these entities are appearing in the list of connected entities provided by Emami.
- (viii) Vijaya Agarwala had traded in only one scrip Emami Ltd. only on 15/05/2015 in the year 2015. Further, as per holding statement available in DWBIS on 20/05/2015, Vijay Agarwala was holding 20,000 shares of Emami Ltd. worth Rs. 2,06,18,000.
- (ix) Further, he was also holding 3,50,000 shares of Allied Global Infrastructure Ltd., 1,40,000 shares of P. B. Films Limited and 5 shares of Reliance Power Limited. Allied Global Infrastructure Ltd. and P. B. Films Limited are not listed on NSE and BSE.
- (x) As per NSE report Vijaya Agarwala has income less than Rs. 1 Lakh. Additionally, no connection between Vijaya Agarwala and other 3 suspects or Emami could be established on the basis of KYC details available in Data Warehousing and Business Intelligence System (DWBIS).

B. Trading of deemed to be connected entities:

Emami provided list of PAN of 57 entities which were deemed to be connected person or privy to the information related to the abovementioned deal. Trading of these entities in preannouncement period in the scrip Emami was examined and it was observed that 9 entities out of 57 entities have traded as given below-

Date	Clnt Pan	Clnt Name	Gr Buy Vol	Gr Sell Vol	Net Trd Vol	Gr Buy Value	Gr Sell Value
01/06/2015	AGWPR2203A	Vikash Rathi	50	0	50	56635.00	0.00
21/05/2015	ADCPG1933D	Amitabh Goenka	0	64000	-64000	0.00	65631673
21/05/2015	AABCB1334Q	Bhanu Vyapaar Pvt Ltd	12800	0	12800	13123840	0.00
21/05/2015	AABCD0860B	Diwakar Viniyog Pvt Ltd	16000	0	16000	16406400	0.00
21/05/2015	AABCE8699P	Emami High Rise Private Ltd	6400	0	6400	6564480	0.00
21/05/2015	AAHCS9799J	Suraj Viniyog Pvt Ltd	6400	0	6400	6564480	0.00
21/05/2015	AAECS4157M	Suntrack Commerce Pvt Ltd	16000	0	16000	16408000	0.00
14/05/2015	ADLPD5578Q	Kavita Agarwal	0	200	-200	0.00	197600
14/05/2015	AGWPR2203A	Vikash Rathi	0	100	-100	0.00	102252
13/05/2015	ADLPD5578Q	Kavita Agarwal	200	0	200	183400.00	0.00

04/05/2015	AGWPR2203A	Vikash Rathi	100	0	100	92925.30	0.00
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8. Further, the observations were also made:

- (i) Amitabh Goenka is promoter of the company. On 21/05/2015, Mr. Amitabh Goenka sold 64,000 shares in the market while on the other hand 6 other promoter group companies (* marked) bought 64,000 shares. Mr Amitabh Goenka is nephew of Mr. Radhe Shyam Goenka, whole time director of Emami Ltd. and he is also related other Key Management Personals. Further, he has same address as Mr. R.S. Goenka i.e. 110A, Southern Avenue, Kolkata - 700019. Mr. Amitabh Goenka and Mr. Radheshyam Goenka are directors in Suraj Viniyog Pvt. Ltd.
- (ii) 4 out of 6 promoter group companies which have bought from Mr. Amitabh Goenka, namely Bhanu Vyapaar Pvt. Ltd., Diwakar Viniyog Private Limited, Emami Highrise Private Limited and Suntrack Commerce Pvt. Ltd. are appearing in the list of deemed to be connected entities provided by Emami Ltd. 2 other companies namely Suraj Viniyog Pvt. Ltd. and Emami Enclave Makers Private Limited have directors same as directors of Emami.
- (iii) Further, as per Emami Ltd. annual Report for the year 2014 - 15, 6 entities namely Bhanu Vyapaar Pvt. Ltd., Diwakar Viniyog Private Limited, Emami Highrise Private Limited, Emami Enclave Makers Private Limited, Suntrack Commerce Pvt. Ltd. and Suraj Viniyog Pvt. Ltd. were appearing in the list of companies in which key management personal of Emami and their relatives have significant influence.
- (iv) On analysis of counter party concentration of trading of Mr. Amitabh Goenka on 21/05/2015 it was observed that 6 promoter group companies have bought 63,961 shares from Mr. Amitabh Goenka at a price of Rs. 1025.49. These trades were Synchronized trades. Further, on 21 May, 2015, selling of 64,000 shares by Mr Amitabh Goenka had contributed to 62.29% in gross selling

volume and buying of 64,000 shares by 6 deemed to be connected entities had contributed to 62.29% in gross buying volume.

(v) It was observed that both the 6 buyers and 1 seller were part of promoter group and insiders of the company hence it could be safely assumed that all 7 entities were aware of the "Keshking deal" and none of them received any undue advantage or suffered losses as there was no asymmetry of availability of information among concerned parties.

(vi) Further, it was also observed that these 7 entities had made disclosures to exchanges for abovementioned transactions.

(vii) 2 other entities which are appearing in the list of deemed to be connected entities namely Mr. Vikas Rathi and Ms. Kavita Agarwal have also traded in small amount in the pre-announcement period.

C. Trading of deemed to be connected entities while in possession of UPSI before January 22, 2015 announcement:

Past trading of deemed to be connected entities, provided by Emami was examined for the year 2015 and it was observed that few connected entities traded in the scrip Emami on January 08, 2015 which is 2 weeks before January 22, 2015 announcement-

Acquisition of M/s Fravin Pty Ltd. (Fravin) by Emami Ltd.-

9. It was observed that Emami had informed BSE on January 22, 2015, that Emami Overseas FZE (based in UAE), a Wholly owned subsidiary of the Company has acquired controlling stake of 66.67% in M/s Fravin Pty Ltd (Fravin), a Company based in Australia with major strength in R&D and manufacture of natural and organic personal care products in Australia. Consequent to the above acquisition, M/s Fravin Pty Ltd along with its three subsidiary Companies have also become subsidiaries of Emami. This announcement published on BSE site at 11:30 A.M.

Trading of deemed to be connected entities:

10. It was observed that 8 entities had traded before the January 22, 2015, announcement in the scrip Emami as under -

Date	Clnt Pan	Clnt Name	Gr Buy Vol	Gr Sell Vol	Net Trd Vol
08/01/2015	ADCPG1933D	Amitabh Goenka	0	52000	-52000
08/01/2015	AABCB1334Q	Bhanu Vyapaar Pvt. Ltd.	10400	0	10400
08/01/2015	AABCD0860B	Diwakar Viniyog Private Limited	13000	0	13000
08/01/2015	AABCE8699P	Emami Highrise Private Limited	5200	0	5200
08/01/2015	AAHCS9799J	Suraj Viniyog Pvt Ltd	5189	0	5189
08/01/2015	AAECS4157M	Suntrack Commerce Pvt Ltd	13000	0	13000
08/01/2015	AABCE8702H	Emami Enclave Makers Private Limited	5200	0	
20/01/2015	ABSPT9958P	Sagun Tulsyan	100	0	100

11. It was observed that on 08/01/2015, which was two weeks earlier than abovementioned announcement, Amitabh Goenka sold 52,000 shares in the market and 6 entities who were deemed to be connected to the company, had bought 51,989 shares from Amitabh Goenka.

12. It was observed that Emami had informed BSE on June 02, 2015 at 11.32 a.m., that the Company had entered into an agreement with Mr. Sanjeev Juneja to acquire his hair & scalp care business under the 'Kesh King' and allied brands.

13. It was further observed that the Open price of the scrip on 04/05/2015 was Rs. 935/- which increased to Rs. 1160/- on 01/06/2015 and closing price of the scrip on 19/06/2015 is Rs. 1053.50.

14. NSE submitted its report on trading activity of 4 entities namely Bhanu Vyapar Pvt. Ltd., Suntrack Commerce Pvt. Ltd., Diwakar Viniyog Pvt. Ltd. and Vijay Agarwala who bought before announcement and continue to hold even 6 months after the announcement. The chronology of events, deemed to be connected

entities and connection with the aforesaid 4 entities with company/ promoters/ directors had been sought from Emami Ltd. The company informed that telephonic discussion held for finalizing a definitive agreement took place on 30/04/2015.

15. It was observed from the submissions and analysis that Vijay Agarwala was found to be not connected with the company/directors/Promoters while other three entities shortlisted by NSE were promoters of the company. On the basis of information provided by Emami, the period 30/04/2015 to 02/06/2015 was considered as pre-announcement period. Accordingly, trading activity of deemed to be connected entities was examined and it was observed that promoters of the company namely Mr. Amitabh Goenka, Emami Highrise Private Limited, Emami Enclave Makers Private Limited and Suraj Viniyog Pvt. Ltd had also traded in the scrip in the preannouncement period.
16. Further to have an advantage of UPSI, their trading activities were examined and it was observed that Amitabh Goenka sold 64,000 shares on 21/05/2015 which was bought by 6 entities, namely Bhanu Vyapaar Pvt. Ltd., Diwakar Viniyog Private Limited, Emami Highrise Private Limited, Emami Enclave Makers Private Limited, Suntrack Commerce Pvt. Ltd. and Suraj Viniyog Pvt. Ltd. Thus it was observed that they had traded among themselves.
17. Further, it was also observed that the Noticees had made disclosures to exchanges for abovementioned transactions.
18. It was further observed that there had been no material price movement in the scrip pursuant to the announcement by the company and also the fact that the entities continue to hold the shares much after the announcement. Further, as provided in Regulation 4(1) of PIT 2015, no insider should trade in the securities while in possession of UPSI except when he may prove his innocence by demonstrating circumstances including Off-Market transfer between promoters.

19. Since, in this case transactions have been done on-market, it was alleged that Amitabh Goenka, Bhanu Vyapaar Pvt. Ltd., Diwakar Viniyog Private Limited, Emami Highrise Private Limited, Suraj Viniyog Pvt Ltd., Suntrack Commerce Pvt Ltd. and Emami Enclave Makers Private Limited have violated Regulation 4 of SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as 'PIT 2015').

APPOINTMENT OF ADJUDICATING OFFICER

20. Securities and Exchange Board of India (SEBI) had appointed Sri S V Krishnamohan as the adjudicating Officer (AO) vide order dated June 27, 2016 under section 15 I of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "SEBI Act, 1992") to inquire into and adjudge the alleged violation of Regulation 4(1) of PIT 2015 read with Section 12 A of SEBI Act, 1992 by Amitabh Goenka, Bhanu Vyapaar Pvt. Ltd., Diwakar Viniyog Private Ltd, Emami Highrise Private Limited, Suraj Viniyog Pvt Ltd, Suntrack Commerce Pvt Ltd and Emami Enclave Makers Private Limited (Hereinafter referred to as 'Noticee 1' to 'Noticee 7' respectively and Collectively referred to as 'Noticees' / 'Noticee 1-7') in the shares of Emami. Pursuant to the inter department transfers, the undersigned has been appointed as the AO to inquire and adjudge the matter.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

21. A Show Cause Notice dated November 30, 2017 (hereinafter referred to as 'SCN') was issued to the Noticee under rule 4(1) of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as 'AO Rules'), calling upon the Noticee to show cause as to why an inquiry should not be held against it in terms of Rule 4 of the AO Rules read with Section 15-I of SEBI Act and why penalty should not be imposed on it in terms of Section 15G(i) of SEBI Act for the aforesaid alleged violation.

22. In response to the SCN, the Noticees vide their letter dated December 26, 2017 sought for the inspection of certain documents. An opportunity of inspection was provided to the Noticees on February 21, 2018. Further, vide their reply dated February 23, 2018, Noticees *inter alia* submitted that an incomplete inspection of documents and records was provided to them and that they were not permitted to inspect the Investigation report, the complete trade and order log relating to trades in the scrip of Emami during the investigation period, the report submitted by NSE and the submissions made by Vijay Agarwala. Further, vide their reply dated March 01, 2018, the Noticees resubmitted their request for the aforesaid documents and sought 2 weeks time to submit their reply. Further, Vide emails dated March 06, 2018, a copy of the NSE report, document containing submissions of Mr. Agarwal, Documents demonstrating connection etc were provided to the Noticees. Further, in the interest of natural justice and in order to conduct an inquiry in terms of rule 4(3) of the AO Rules, the Noticee was granted an opportunity of personal hearing before the undersigned on March 15, 2018. The Authorized Representatives (hereinafter referred to as 'ARs') on behalf of the Noticees appeared before the AO. During the hearing, on request, the ARs were allowed time to submit their written submission along with the following documents:

- a) All the market transactions done by the Noticees one week prior and after the corporate announcement
- b) Demat account statement of all the Noticees for relevant period
- c) Price movement one week before the corporate announcement

23. Vide their letter dated March 22, 2018, the Noticee submitted their reply submitting *inter alia* as under:

"1. These submissions are being presented as an aide memoire of the arguments made at the personal hearing on March 15, 2018. A document titled "Note on Arguments" was tendered at the personal hearing to aid navigation of arguments by Mr. Somasekhar Sundaresan, Counsel for the Notices.

2. *These written submissions should be read with that document and they may collectively be treated as our response to the SCN . A copy of the said Note on Arguments is enclosed as Annexure A. Capitalized terms used here but not defined , shall have the same meaning ascribed in the Note on Arguments .*

The Issues:

3. *The core issues that falls for consideration in these proceedings are:*
- a. *whether trades, admittedly between two or more promoters of a listed company, having equal symmetry of access to information can at all constitute violative insider trading;*
 - b. *whether, in fact, the information in question in the instant case at all constituted unpublished price sensitive information ("UPSI");*
 - c. *whether an ingredient of a valid defence in an inclusive list of illustrative defences made available in the PIT Regulations can become a mandatory requirement even if the defence in question as formulated in the PIT Regulations is not necessary to adopt.*

Ingredients for Insider Trading:

4. *The SEBI (Prohibition of Insider Trading) Regulations 2015 ("PIT Regulations") as do insider trading laws world over, prohibit insiders from seeking to profit from asymmetrical access to UPSI, which the rest of the market does not have. Towards this end , the following ingredients need to be established to bring home a charge of violative insider trading: -*
- a. *one of the parties to the trade must have asymmetrical access to UPSI;*
 - b. *it should be possible to conclude reason ably that such party is in possession of UPSI and the other party is not in possession of the UPSI;*
 - c. *the nature of the trade ("buy" or "sell") by the party in possession of UPSI should be consistent with the character of the UPSI (i.e. such person ought to have made a purchase before positive information becomes published ; and such person ought to have made a sale before adverse information becomes published);*
 - d. *no defence that can justify and explain that no violative trading took place must be available, whether or not such defence forms part of the listed illustrative list of valid defences.*
5. *When the aforesaid ingredients are met and established , the insider in possession of UPSI would be presumed to have traded on the basis of the UPSI with him . The presumption is rebuttable and it is the conduct of the insider as a whole that will inform the inference of what*

was the insider 's state of mind , when he traded. Evidence for insider trading will invariably be a mixed question of fact and law to be answered from the application of the law to the facts and circumstances of the case, applying the test of how a reasonable mind would conclude as to what transpired . Being a serious charge and a heinous offence, the standard of proof, even in civil cases involving preponderance of probability must be of a higher standard. The test is to examine what a reasonable person in the Noticee's position at the relevant time, acting reasonably, would have done. To establish answers to mixed questions of fact and law, full access to the record to show all material that could support the charge, and indeed , that could undermine the charge, would have to be presented to the Noticees
- in the instant case, admittedly that has not been done.

6. *In the instant case, the Noticees submit the following propositions - each of which would need to fail for SEBI to establish that they have violated PIT Regulations. If any one of these propositions are acceptable, these proceedings would need to be discharged. The propositions are :-*

- a. the information in question was not UPSI - by reason of their character not being such that there would have been a material impact on price of the shares of Emami when the information in question would become generally available;*
- b. those who traded did not have access to U PSI - which was only with the deal team in Emami and not with the Noticees; and*
- c. the trades that are assailed are all trades among the Noticees - all of whom are part of the promoter group and if they were to have access to the information in question , they would all have the same parity of access, thereby no one being a victim of any asymmetrical access;*

7. *If any of these propositions are accepted , the charge would fail. In that event, the Noticees would waive their right to further inspection . However, if the Learned Adjudicating Officer is not inclined to accept the foregoing, full access to the material on record would become necessary.*

Trades Assailed

8. *The trades that have been assailed with the charge of violative insider trading under Regulation 4(1) of the PIT Regulations are the following trades in the equity shares of Emami, executed by the Noticees, all of whom are promoters of Emami, with full and formal pre-and-post-trans action disclosure, on the floor of the exchange:*

- a. Sale of 52,000 shares by Noticee No. 1 and purchase of 52,000 shares by Noticee Nos. 2-7 on January 8, 201 5 ("January 2015 trades") purportedly in possession of alleged UPSI relating to the Fravin Acquisition (as defined below); and*

- b. *Sale of 64,000 shares by Noticee No. 1 and purchase of 64,000 shares by Noticee Nos. 2-7 on May 21, 2015 ("May 2015 Trades") purportedly in possession of alleged UPSI relating to the Kesh King Acquisition (as defined below).*
9. *The two alleged pieces of information that allegedly constitute UPSI are: -*
- a. *acquisition of 66.67% of Fravin Pty Ltd ("Fravin"), an Australian company, by Emami International FZE, a wholly owned subsidiary of Emami ("Fravin Acquisition");*
- b. *acquisition by Emami of the hair and scalp business under "Kesh King" and allied brands ("Kesh King Acquisition")*
10. *The basis of the charge is: -*
- a. *that the Fravin Acquisition and the Kesh King Acquisition were allegedly UPSI;*
- b. *that the promoters are to be assumed to be in possession of such alleged UPSI; and*
- c. *that the promoters are allegedly guilty of insider trading because they traded on-market whereas they would not be guilty if they traded off-market.*
11. *For the reasons discussed below, the proceedings against the Noticees ought to be dropped.*

Absence of Asymmetrical Access to UPSI

12. *At the threshold, ex-facie and on SEBI's own showing, leaving aside the question of whether the information in question was UPSI and the Noticees had access to such information and were "insiders", the impugned trades were admittedly between promoters. The SCN concedes that "none of them (the Noticees) received any undue advantage or suffered losses as there was no asymmetry of availability of information among concerned parties." (See Paragraph 9(v) of the SCN).*
13. *The sole basis on which the charge of breach of Regulation 4(1) of the PIT Regulations has been levelled, is that the trades between the Noticees was on-market and not off-market. One of the illustrative list of defences set out in the proviso to Regulation 4(1) of the PIT Regulations, has been mis-read to mean that the framework of the available defence is the only defence that is available.*
14. *Such a reading is incorrect.*
15. *Relevant portions of Regulation 4(1) of the PIT Regulations are extracted below:*

"Trading when in possession of unpublished price sensitive information.

4. (1) **No insider shall trade in securities** that are listed or proposed to be listed on a stock exchange **when in possession of unpublished price sensitive information** :

Provided that **the insider may prove his innocence** by demonstrating the circumstances including the following : -

(i) the transaction is an **off-market inter-se transfer between promoters** who were in possession of the same unpublished price sensitive information without being in breach of regulation 3 and both parties had made a conscious and informed trade decision;

(ii) in the case of non-individual insiders: -

(a) the **individuals who were in possession** of such unpublished price sensitive information **were different from the individuals taking trading decisions and such decision-making individuals were not in possession** of such unpublished price sensitive information when they took the decision w trade; and

(b) appropriate and adequate arrangements were in place to ensure that these regulations are not violated and no unpublished price sensitive information was communicated by the individuals possessing the information to the individual taking trading decisions and there is no evidence of such arrangements having been breached;

(Emphasis Supplied)

16. Evidently, the defences enumerated in the proviso are **illustrative** and not **exhaustive** . They are one of the many inclusive defences which an insider can avail of to demonstrate his innocence. The words "circumstances including the following " in the proviso mean that the specific mention of certain circumstances, do not exhaust the universe of available circumstances, an insider can bring to bear to demonstrate his innocence.

17. To begin with, there has to be a coherent charge of insider trading for the defence to even be considered . If the very charge can not be levelled, it would follow that the defence would not be necessary. Even if the circumstances of a defence are set out , it can never follow that the absence of one of the ingredients of the defence would automatically lead to the charge being established .

18. One hardly needs to cite case law to support the proposition that the expression "includes" generally signifies that the law makers intended the specified meaning to be merely illustrative and not exhaustive. A few cases will put this unassailable legal position beyond any shadow of doubt: -

a. In **RBI v. Peerless General Finance & Investment Co. Ltd ., (1987) 1 SCC 424**, the Hon'ble Supreme Court was called upon to interpret the meaning of the word "include" and held as follows:

"All that is necessary for us to say is this: Legislatures resort to inclusive definitions (1) to enlarge the meaning of words or phrases so as to take in the ordinary, popular and natural sense of the words and also the sense which the statute wishes to attribute to it, (2) to include meanings about which there might be some dispute, or, (3) to bring under one nomenclature all transactions possessing certain similar features but going under different names. "

(Emphasis Supplied)

b. In **Sahara India Real Estate Corpn. Ltd . v. SEBI (2013) 1 SCC 1**, one of the issues before the Hon'ble Supreme Court was whether the scope of SEBI's jurisdiction under Section 55 of the erstwhile Companies Act, 1956 ("**1956 Act**") would extend to Section 60-B of the 1956 Act. The Saharas argued that the specific mention of certain sections with capital letters, namely, Section 68A, 77A and SSA- in Section 55 of the 1956 Act, would necessarily exclude sections not specifically mentioned such as 60-B. Rejecting the argument, the Supreme Court emphasized the use of the words "including" and held:

Further , the specific inclusion of Sections 68-A, 77-A and 80-A in a bracket, would not mean the exclusion of all sections in between Sections 59 to 81 with suffix 'A' or 'AA' or 'B'. The word "including" used in the parenthetical clause is only to give emphasis to those sections.the word "include" is very generally used in interpretation clause in order to enlarge the meaning of words or phrases occurring in the body of the statute and, when it is so used, these words and phrases must be construed as comprehending, not only things they signify according to their natural import, but also those things which the interpretation clause declares that they shall include. **...Giving emphasis to Sections 68-A, 77-A and 80-A does not mean the exclusion of all such similar sections."**

(Emphasis Supplied)

19. Therefore, applying these principles, it is clear that the specific circumstances set out in the proviso are merely illustrative and provide guidance on the underlying principles, based on which the defence can be applied to other cases. They cannot exclude application of the underlying principle to other cases.

20. A specific defence for off-market inter-se transfers between promoters who are in possession of the same unpublished price sensitive information has been provided . The fact that such a defence has been expressly provided to off-market transactions between promoters, does not

mean that every trade executed on the market would automatically become insider trading - more so, when the principles underlying the defence are all available and are being met viz. parties are in possession of the same UPSI and took a conscious and informed decision to trade, and that too in full transparency.

21. *Such a reading would render the words "including" in the proviso meaningless and would amount to the opposite meaning being rendered. Worse, it would also mean that the right to claim the availability of a defence would be interpreted as an obligation for compliance without which, the charge would be established without regard to whether the charge is otherwise capable of being established. Besides, it would constitute disregarding the substance of the trades, and instead, lead to the form of the trade being expanded rendering a completely valid trade to be a violative trade. What is being ignored is the fundamental question: whether one of the parties to the trade had asymmetrical access to UPSI, which access was not available to the other party to the trade.*

22. *As stated earlier, violative insider trading presupposes the absence of parity in access to UPSI. In other words, asymmetrical access to UPSI is fundamental for a charge of violative insider trading to be sustained. The victim of the insider's asymmetrical access to UPSI would be the party not having such access, and his decision to trade, without such access, would not be an informed investment or divestment decision.*

23. *On the other hand, when both parties to the trade are in possession of the very same UPSI and are therefore insiders, there is no victim as both parties would presumably have traded with the knowledge of such UPSI.*

24. *In the instant case, without prejudice to the Noticees' submissions that the information in question was not UPSI and the Noticees were not "insiders", SEBI has explicitly acknowledged that the trades in question were between promoters who did not derive any unfair advantage as there was no asymmetrical access to UPSI. In other words, even if the impugned trades had been undertaken off-market, there would be no insider trading.*

25. *Therefore, it is clear that insider trading is not established by whether the trade is effected on-market or off-market. Instead, it is established by whether one of the parties to the trade had sought to benefit and exploit the other party to the trade by reason of possession of UPSI owing to asymmetrical access. Therefore, trades executed off-market too could lead to a violative insider trading, only if there was asymmetrical access to UPSI. Therefore, the fundamental question is not where the trade took place but whether one of the parties to the trade had asymmetrical access to UPSI.*

26. *For the reasons stated above, the Noticees humbly submit that Learned Adjudicating Officer ought to discharge the Noticees and absolve them of any alleged wrongdoing. SEBI itself has found the trades were between the promoters, none of whom had asymmetrical access to UPSI.*

27. As submitted at the hearing, the Noticees would not press the issue of inspection and protest the denial of access to the investigation report if this fundamental proposition is accepted. This proposition, which is clear as daylight would also render it unnecessary to examine whether the information in question was UPSI and the Noticees had access to UPSI.

Complex Questions of Fact I Need for Inspection

28. However, should the Learned Adjudicating Officer determine that the aforesaid issue in the negative, the merits would still need to be considered and one would have to deal with questions of fact viz. whether the Noticees indeed had access to the UPSI (which was only available to the deal teams in side Emami) and whether the information in question was indeed UPSI (which it is submitted, it was not). Towards this end, it is respectfully submitted, that a full, fair and effective opportunity of inspection of all the relevant record - by relevant is meant, all material that would support the charge and indeed undermine the charge - ought to be disclosed with full inspection and copies.

29. During the course of inspection on February 21, 2018, the department refused to provide us with the documents and records that had been relied upon by them including -

- a. The Investigation report;
- b. Report of NSE;
- c. Trade and order logs; and
- d. Analysis and submissions of Vijaya Agarwala

30. An email dated March 1, 2018 was sent by the advocates on record requesting SEBI to provide these documents. In reply, SEBI vide email dated March 6, 2018, provided us inter-alia with the following documents: -

- a. A copy of the NSE's report; and
- b. A copy of an undated letter/undertaking sent/given by Vijaya Agarwala to Motilal Oswal Securities Limited

31. However, the investigation report has not been provided to us. It is obvious that the SCN has been issued based on the investigation report. The core objective of quasi-judicial proceedings is to arrive at the truth and therefore, it is critical for the Noticees to have access to all relevant material. This has to include not only the material that will help support the charges but also include all material that would undermine the charges levelled. It is also critical to have symmetrical and identical access to the record on the part of both SEBI and the Noticees. If any part of the investigation report is sensitive and irrelevant, then such part may be "red-acted" and blanked out, but there is no reason not to provide the investigation report to any noticee.

Information in Question, not UPSI

32. Strictly without prejudice to the Noticees right to seek inspection of all relevant records including the investigation report , the Noticees submit that the information relating to the Fravin Acquisition and the Kesh King Acquisition cannot constitute UPSI.

January 2015 Trades I Fravin Acquisition

33. At the threshold, the charge relating to the January 20 15 Trades is not maintainable . The PIT Regulations were published in the Gazette on January 15, 2015. Regulation 1(2) of the PIT Regulations expressly provided that the regulations would come into force on the 120th day from the date of publication in the gazette i.e. on May 15, 2015. The PIT Regulations cannot be applied retrospectively to the January 2015 Trades.

34. Without prejudice to the above and purely with a view to assuage the conscience of the Learned Adjudicating Officer, it is submitted that the information relating to the Fravin Acquisition is not UPSI.

35. Regulation 2(1)(n) of the PIT Regulations defines "unpublished price sensitive information" and reads as follows:

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

- (i) financial results;
- (ii) dividends;
- (iii) change in capital structure;
- (iv) mergers, de-mergers, acquisitions, delistings, disposals and expansion of business and such other transactions;
- (v) changes in key managerial personnel; and
- (vi) material events in accordance with the listing agreement.

NOTE: It is intended that information relating to a company or securities , that is not generally available would be unpublished price sensitive information if it is likely to materially affect the price upon coming into the public domain. **The types of matters that would ordinarily give rise to unpublished price sensitive information** have been listed above to give illustrative guidance of unpublished price sensitive information."

(Emphasis Supplied)

36. The PIT Regulations intended that information that is not generally available would be UPSI if it is likely to materially affect the price upon becoming generally available. If the impact on price is unlikely to be material, as a matter of principle, the information cannot be price-sensitive even if unpublished. Besides, the listed illustrations are ordinarily in the nature of UPSI, which also means they need not be UPSI. Merely because a particular type of event is listed it would not follow that it would inexorably constitute UPSI regardless of the materiality of its potential price impact. For example, where a very large company makes a non-material and inconsequential acquisition of a tiny business, or where a company declares the same rate of dividend that it has declared for several years as per publicly stated dividend policy, there would be hardly any surprise and the impact on price would not be material at all.

37. The purported UPSI for the January 2015 Trades was the acquisition by Emami International FZE, a wholly owned subsidiary of Emami, of a controlling interest of 66.67% in Fravin. As a result, Fravin and its three subsidiaries became subsidiaries of Emami International FZE.

38. What the SCN does not state is that the value of the Fravin Acquisition was a mere Rs. 13.53 crores, as opposed to the market capitalization of Emami of over Rs. 25,000 crores (see paragraph 10 of the SCN).

39. The SCN itself has not examined or discussed the "materiality" of this transaction. It has not even examined the price movement when information relating to the acquisition was actually published on January 22, 2015. The SCN has also not defined the "UPSI Period" i.e. when the alleged UPSI came into existence and the period during which the Noticees purportedly had access to it. The SCN only refers to the date on which this alleged UPSI became generally available.

40. As requested by the Learned Adjudicating Officer, it is confirmed that there were no market transactions effected by the Noticee one week prior to the public announcement of the Fravin Acquisition and one week after such announcement. The price movement from one week before the announcement of the Fravin Acquisition on January 22, 2015 and one week after the announcement is set out below: -

Date	Open	High	Low	Close
January 16,2015	870.00	897.00	863.75	876.15
January 19,2015	876.00	886.60	870.15	873.10
January 20,2015	873.05	873.47	847.00	873.75
January 21,2015	863.55	872.35	855.10	858.45
January 22,2015	860.70	930.05	860.70	892.75
January 23,2015	905.00	905.90	890.55	896.20
January 27,2015	896.00	937.85	885.00	933.90
January 28,2015	934.00	966.50	896.10	928.40
January 29,2015	925.00	950.00	910.30	917.90

January 30,2015	920.15	920.15	905.00	919.25
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41. The analysis of the price movement shows that when the news of the Fravin Acquisition was announced by Emami on January 22, 2015 [after close of trading hours] and the price movement was neither unusual or extra-ordinary. In fact, a comparison of the closing price of the scrip on January 22 , 2015 (before the announcement) and January 23, 2015 (after the announcement) , shows that there was a difference of just under Rs 4/- which by no stretch can be said to be material - it works out to a movement of approximately 0.5%. This is but natural since an acquisition of Rs. 13 crores can never be material for a company with a market capitalization of over Rs. 25,000 crores.

42. It is also noteworthy that the trades on January 8, 20 15 were between the promoters - Noticee No. 1 sold shares while Noticees Nos. 2-7 acquired the shares who had parity of access to the same UPSI. (See Paragraph 9(v) of the SCN).

43. Moreover, it is also an admitted position in the SCN that Noticee Nos. 2-7 did not sell the shares acquired from Noticee No. 1 after the Fravin Acquisition was announced and held the shares for a period of over 6 months (paragraph 2 of the SCN).

44. Therefore, even circumstantial evidence clearly points to the reality being inconsistent with SEBI's hypothesis of insider trading.

45. A copy of extracts from the demat statement for the period of one week before and one week after the announcement in respect of shares of Emami is annexed as Annexure [B].

46. The SCN itself records that "there has been no material price movement in the scrip pursuant to the announcement ...and also the fact that the entities continue to hold the shares after the announcement." (See Paragraph 19 of the SCN).

47. Lastly, it may be noted that the January 20 15 trades were disclosed well prior to the trades being executed in a transparent manner under Regulation 10(4) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011. Annexed as Annexure [C] and Annexure [D] are screenshots from the website of the BSE and the disclosures under Regulation 10(5), effected prior to the execution of the trades. The trades were conducted transparently without anything to hide . Therefore, the market was also aware that an inter-se transfer would be taking place between the promoters.

48. Therefore, it is submitted that the January 201 5 Trades are not violation of Regulation 4(1) of the PIT Regulations.

May 2015 Trades I Kesh King Acquisition

49. The UPSI period according to SEBI commenced on April 30, 2015 when telephonic discussions took place between Emami, the financial and legal advisors of the seller, for finalizing a definitive agreement (See Paragraph 8 of the SCN).

50. As requested by the Learned Adjudicating Officer, it is confirmed that there are no trades on the market by the Noticees one week before the public announcement of the Kesh King Acquisition and one week after the same. The price movement (on the BSE) for the period of one week before the announcement of the Kesh King Acquisition on June 2, 2015 and one week after is set out below:

<i>Date</i>	<i>Open Price</i>	<i>High Price</i>	<i>Low Price</i>	<i>Close Price</i>
May 22, 2015	1020.20	1047.80	1016.50	1026.15
May 25, 2015	1027.00	1032.00	1016.50	1022.95
May 26, 2015	1020.00	1048.80	1020.00	1033.20
May 27, 2015	1030.00	1088.00	1025.00	1080.70
May 28, 2015	1081.05	1109.90	1081.05	1103.85
May 29, 2015	1105.00	1146.00	1105.00	1117.60
June 1, 2015	1119.00	1160.00	1119.00	1131.80
June 2, 2015	1133.00	1146.00	1044.00	1066.15
June 3, 2015	1085.00	1169.90	1074.35	1087.15
June 4, 2015	1083.00	1101.35	1067.65	1073.05
June 5, 2015	1067.65	1108.90	1067.65	1103.10
June 8, 2015	1105.00	1118.00	1052.00	1067.90
June 9, 2015	1078.10	1085.95	1071.80	1076.60
June 10, 2015	1078.00	1093.80	1077.75	1082.30
June 11, 2015	1095.00	1105.50	1078.70	1089.80

(Source: SSE website)

51. The analysis of the price movement on June 2, 2015 i.e. the date of the announcement actually showed that the price did not get impacted at all. For days before the announcement the price was at around or just less than Rs. 1,100 per share and after the announcement too, the price stabilized at that level - Rs 1,066/- (closing price on June 2, 2015). In any event, whether the information is UPSI at all is arguable. The value of the deal at Rs. 1,681 crores was a mere 6% of the Rs.25,000-crore market capitalization of Emami.

52. The trades were executed at an average price of approximately Rs.1,025/- on May 21, 2015 and the closing price as on May 20, 2015 was Rs.1,029.65/- (See Paragraph 7 of the SCN for the closing price).

53. Assuming for the sake of argument that the information was UPSI, there is no mention of whether it was adverse or positive in character. Even this is wholly irrelevant inasmuch as it is an admitted position by SEBI that the buyer and sellers in relation to the trades in question had parity of access to the same UPSI. (See Paragraph 9(v) of the SCN). Besides, as stated above, indeed, the market did not believe the information to be price-sensitive.

54. The SCN itself notes that: (a) there was no information asymmetry and therefore, none of the promoters received any advantage or suffered losses; (See Paragraph 9(v)) and (b) "there has been no material price movement in the scrip pursuant to the announcement...and also the fact that the entities continue to hold the shares after the announcement." (See Paragraph 19 of the SCN) .

55. In fact, Noticee Nos. 2-7 held the shares well after the announcement . A copy of extracts from the demat statement for the period of one week before and one week after the announcement in respect of shares of Emami is annexed as **Annexure [E]**.

56. Lastly, it may be noted that the May 2015 trades were disclosed well prior to the trades being executed in a transparent manner under Regulation 10(5) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulation s, 20 1 1. Annexed as **Annexure [E]** and **Annexure [G]** are screenshots from the website of the BSE and the disclosures under Regulation 10(5), effected prior to the execution of the trades. The trades were conducted transparently without anything to hide. Therefore, the market was also aware that an inter-se transfer would be taking place between the promoters.

Noticees did not have access to the purported UPSI

57. Another aspect that is vital for SEBI to establish to bring home a charge of insider trading is that the Noticees indeed had access to UPSI. Assuming for the sake of argument that the Fravin Acquisition and the Kesh King Acquisition were indeed UPSI, it would have to be shown that the Noticees in fact had access to such alleged UPSI.

58. The SCN has proceeded on the basis that since the Noticees are promoters, they are deemed connected persons and therefore "insiders" who may reasonably be said to be in possession of UPSI. This is an incorrect presumption without any basis in fact or in law.

59. It may be noted that Regulation 2(1)(d)(ii) of the PIT Regulations, which sets out the persons who are "deemed to be connected persons", promoters have presumably not been deliberately included in the list by SEBI. Not every promoter of a listed company can be presumed to legitimately have access to UPSI. For the SCN to conclude that the Noticees had access to UPSI simply by virtue of being connected persons presumes that such Noticees had acted in contravention of Regulation 3 of the PIT Regulations, a finding for which there is no basis set out in the SCN . To demonstrate the same, it would be necessary to investigate whether there were calls or emails or other communication from insiders in possession of UPSI to the

Notices. To review such findings, it would be vital to examine the investigation report. If the investigation report is silent in this regard, no charge may be levelled.

60. Indeed, an Adjudicating Officer of SEBI has in an order dated October 3, 2016 in the matter of Piramal Enterprises Limited (Ref NO.EAD-5/ SVKM/ DS/ A0/ 08-13/ 2016- 17) held that a promoter who was neither a director nor an employee and had access to UPSI without any legitimate basis, would be guilty of contravention of the "need-to-know" principles under the 1992 Insider Trading Regulations. The Learned Adjudicating Officer in that case observed:

"It is necessary to ensure that UPSI is shared strictly on a need to know basis and not communicated to others who are not involved in the transaction irrespective of their position in the company or relationship with promoters and senior management. Piramal Healthcare Ltd. in its letter dated January 21, 2011 has listed out the names and designations of all the persons who were privy to the decision at every stage and Shri Anand Piramal was one amongst them. Noticee Nos. 1 to 5 should have shared the price sensitive information very discreetly. Thus, Noticee Nos. 1 to 5 failed to exercise discretion and due diligence and should have avoided sharing of information with regard to the proposed sale with Shri Anand Piramal who is neither a Director nor an employee of PEL."

(Emphasis Supplied)

61. The Noticees were neither officers nor employees of Emami and had no role to play in the discussions relating to the Fravin Acquisition and the Kesh King Acquisition. None of the Noticees in question had any access to the alleged UPSI and were not involved in discussions relating to the Fravin Acquisition and the Kesh King Acquisition. There is no material provided so far to suggest any actual or real possession of the alleged UPSI. It is evident that those who are listed as being in possession of information about these acquisitions do not include the Noticees.

62. Emami as a listed company and has a dedicated professional team that handles Mergers and Acquisitions. As a listed company, Emami is conscious of the fact that UPSI should not be communicated except on a need-to-know basis. Under Emami's Code of Practices and Procedures for Fair Disclosure of UPSI, there is an explicit provision that UPSI Shall be handled on a need-to-know basis. Emami has appropriate and adequate arrangements in place that ensure that UPSI is not communicated except in accordance with need -to-know principles.

63. Therefore, in order for SEBI to conclude that the Noticees had access to UPSI, it would be incumbent on SEBI to establish that the need to know principles had been breached and UPSI was communicated in violation of Regulation 3 of the PIT Regulations. There is not a whisper in the SCN on this fundamental question which goes to the root of the charge in the SCN. Indeed, it is for this reason the Noticees had sought inspection inter-alia of the Investigation Report.

64. *It is humbly submitted that even assuming for the sake of argument (without conceding) that information relating to the Fravin Acquisition and the Kesh King Acquisition was UPSI, the Noticees did not have access to the same and therefore, no regulatory intervention is warranted."*

24. At this juncture, I deem it necessary to quote the judgment of the Hon'ble Securities Appellate Tribunal (SAT), in the case of Mayrose Capfin Private Limited V/s. Securities and Exchange Board of India (Appeal No. 20 of 2012) dated 30.03.2012 wherein it was observed that *"The principles of natural justice require that the inquiry officer should make available such document and material to the delinquent on which reliance is being placed in the inquiry. It is not necessary for the inquiry officer to make available all the material that might have been collected during the course of investigation, but, has not been relied upon for proving charge against the delinquent. No prejudice can, therefore, be said to have been caused to the appellant on this count"*.

25. In this regard, I also note the submissions of the Noticees vide their letter dated February 15, 2018 wherein it was stated that *"With regard to your averment to the observations of the Hon'ble SAT in the matter of Mayrose Capfin Pvt Ltd in their order of March 30, 201, our clients would like to draw your attention to the order of the Hon'ble Supreme Court of India in the matter of Price Waterhouse Coopers vs SEBI passed on January 10, 2017 holding that all documents relied upon by SEBI are to be made available to the noticees"*. In this regard, I further note the subsequent decision of Hon'ble SAT dated 12.05.2017 passed in the matter of B. Ramalinga Raju vs. SEBI whereby Hon'ble SAT after considering the Judgment dated 10.01.2017 passed by Hon'ble Supreme Court in the matter of Price Waterhouse Coopers held that the observations made by Hon'ble Supreme Court were general directions given as and by way of clarifications without going into the merits of the case and the same could not be said to be the ratio laid down by Hon'ble Supreme Court as to be applicable to all cases. The said observations of Hon'ble SAT are reproduced hereunder:

“21.Fourthly, Apex Court in case of Price Waterhouse has specifically recorded that the directions given in that case are general directions given as and by way of clarifications without going into the merits of the case. Therefore, directions given in the facts of Price Waterhouse cannot be said to be the ratio laid down by the Apex Court applicable to all other cases. In these circumstances, appellants are not justified in contending that the directions given by the Apex Court in case of Price Waterhouse must be applied to the case of the appellants.”

26. In view of the aforesaid, I note that all the relevant documents that have been relied upon with respect to the charge levelled against the Noticees vide the SCN have been provided to them. Therefore, I am proceeding further with the instant matter based on the material on record.

CONSIDERATION OF ISSUES AND FINDINGS

27. After perusal of the material available on record, I have the following issues for consideration viz.

- I. Whether the Noticees have violated the provisions of regulation 4(1) of PIT 2015 read with Section 12A(d) of the SEBI Act, 1992?
- II. Whether the Noticees are liable for monetary penalty under Section 15G(i) of the SEBI Act?
- III. If so, what quantum of monetary penalty should be imposed on the Noticees?

FINDINGS

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

ISSUE I: Whether the Noticees have violated the provisions of regulation 4(1) of PIT 2015 read with Section 12A(d) of the SEBI Act, 1992?

29. I note the provisions of regulation 4(1) of PIT Regulations, 2015 and Section 12A(d) of the SEBI Act, 1992, which are reproduced hereunder:-

PIT Regulations, 2015

Trading when in possession of unpublished price sensitive information.

4. (1) No insider shall trade in securities that are listed or proposed to be listed on a stock exchange when in possession of unpublished price sensitive information:

Provided that the insider may prove his innocence by demonstrating the circumstances including the following : –

(i) the transaction is an off-market inter-se transfer between promoters who were in possession of the same unpublished price sensitive information without being in breach of regulation 3 and both parties had made a conscious and informed trade decision;

(ii) in the case of non-individual insiders: –

(a) the individuals who were in possession of such unpublished price sensitive information were different from the individuals taking trading decisions and such decision-making individuals were not in possession of such unpublished price sensitive information when they took the decision to trade; and

(b) appropriate and adequate arrangements were in place to ensure that these regulations are not violated and no unpublished price sensitive information was communicated by the individuals possessing the information to the individuals taking trading decisions and there is no evidence of such arrangements having been breached;

(iii) the trades were pursuant to a trading plan set up in accordance with regulation 5.

NOTE: When a person who has traded in securities has been in possession of unpublished price sensitive information, his trades would be presumed to have been motivated by the knowledge and awareness of such information in his possession.

The reasons for which he trades or the purposes to which he applies the proceeds of the transactions are not intended to be relevant for determining whether a person has violated the regulation. He traded when in possession of unpublished price sensitive information is what would need to be demonstrated at the outset to bring a charge. Once this is established, it would be open to the insider to prove his innocence by demonstrating the circumstances mentioned in the proviso, failing which he would have violated the prohibition.

SEBI Act, 1992

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

12A. No person shall directly or indirectly—

.....

(d) engage in insider trading;

30. Before proceeding further, I note that it is not in dispute that the Noticees were the promoters of the Emami during the two announcement constituting the alleged violation specified in SCN. I also note that the Noticees have not disputed the carrying out of the following alleged trades assailed with the charge of violative insider trading under 4(1) of the PIT Regulations, 2015 as specified in SCN.

- a. Sale of 52,000 shares by Noticee No. 1 and purchase of 52,000 shares by Noticee Nos. 2-7 on January 8, 2015 ("January 2015 trades") allegedly in possession of alleged UPSI relating to the Fravin Acquisition and
- b. Sale of 64,000 shares by Noticee No. 1 and purchase of 64,000 shares by Noticee Nos. 2-7 on May 21, 2015 ("May 2015 trades") allegedly in possession of alleged UPSI relating to the Kesh King Acquisition

31. Firstly, I note the submissions of the Noticee with respect to the alleged violative insider trading on January 08, 2015 pertaining to Fravin Acquisition. The Noticees

have *inter alia* submitted that the PIT Regulations, 2015 were published in the Gazette on January 15, 2015 and that Regulation 1(2) of the PIT Regulations, 2015 expressly provided that the regulations would come into force on the 120th day from the date of publication in the gazette i.e. on May 15, 2015 and that the PIT Regulations cannot be applied retrospectively to the January 2015 Trades. I find merit in the aforesaid contention of the Noticees. In view of the same, I conclude that the charge against the Noticees with respect to January 2015 does not merit consideration.

32. I now proceed to deal with the charge pertaining to the May 2015 trades. The Noticees have made a detailed submission in their reply dated March 22, 2018 which has been duly perused. At this juncture, I consider it necessary to address the following to deal with the instant issue at hand:

- A) Whether the information in question i.e. Kesh King Acquisition constituted an UPSI?
- B) If so, whether the Noticees had access to the said UPSI at the time of the May 2015 Trades?
- C) If so, whether the May 2015 trades by the Noticee are violative of the Regulation 4(1) of PIT Regulations, 2015?

I proceed to answer the above in the facts and circumstances of the case giving due regards to the material available on record hereunder:

A) Whether the information in question i.e. Kesh King Acquisition constituted an UPSI?

33. In this regard, I note the Regulation 2(1)(n) of the PIT Regulations, 2015 defines "unpublished price sensitive information" and reads as follows:

Definitions

2(1) (n) "unpublished price sensitive information" means any information, relating to a company or its securities, directly or indirectly, that is not generally available which upon becoming generally available, is likely to materially affect

the price of the securities and shall, ordinarily including but not restricted to, information relating to the following: -

- (i) financial results;
- (ii) dividends;
- (iii) change in capital structure;
- (iv) mergers, de-mergers, acquisitions, delistings, disposals and expansion of business and such other transactions;
- (v) changes in key managerial personnel; and
- (vi) material events in accordance with the listing agreement.

NOTE : It is intended that information relating to a company or securities , that is not generally available would be unpublished price sensitive information if it is likely to materially affect the price upon coming into the public domain. The types of matters that would ordinarily give rise to unpublished price sensitive information have been listed above to give illustrative guidance of unpublished price sensitive information."

34. I note that such information would be UPSI which is not generally available and upon becoming generally available, is likely to materially affect the price of the securities. The Noticees have argued that the listed illustrations in the aforesaid regulation are ordinarily in the nature of UPSI, which also meant they need not be UPSI. They have contended that merely because a particular type of event is listed it would not follow that it would inexorably constitute UPSI regardless of the materiality of its potential price impact. While I agree with the said argument of the Noticee that a particular type of event being listed would not necessarily constitute UPSI regardless of the materiality of its potential price impact, the facts and circumstance of the case will have to be looked into to ascertain the same.

35. The Noticees vide their submissions dated March 22, 2018 have submitted the price movement (on the BSE) for the period of one week before the announcement of the Kesh King Acquisition on June 2, 2015 and one week after which is set out below:

Date	Open Price	High Price	Low Price	Close Price
May 22, 2015	1020.20	1047.80	1016.50	1026.15

May 25,2015	1027.00	1032.00	1016.50	1022.95
May 26,2015	1020.00	1048.80	1020.00	1033.20
May 27,2015	1030.00	1088.00	1025.00	1080.70
May 28,2015	1081.05	1109.90	1081.05	1103.85
May 29,2015	1105.00	1146.00	1105.00	1117.60
June 1 ,2015	1119.00	1160.00	1119.00	1131.80
June 2, 2015	1133.00	1146.00	1044.00	1066.15
June 3,2015	1085.00	1169.90	1074.35	1087.15
June 4,2015	1083.00	1101.35	1067.65	1073.05
June 5, 2015	1067.65	1108.90	1067.65	1103.10
June 8,2015	1105.00	1118.00	1052.00	1067.90
June 9,2015	1078.10	1085.95	1071.80	1076.60
June 10,2015	1078.00	1093.80	1077.75	1082.30
June 11, 2015	1095.00	1105.50	1078.70	1089.80

36. As also stated in the SCN there had been no material price movement in the scrip pursuant to the announcement. However, in this case, I further note from the preliminary report provided by BSE vide its email dated December 28, 2015 that on May 21, 2015, BSE had referred to the media flash on ET Now at 13:50 titled “*Emami is in advanced talks to buy Kesh King brand from Himachal Pradesh SBS Biotech. Deal to be valued around Rs. 1800 crs.*” In this background, I am of the view that the price movement of the scrip during the UPSI period also needs to be looked into and the same is as follows:

Date	Prev Close	Open Price	High Price			Close Price	Total Traded Quantity	Turnover in Lacs	No. of Trades
				Low Price	Last Price				
4-05-15	930.45	931.00	935.00	894.00	905.00	906.90	204172	1854.48	12903
5-05-15	906.90	910.00	930.00	900.20	928.95	924.65	106631	985.64	5282
6-05-15	924.65	928.00	932.65	903.00	903.00	911.50	213944	1962.55	4575
7-05-15	911.50	911.35	911.35	870.00	877.00	881.45	61369	547.11	2690
8-May- 15	881.45	887.00	917.95	887.00	903.25	905.80	83753	756.81	3517
11-May- 15	905.80	912.85	952.75	898.00	945.00	945.15	227827	2096.10	5477
12-05-15	945.15	948.80	952.00	914.25	924.00	928.85	91746	849.27	4199
13-05-15	928.85	930.00	949.00	911.10	940.00	936.65	377960	3517.50	17305
14-05-15	936.65	947.90	1049.00	927.00	1020.00	1017.95	1001400	10013.49	35184
15-05-15	1017.95	1019.00	1043.40	1018.00	1031.15	1032.65	281405	2906.36	14199
18-05-15	1032.65	1026.10	1060.00	983.30	1046.00	1041.30	148626	1553.87	13997
19-05-15	1041.30	1040.00	1055.50	1026.50	1044.00	1046.90	51265	536.93	4855
20-05-15	1046.90	1056.00	1056.00	1021.75	1027.00	1030.90	44926	465.23	3759
21-05-15	1030.90	1049.00	1049.00	1006.00	1016.00	1012.55	96905	993.48	1797
22-05-15	1012.55	1010.00	1046.00	1008.50	1025.00	1026.40	51793	533.74	2982
25-May- 15	1026.40	1030.00	1034.95	1016.00	1025.00	1024.65	31881	325.99	1527

26-05-15	1024.65	1024.65	1047.90	1012.00	1035.00	1035.40	37789	391.96	2139
27-05-15	1035.40	1026.15	1088.00	1025.50	1077.10	1081.15	179586	1914.61	8045
28-05-15	1081.15	1085.10	1113.05	1085.10	1111.00	1103.85	135484	1491.13	4904
29-05-15	1103.85	1111.00	1147.40	1106.00	1121.00	1120.35	139735	1575.46	8617
1-Jun -15	1120.35	1121.60	1159.00	1115.00	1135.00	1134.50	180414	2062.01	10347
2-06-15	1134.50	1128.85	1146.70	1040.60	1060.00	1063.65	350396	3775.99	17614
3-06-15	1063.65	1084.00	1115.00	1070.20	1085.05	1088.95	281235	3074.06	15769
4-06-15	1088.95	1095.00	1099.80	1070.00	1073.15	1076.70	100543	1084.51	8045
5-06-15	1076.70	1085.00	1100.75	1077.10	1107.40	1105.70	98121	1080.40	8093
8-06-15	1105.70	1101.35	1116.95	1051.10	1077.95	1069.15	107945	1170.59	6508
9-06-15	1069.15	1055.20	1085.00	1055.20	1085.00	1078.65	80577	869.97	5285
10-06-15	1078.65	1080.00	1091.85	1074.85	1083.00	1085.95	323035	3490.52	9847
11-06-15	1085.95	1076.00	1109.00	1076.00	1090.00	1093.95	121799	1334.76	9390

37. From the above, it is noted that the price of the scrip opened at Rs. 931 on May 4, 2015 and closed at Rs. 1063 on June 2, 2015. In this regard, I further note from the documents submitted by the Noticees vide their reply dated March 22, 2018, on the same day i.e. on May 14, 2015 vide its email at 5:58 PM, Emami had forwarded the disclosure under regulation 10(5) of SAST Regulations, 2011 intimating the stock exchanges about the details of the proposed acquisition of shares through inter se transfers between the Noticees on May 21, 2015. It is noted that on the said date, i.e May 14, 2015 the price of the scrip opened at Rs. 936.65 and reached the high price of Rs. 1049 and closed at Rs. 1020. I also note that the Noticees have submitted that the value of the (Kesh King) deal was Rs. 1,681 crores claiming that the same was 6% of the Rs.25,000-crore market capitalization of Emami and that would not materially impact the price movement of the scrip. However, I am of the view that, when the total income of the company is taken into consideration i.e. Rs. 524.93 Crores in the March 2015 quarter, the Kesh King will amount to a deal of significant value having possible impact on the financials. I am also of the view that an information to be qualified as an UPSI before it is made public, there has to be a likelihood of it materially affecting the price movement of the scrip on being made public. It also note that, the event involving the alleged UPSI in the instant case is in the nature of acquisition, which has been listed under regulation 4(1) of the PIT Regulations, 2015 and therefore the prospect of same to qualify as such information to be likely to cause material price movement on its becoming public would be more. In addition to the same, considering the value of the Kesh

King deal taken together with the significant price movement on May 14, 2018, the day when the intimation of the inter se transfers was made as has already brought out above, in the current facts and circumstances of the case, I am inclined to conclude that, the said information in question constituted UPSI.

B) If so, whether the Noticees had access to the said UPSI?

38. The submissions of the Noticees in this regard are duly noted. It has been *inter alia* contended that Regulation 2(1)(d)(ii) of the PIT Regulations, 2015 which sets out the persons who are "deemed to be connected persons", promoters have presumably not been deliberately included in the list by SEBI and that not every promoter of a listed company can be presumed to legitimately have access to UPSI. In this regard, I note the following table which describes the connection between the Noticees.

Sr No.	Name	Promoter	Remarks
1	Amitabh Goenka	Yes	Amitabh Goenka is nephew of whole time director namely Radhe Shyam Goenka and Managing Director Sushil Kumar Goenka. He is also cousin on 2 whole time directors namely Mohan Goenka and Prashant Goenka. Further, he has same address as Mr. R.S. Goenka i.e. 11 OA, Southern Avenue, Kolkata - 700019. Mr. Amitabh Goenka and Mr. Radheshyam Goenka are directors in Suraj Viniyog Pvt. Ltd.
2	Bhanu Vyapaar Pvt Ltd	Yes	2 of the directors of Bhanu Vyapaar Pvt. Ltd. are Mohan Goenka and Radhe Shyam Goenka who are also directors in Emami Ltd.
3	Diwakar Viniyog Pvt Ltd	Yes	Directors of Diwakar Viniyog Pvt. Ltd. Are namely Sushil Kumar Goenka, Harsha Vardhan Agarwal and Radhe Shyam Agarwal. Harsha Vardhan Agarwal and Radhe Shyam Agarwal are Whole time directors in Emami Ltd. while Sushil Kumar Goenka Is Managing Director in Emami Ltd.
4	Emami High Rise Private Ltd	Yes	Sushil Kumar Goenka who is Managing Director of Emami Ltd., is also director of Emami High Rise Pvt. Ltd.
5	Suraj Viniyog Pvt Ltd	Yes	Whole time director of Emami Ltd. Mr. Radhe Shyam Goenka is director in Suraj Viniyog Ltd. Also. Further, Amitabh Goenka is also director in Suraj Viniyog Pvt. Ltd.

6	Suntrack Commerce Pvt Ltd	Yes	Three directors of Suntrack Commerce Pvt. Ltd. namely Harsha Vardhan Agarwal, Radhe Shyam Agarwal and Radhe Shyam Goenka are Whole Time Directors in Emami Ltd.
7	Emami Enclave Makers Private Limited	Yes	2 directors of Emami Enclave Makers Pvt. Ltd. Namely Prashant Goenka and Mohan Goenka are Whole time Directors in Emami Ltd.

39. From the above, it is noted that that Mr. Radhe Shyam Goenka, who is the whole time director of Emami is also a common Director of Noticee-2, Noticee-3, Noticee-5 and Noticee 6. Further, Mr. Sushil Kumar Goenka who is the Managing Director of Emami is also a director of Noticee – 4. Further, Noticee-1 is the nephew of Mr. Radhe Shyam Goenka and Mr. Sushil Kumar Goenka and also one of the directors of Noticee-5 along with Mr. Radhe Shyam Goenka. Further, Noticee -1 has the same address as that of Mr. Radhe Shyam Goenka. Further, it is also noted from the list of entities/person who were aware of the UPSI i.e. Kesh King announcement as provided by Emami vide its email dated December 21, 2015 that Mr. Radhe Shyam Goenka and Mr. Sushil Kumar Goenka were aware of the UPSI. In this regard, I refer to the provision of Regulation 2(1)(d) of PIT Regulations.2015 which read as under:

2(1)(d) "connected person" means,- (i) any person who is or has during the six months prior to the concerned act been associated with a company, directly or indirectly, in any capacity including by reason of frequent communication with its officers or by being in any contractual, fiduciary or employment relationship or by being a director, officer or an employee of the company or holds any position including a professional or business relationship between himself and the company whether temporary or permanent, that allows such person, directly or indirectly, access to unpublished price sensitive information or is reasonably expected to allow such access.

40. From the above, it is noted that connected person includes any person who has been associated with a company, directly or indirectly, in any capacity inter alia by reason of frequent communication with its officers that allows such

person, directly or indirectly, access to unpublished price sensitive information or is reasonably expected to allow such access. While the PIT Regulations, 2015 does not define the word “*Officers*”, the Regulation 2(2) of the PIT Regulations, 2015 inter alia refers to Companies Act, 2013 for the words that have not been defined thereunder. Accordingly, I note that section 2(59) of the Companies Act, 2013 lays down that “officer” includes any director, manager or key managerial personnel or any person in accordance with whose directions or instructions the Board of Directors or any one or more of the directors is or are accustomed to act. In this background, noting the connection of Noticees -1 to 6 with Mr. Radhe Shyam Goenka and Mr. Sushil Kumar Goenka, Whole-time Director and Managing Directors of Emamai respectively and that they had access to UPSI, I am of the view that Noticees- 1 to 6 were connected persons and therefore are also insiders within the meaning of the Regulation 2(1)(g) of PIT Regulations, 2015.

41. Having noted the above, at this juncture, I further refer to Regulation 3 of the PIT Regulations, 2015 which specifically prohibits the insiders with access to UPSI from communicating the same to any person including the other insiders. The said regulation also provides that such information could be communicated only in furtherance of legitimate purposes, performance of duties or discharge of legal obligations and also only after the execution of agreements to contract confidentiality and non-disclosure obligations. It is not in dispute that Mr. Radhe Shyam Goenka and Mr. Sushil Kumar Goenka had access to the UPSI. Though the Noticees-1 to 6 are deemed connected entities with the aforesaid 2 directors, it cannot be deemed that these Noticees had accessed UPSI. Further, in view of the specific restriction on communication of UPSI by the insiders contemplated under regulation 3 of PIT Regulations, 2015, evidence to show that the same has been communicated by the aforesaid 2 directors to the Noticees have to be specifically brought out. However, the same is not available on record in the instant case.

42. Further, I also note that, from the material available on record, though it is noted that Noticee-7 is one of the promoters of Emami, the evidence with respect to

Noticee-7 being connected/deemed connected to persons having access to UPSI is not forthcoming. Therefore, agreeing with the argument of the Noticees as noted at para above, I conclude that charge against the Noticee-7 stands not proved.

C) If so, whether the May 2015 trades by the Noticees are violative of the Regulation 4(1) of PIT Regulations, 2015?

43. I note that, it is the fact of the case that none of the Noticees received any undue advantage or suffered losses as there was no asymmetry of availability of information among the Noticees. However, I also note that all the Noticees are admittedly the promoters of Emami and the trades in question were admittedly carried out *on market*. At this juncture, I refer to the provision of Regulation 4(1) of PIT Regulations, 2015 which reads as “**4. (1)** *No insider shall trade in securities that are listed or proposed to be listed on a stock exchange when in possession of unpublished price sensitive information:*

Provided that the insider may prove his innocence by demonstrating the circumstances including the following : –

(i) the transaction is an off-market inter-se transfer between promoters who were in possession of the same unpublished price sensitive information without being in breach of regulation 3 and both parties had made a conscious and informed trade decision;”

44. In light of the aforesaid, it has been alleged that the May 2015 trades by the Noticee-1 to 6 are violative of Regulation 4(1) of PIT Regulations, 2015. Vide its reply, the Noticee has contended that one of the illustrative list of defences set out in the proviso to Regulation 4(1) of the PIT Regulations, 2015 cannot be read as the only defense that is available and that the defenses enumerated in the proviso are illustrative and not exhaustive and the Noticees have put forth a detailed argument to drive home their said argument. In this regard, I note that it is fairly agreeable that the list of defenses envisaged under regulation 4(1) of PIT Regulations, 2015 is not exhaustive and the Noticees cannot be precluded from

bringing on any other defenses that are not listed under regulation 4(1). However, I also note in this regard that, such defence that has not been specifically mentioned under regulation 4(1) ought not to be inconsistent or contrary to the ones that have already been specified under regulation 4(1).

45. I note that the Noticees vide their reply dated March 22, 2018 have submitted that the May 2015 trades were disclosed well prior to the trades being executed in a transparent manner under Regulation 10(5) of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011. In support of the same, the Noticees submitted screenshots from the website of the BSE and the disclosures under Regulation 10(5), effected prior to the execution of the trades. The Noticees stated that the trades were conducted transparently without anything to hide and that the market was also aware that an inter-se transfer would be taking place between the promoters. I have perused the said contention of the Noticees along with the documents available on record. I note that the Noticees had submitted to the exchanges on May 14, 2015, the disclosures under regulation 10(5) of SAST Regulations, 2011. On perusal of the copy of the disclosure, it is noted that the said transaction was intimated to be an *inter se* transfers between the Noticees where Noticees-2 to 7 would acquire 67,000 shares from Noticee-1. I note that the Noticees have stated that the said acquisition would be through inter se transfer among promoters through registered stock broker at market price and the proposed date of acquisition was on and after May 21, 2015.

46. Having considered the above, I now refer to regulation 4(1) of the PIT Regulations, 2015. The said regulation provides for one of the cases of the defense to the Noticees as an off-market inter-se transfer between promoters in possession of the same UPSI and all parties had made a conscious and informed trade decision. In the instant case, from the above, the Noticees have made a prior intimation that the transfers would be inter-se transfers between the promoters. Further, I also note that Emami has submitted the pre-clearance orders dated May 15, 2015 issued to the Noticees pursuant to their request in respect of the said transfer. In

the said circumstances, I am of the view that the said transfers were primarily inter-se in nature and pre-arranged. When the Noticees intimated to the exchanges that the said transfers would be effected by way of inter se transfers through registered stock broker at market price, the same was intended to be carried out on Market. Such inter se transfers could have been effected by way of Block deal on market. However, I note that, except Noticee-1, who would sell 64,000 shares of value exceeding Rs. 5 crores, the transfers to be effected by Noticee 2 to 7 would fall short of the requirement of a Block Deal. Therefore, I am of the view that the transfers have been effected on market. It is pertinent to note that it is not the allegation that there was any asymmetry of availability of information among the Noticees. Therefore, I am of the view that, in the facts and circumstances, the Noticees had made a conscious and informed trade decision as the same was pre-arranged.

47. Having observed as above, I find it pertinent to note the following observation of Hon'ble Securities Appellate Tribunal (SAT) in the case of Dilip S. Pendse vs. Securities and Exchange Board of India [Appeal no. 80 of 2009 decided on November 19, 2009] –

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

48. In the facts and circumstance of the case and referring to my findings in the preceding paragraphs, I note that though the Noticees-1 to 6 have been concluded as insiders, there has been no material available on record to show that the UPSI was in access by them and that the May 15 transfers were inter se in nature and the Noticees had made a conscious and informed trade decision as the same were pre-arranged. Agreeing with the Noticees' submission and the observation of Hon'ble SAT as cited above, the charge of insider trading being of a serious nature and there needs to be a higher degree of proof for the preponderance of probability having regard to the gravity of the charge, I conclude that the benefit of doubt is to be given to the Noticees in view of my findings and observations made above. Therefore, I conclude that the Noticees have not violated the provisions of regulation 4(1) of PIT 2015 read with Section 12A(d) of the SEBI Act, 1992.

ISSUE II. Whether the Noticees are liable for monetary penalty under Section 15G(i) of the SEBI Act, 1992?

49. In view of the conclusion arrived at para 48 above, I conclude that the instant issue doesn't survive for consideration.

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

50. Since the Noticees are not liable for monetary penalty in the instant matter, this issue deserves no consideration.

ORDER

51. In view of my findings noted in the preceding paragraphs, I hereby dispose of the Adjudication Proceedings initiated against Amitabh Goenka, Bhanu Vyapaar Pvt. Ltd., Diwakar Viniyog Private Ltd, Emami Highrise Private Limited, Suraj Viniyog Pvt Ltd, Suntrack Commerce Pvt Ltd and Emami Enclave Makers Private Limited vide Show Cause Notice dated 30.11.2017.

52. In terms of the provisions of Rule 6 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules 1995, a copy of this order is being sent to Amitabh Goenka, Bhanu Vyapaar Pvt. Ltd., Diwakar Viniyog Private Ltd, Emami Highrise Private Limited, Suraj Viniyog Pvt Ltd, Suntrack Commerce Pvt Ltd and Emami Enclave Makers Private Limited at their respective addresses and also to the Securities and Exchange Board of India, Mumbai.

Place: MUMBAI
Date: MAY 18, 2018

B J DILIP
ADJUDICATING OFFICER