**BEFORE THE ADJUDICATING OFFICER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

**[ADJUDICATION ORDER NO. RA/JP/ 228 - 229 /2017]**

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**UNDER SECTION 15-I (2) OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 AND RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995.**

In respect of:-

Mr. Pavel Garg (PAN: AALPG2923R)

Ms. Poonam Garg (PAN: AAGPG2986F)

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**BACKGROUND**

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') had carried out investigations in the trading of shares of Mudit Finlease Ltd. (hereinafter referred to as "**MFL/Company**") for the period from March 03, 2010 to July 03, 2012 (**Investigation period**) to find out the possible irregularities / violations in the shares of MFL. Investigations *prima facie* revealed that (1) Mr. Pavel Garg- Promoter/Managing Director / Compliance Officer of the MFL and (2) Ms. Poonam Garg- Promoter / Non-Executive Director of MFL (hereinafter referred to as "**Noticee No. 1 to 2**" respectively or as **"the Noticees"** collectively) had indulged into violations of regulation 3(i) and 4 of the SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as **'PIT Regulations')** read with section 12A (d) and (e) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**') and Clause 1.2 of the model code of conduct specified under Part A of the Schedule I read with regulation 12 (1) and 12(3) of PIT Regulations.

## APPOINTMENT OF ADJUDICATING OFFICER

2. SEBI had initiated adjudication proceedings and vide order dated January 29, 2016 appointed the undersigned as the Adjudicating Officer under section 15 I of the SEBI Act read with rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as **'Adjudication Rules'**) to inquire into and adjudge under section 15 G and 15 HB of the SEBI Act, the violations of aforesaid provisions of SEBI Act and PIT Regulations alleged to have been committed by the Noticees.

## SHOW CAUSE NOTICE, REPLY AND HEARING

3. A common Show Cause Notice No. E&AO/RA/JP/14904/2016 dated May 24, 2016 (hereinafter referred to as **"SCN"**) was served upon the Noticees under rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be held and penalty be not imposed against them under sections 15G and 15 HB of the SEBI Act for the alleged violations of regulation 3(i) and 4 of the PIT Regulations read with section 12A (d) and (e) of the SEBI Act and Clause 1.2 of the code of conduct specified under Part A of the Schedule I read with regulation 12 (1) and 12(3) of PIT Regulations. The allegations levelled against the Noticees are briefly mentioned hereunder.

4. *MFL vide reply dated January 30, 2015 provided the following chronology of events.*

| ***Sl. No.*** | ***Date*** | ***Time (approx.)*** | ***Nature of event*** |
|---|---|---|---|
| *1.* | *01-Feb-12* | *N.A.* | *The accountant finalized the financial result on February 01, 2012 for the quarter ended December 2011.* |
| *2.* | *02-Feb-12* | *N.A.* | *The company had finalised the date of the Board Meeting and issued the notice of Board Meeting to consider the financial results for the quarter ended* |

| | | | |
|---|---|---|---|
| | | | *December 2011.* |
| *3.* | *13-Feb-12* | *N.A.* | *The Statutory Auditors completed the limited review of the financial results and presented the same further for review by the Audit Committee and for consideration of the Board of Directors.* |
| *4* | *13-Feb-12* | *N.A.* | *The financial results were reviewed by the Audit Committee and the same were taken on record by the Board of Directors at their meeting.* |
| *5.* | *13-Feb-12* | *10:30 hrs* | *Board Meeting* |
| *6.* | *21-Feb-12* | *13:00 hrs* | *Official Public Announcement to stock exchange* |

5. *That Mr. Pavel Garg / Noticee No. 1 was the Promoter / Managing Director / Compliance Officer of the MFL and hence, he was involved in official capacity in all the aforesaid events. The Noticee No. 2 / Mrs. Poonam Garg was Promoter / Non-Executive Director of MFL and was the wife of Noticee No. 1, therefore, she was involved in official capacity in all the event except event no.1. That the Noticee No. 1 being in such position was in charge of the day to day management of the Company. From the aforesaid letter dated January 30, 2015 of MFL, the Noticee No. 1 was shown in the list of people who were 'Insider' for finalization of the financial results for quarter ended December 2011. It was alleged that the Noticee No. 1 was reasonably expected to be privy to the Price Sensitive Information (**PSI**) of the MFL, and thus he had an access to the PSI. It was therefore alleged that the Noticees were insiders in terms of regulation 2(e) of the PIT Regulations.*

6. *That the unaudited financial statements of the Company was in shape of presentation to its Board by February 02, 2012 (when the agenda was sent to the directors for the Board meeting scheduled on February 13, 2012) and thus the date of existence of the PSI for unaudited financial results was February 02, 2012. MFL on February 21, 2012 at 13:00 informed BSE Ltd (**BSE**) about the Financial Results for the Quarter*

*ended December, 2011 and thus the PSI was published on February 21, 2012. Therefore, the period of Unpublished Price Sensitive Information* ***(UPSI****) was between the period from February 02, 2012 to February 21, 2012.*

7. *That the Noticees being in possession of UPSI had traded and sold 92,400 shares during period February 02, 2012 to February 21, 2012 (UPSI period). The trading details are shown in below table.*

| ***UPSI period*** | ***Date*** | ***Name*** | ***Shares sold*** |
|---|---|---|---|
| *2nd to 21st February, 2012* | *02-Feb-12* | *Pavel Garg* | *12,000* |
| | *07-Feb-12* | | *20,000* |
| | *08-Feb-12* | | *17,900* |
| | *07-Feb-12* | *Poonam Garg* | *15,000* |
| | *08-Feb-12* | | *14,900* |
| | *15-Feb-12* | | *12,600* |
| | ***Total*** | | ***92,400*** |

8. *It was alleged that the Noticees being the "Insider" of the MFL and were in possession of UPSI, had traded during the period when PSI was unpublished, hence, they had violated regulation 3(i) and 4 of the PIT Regulations read with section 12A (d) and (e) of SEBI Act. The said provisions are shown below;*

*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;*

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

**SEBI Act**

***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;*

*(e) deal in securities while in possession of material or non-public information or communicate such material or non-public information to any other person, in a manner which is in contravention of the provisions of this Act or the rules or the regulations made thereunder;*

9. It was also alleged that the Noticee No. 1 had violated following provisions of law which are as under;

*i. Clause 3.2-1 of the model code of conduct for prevention of insider trading for listed companies as specified under Part A of Schedule I of the PIT Regulations stipulates that "The company shall specify a trading window period, for trading in the company's security. The trading window shall be closed during the time the information referred to in para 3.2-3 is unpublished".*

*ii. Clause 1.2 of the model code of conduct as specified under Part A of Schedule I read with regulation 12 (1) and 12 (3) of PIT Regulations stipulates as:-*

*"The compliance officer shall be responsible for setting forth policies, procedures, monitoring adherence to the rules for the preservation of "Price Sensitive Information", pre-clearing; of designated employees' and their dependents' trades (directly or through respective department heads as decided by the company), monitoring of trades and the implementation of the code of conduct under the overall supervision of the Board of the Board of the listed company."*

10. *It was alleged that the Noticee No. 1 being the Compliance Officer / Managing Director and the person who is in charge of day to day affairs*

*of MFL, had failed to close the trading window during the time when PSI remained unpublished.* It was also alleged that the *'Unaudited Financial Results' for Quarter ended December 2011 were signed by Board of Directors of MFL on February 13, 2012, however, same was communicated belatedly to the stock exchange on February 21, 2012 i.e. 6 days after stipulated time of 45 days as required under listing agreement i.e. clause 41(l) (c). Therefore, it was alleged that the Noticee No. 1 had violated clause 1.2 of the model code of conduct under Part A of the Schedule I read with regulation 12 (1) and 12(3) of PIT Regulations.*

11. *In view of foregoing, it was stated in the SCN that the aforesaid alleged violations, if established, would make the Noticee No. 1 liable for monetary penalty under section 15G and 15HB of the SEBI Act and would make the Notiocee No. 2 liable for monetary penalty under section 15G of the SEBI Act, which reads as follows:*

***Penalty for insider trading.***

*15G. If any insider who,—*

*(i) either on his own behalf or on behalf of any other person, deals in securities of a body corporate listed on any stock exchange on the basis of any unpublished price-sensitive information; or*

*(ii) communicates any unpublished price-sensitive information to any person, with or without his request for such information except as required in the ordinary course of business or under any law; or*

*(iii) counsels, or procures for any other person to deal in any securities of any body corporate on the basis of unpublished price-sensitive information;*

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

***15HB.Penalty for contravention where no separate penalty has been provided.***

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

12. In respect of SCN. the Noticees vide letter dated June 08, 2016 requested additional time till July 07, 2016 for filing reply towards the SCN. Again, vide letter dated July 05, 2016, the Noticees sought additional 1 month time to file reply in the matter. However, without filing reply, the Noticees vide letter dated July 25, 2016 requested to keep the instant proceeding in abeyance as they are in the process of filing settlement application before SEBI in the matter.

13. An intimation from SEBI was received on December 09, 2016 regarding filing of settlement applications No. 3123/2016 and 3122/2016 by respective Noticees under SEBI (Settlement of Administrative and Civil Proceedings) Regulations, 2014. It was also stated by SEBI that the adjudication proceedings may be continued except passing of final order which can be kept in abeyance till the settlement applications are disposed of. Thereafter, on April 21, 2017, SEBI informed that the aforesaid settlement applications have been rejected and requested to continue the instant adjudication proceedings.

14. The Noticees vide their letter dated April 27, 2017 requested for inspection of documents in the matter. An opportunity of inspection of documents was provided to the Noticees vide communique dated May 08, 2017 and they were asked to complete the inspection on or before May 23, 2017 and to submit reply within a week from inspection of documents. After, certain communications with SEBI, the Noticees availed inspection of documents on June 02, 2017 and on June 23, 2017. Copies of minutes of inspection are placed on records.

15. As no reply was received from the Noticees despite lapse of sufficient time after availing opportunities of inspection of documents, therefore, vide a notice dated July 13, 2017, they were again asked to file reply towards the SCN if any, on or before July 27, 2017 and to avail opportunity of hearing on August 03, 2017. In respect of said notice, the Noticees had filed reply dated July 25, 2017 and vide letter dated August 01, 2017 sought adjournment of aforesaid scheduled hearing.

16. Final opportunity of hearing was provided to the Noticees on August 23, 2017 vide notice dated August 08, 2017. Vide said notice, they were also asked to provide authentic proof of Annexure A attached along with their reply dated July 25, 2017. Hearing on August 23, 2017 was attended by the authorized representatives of the Noticees and they reiterated as stated in aforesaid replies. Also, the authorized representatives desired to file by September 02, 2017 the additional written submissions along with authentic proof of Annexure A. Thereafter, additional reply dated September 11, 2017 was received from the Noticees.

17. The core submissions made by the Noticees towards the SCN through their reply dated July 25, 2017, during course of hearing and additional reply dated September 11, 2017, are mentioned below;

Reply of the Noticees

Reply of Pavel Garg

i. I deny all the allegations levied against me in the SCN in entirety. I am the Director of Mudit Finliease Limited since 14th February, 2005. All the activities done by me are only in due course of performing my duties and I am not personally liable for any act done by me during the course of my engagement with company. I had performed all my duties diligently. Effectively I have acted as a trustee of the Company and should not be held liable for any act done during the course of my engagement with the company.

ii. UPSI came into existence on 13th February, 2012 when the result which was finalized by accountant was presented before the Statutory Auditors for their observations and review and thereupon placed before the board for approval during the Board Meeting held on 13th February, 2012.

iii. Trading window was closed from 13th February, 2012 to 14th February, 2012. However, SEBI has made an incorrect assumption by deciding on the trading closure period from 2nd February, 2012 to 21st February, 2012 ("deemed closure period"). The actual trading window was closed from 13th February, 2012 to 14th February, 2012, which was not uploaded / recorded at BSE due to some technical issue, but same was promptly communicated to all the insiders.

iv. My trades on above mentioned three dates were genuine and taken place while I was not in possession of UPSI. So the allegation on me that I was an insider is not justified in its entirety.

v. The Quarterly financial result was published on 15th February, 2012 in two leading newspapers. So, the effort was immediately made on a conclusion of board meeting to made the result public. Announcement was also given to BSE (which was not updated at BSE on same date). Hence, it cannot be alleged that I was not failed to disclose PSI.

vi. For the same violation as alleged on me above, separate SCN is already given to Company – Mudit Finlease Limited for which company has paid the penalty amount. All the act done by me was during course of my employment and it is implied that any loss suffered by my act or omission will be reimbursed by the company. Hence effectively company will bear the penalty levied on me. Hence it is unwarranted duplication of proceedings.

vii. I have sold negligible quantity of 47,900 shares on 2nd, 7th & 8th February 2012 i.e. before closure of trading window period. Further, SEBI has alleged me on the basis of company reply dated 30th January, 2015 where chronology of event is given as below in tabulated form for your perusal:

| **Date** | **Particulars / Event** | **Remark** |
|---|---|---|
| 1st February, 2012 | The accountant finalized the financial result on | I was not involved in preparation of accounts. |

| | | |
|---|---|---|
| | February 01, 2012 for the quarter ended December 2011. | |
| 2nd February, 2012 | The company had finalized the date of the Board Meeting and issued the notice of Board Meeting to consider the financial results for the quarter ended December 2011. | I have sold 12000 shares without knowing the figure of financial result. The notice of Board Meeting was not uploaded at BSE. |
| 7th February, 2012 | Date when I sold the shares of Company while not in possession of UPSI. | I have sold 20000 shares without knowing the figure of financial result. |
| 8th February, 2012 | Date when I sold the shares of Company while not in possession of UPSI. | I have sold 17900 shares without knowing the figure of financial result. |
| 13th February, 2012 | The Statutory Auditors completed the limited review of the financial results and presented the same further for review by the Audit Committee and afterwards it was considered and taken on record by board of directors. | Outcome was given to BSE which was uploaded by BSE on 21st February, 2012. |
| 15th February, 2012 | Quarterly Result officially published in two newspapers i.e. Financial Express (English) and Haribhoomi (Hindi). | Please note that Company has given this work to newspaper / Agency for publication in newspaper on 13th February, 2012 immediately after conclusion of board meeting. |
| 21st February, 2012 | Uploading of Quarterly Result by BSE on its website. | BSE taken on record the financial result dated 13th February, 2012 and uploaded the same after |

| | | |
|---|---|---|
| | | delay. |

viii. I would like to refer order of the Hon'ble Tribunal in the case of Dilip S. Pendse vs Securities and Exchange Board of India [Appeal no. 80 of 2009 decided on November 19, 2009] wherein Tribunal had observed "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".

ix. In Mousam Singha Roy v. State of West Bengal 13 (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."

x. In Hornal v. Neuberger Products Ltd. (1956) 3 All E.R.970 Hodson, L.J. observed as under: "Just as in civil cases the balance of probability may be more readily tilted in one case than in another, so in criminal cases proof beyond reasonable doubt may more readily be attained in some cases than in others." We are also tempted to refer to what Denning, L.J. observed in Bater v. Bater (1950) 2 All E.R. 458 wherein he was resolving the difference of opinion between two Lord Justices regarding the standard of proof required in a matrimonial case.

xi. I cannot be termed as "insider" of the company for the reason that I was not having access to unpublished price sensitive information anytime before the date of Board meeting i.e. February 13, 2012.

xii. Another significant issue regarding implication of the conjunctive "AND" in the definition of "Insider". This suggests that the dual requirement in Regulation 2(e) must be satisfied viz., first, that of being a connected person and second, existence of a reasonable expectation of access to UPSI. The Hon'ble Tribunal has held in SRSR Holdings Private Limited vs. SEBI (Appeal No. 463 of 2015).

xiii. I have sold the shares on 2nd Feb, 7th Feb & 8th Feb, 2012 before UPSI came into existence i.e. on 13th February, 2012. It is SEBI assumption that I was involved in the preparation of financial result and knowing the numbers of financial result while selling the shares. Financial

results came to my knowledge on 13th February, 2012 only. Financial Result does not have any negative effect on price of shares. Price of the shares does not reduce after declaration of financial result i.e. 13th February, 2012. Price of the share was continue to be around ` 325-330 on 14th & 15th February, 2012 i.e. after declaration of result. The volume of the share was at its peek on 13th, 14th & 15th February, 2012 (on 13th February, 2012 volume was 2.81 lakhs, on 14th February, 2012 volume was 4.33 lakhs and on 15th February, 2012 volume was 6.93 lakhs). On 2nd February, 2012 I sold 12,000 shares when the price of the shares was around ` 250 after that on 9th February, 2012 onwards rate has gone around ` 330-338. I could have easily take the advantage if I sold my shares on these days i.e. 13th, 14th & 15th February, 2012. I was holding huge quantity of shares. Please note that I did not sell a single share on these days.

xiv. I was having approximately 15.71 lakh shares before selling 47,900 shares in February 2012. If I would have known in advance that the price of the scrip will reduce after February due to so called impact of December Quarter Result. I would have sold bigger quantity having approximately 15.71 lakh shares. I have sold approximately 3% of my shares and sale was only need based. There was no malafide intention and mensrea (guilty mind) of mine in selling of shares. No investors interest is harmed by my sale of negligible quantity of 47,900 shares. My sale of 47,900 shares is negligible when the total volume in the month of February is 34.59 lakh shares.

xv. No synchronized trades / self trades / circular trades / off market trades were noticed against me by SEBI. As per LTP Analysis, New High Price Analysis and First Trade Analysis no adverse inference is drawn. There are no evidence which suggests that I was in possession of UPSI while selling the shares. It is purely an assumption.

xvi. As per Code of Conduct, Compliance Officer has a liberty to decide closure of trading window and accordingly our company has decided the closure of window as from 13th to 14th February, 2012.

xvii. The only default was to failure to give notice of board meeting. We have directly given outcome of board meeting and i.e. violation of listing agreement and not of SEBI (PIT) Regulation as alleged. As per SCN, Pg. 6 and para 2(vi) SEBI has wrongly interpreted the companies letter

dated 30th January, 2015 as it is given in the letter that *"Noticee No. 1 (managing director) was shown in the list of people who were 'Insider' for finalization of the financial results for quarter ended 2011."* As I am the compliance officer and involved in such finalization of result only on the date of board meeting i.e. 13th February, 2012 and not before this date, so SEBI contention is not justified as I came to know about Price Sensitive Information only on 13th February, 2012 only i.e. the date of board meeting.

xviii. Actually Company has not issued the notice of board meeting along with agenda for finalization of financial results as stated in Para 2(vii) of SCN. SEBI has taken some line from letter as 'It was revealed that the unaudited financial statements of the company was in shape of presentation to its board by 2nd February, 2012 when agenda was sent to directors for Board Meeting scheduled on 13th February, 2012. This is an incorrect statement. As in the Companies letter, nowhere it is stated that financial results were ready and known to directors including me before the date of board meeting.

xix. The entire case of SEBI is based on companies letter dated 30th January, 2015 where the chronology of event was explained. Please note that the letter was misunderstood by SEBI and a company statement was used as an evidence and selective portion of entire letter was used as evidence. As per SCN company has taken two contradictory view during the course of investigation on Pg. No. 6, Para 3(iii) & Para 3(iv). In Para 3(iii) it is mention that "the company was not aware about closing of trading window ……" *Contrary to this, as per Clause 3 & 7 of Code of Conduct of MFL (given on Pg.6 Para 3(iv) of SCN) provide for the close period.*

xx. SEBI is cherry picking the information available by company to frame me. In the circumstance, SEBI cannot selectively use the submission made by company against me, as the information submitted by company is confusing and contradictory. Hence, I withdraw the earlier submissions dated 30th January, 2015 made by company and same cannot be used as evidence against me.

xxi. The non-uploading of Notice of board meeting by/at BSE may due to some technical/procedural failure by company or BSE. This can be a violation of listing agreement but this cannot be termed as violation of PIT.

xxii. On 1st February, 2012 accountant has only initiated the process of finalization of financial result. I or any of the director was not a part for finalization of financial result.

**Reply of Poonam Garg**

xxiii. I am a Non-Executive Director (NED) in Mudit Finlease Limited since 30th July, 2007. It is a set position that the NED are not held liable for any act done by the Company or other directors until their role in such act is clearly established. The role of NED is limited only to overlook policy making decisions and not to get involved into day to day compliance of the company. This could be explained further by quoting Supreme Court of India's decision in a landmark case: Pooja Ravinder Devidasani v/s. State of Maharashtra, [Criminal Appeal Nos. 2604 – 2610 of 2014 (Arising out of Special Leave Petition (Crl) Nos. 9133-9139 of 2010]1.

xxiv. It is very clear from the definition quoted by SEBI and also as per the Regulation 2(c of PIT Regulations, 1992 that a person can only be termed as "insider" if it meets both the criteria as stated therein i.e. a) connected with the company and b) having possession of UPSI. Being a NED, if in any which case I am assumed to be connected with the company does not at far of its imagination established that I was having access to or was in possession to UPSI during the dates on which I have traded on the platform of stock exchange.

xxv. I state that the period of UPSI was only 13th February, 2012 to 14th February, 2012. The information was price sensitive only on the date of Board Meeting from 10:30 A.M. in the morning till 24 hour from the conclusion of Board Meeting, i.e. 13th February, 2012 and 14th February, 2012 and I have not sold on these days.

xxvi. As per the SCN, the company issued Notice of Board meeting on February 02, 2012 calling Board Meeting on February 13, 2012. However, there is nothing in records to prove that such notice was available on public domain nor the said notice is available on the stock exchange. Hence, at no stretch of imagination it can assumed that the notice of board meeting ever came to my knowledge on February 02, 2012.

xxvii. Even if notice was given to all, it is no way establishes that along with the Notice, the company has also circulated financials of the company

to their directors including me. Hence, the information which is incorrectly assumed to be Price Sensitive w.e.f. February 01, 2012 was not communicated or passed through by the officials who were in possession of the same.

xxviii. It is further to be noted that the result which were finalised by the accountant was subject to limited review by the statutory auditors and their finalisation and in no case it can be considered as "price sensitive information". It was only on February 13, 2012 when the auditors reviewed the results, it falls under the bracket of PSI and not before the same.

xxix. The closure of window and availability of UPSI are two different things. Trading during closure of window and trading with availability of UPSI is a different thing and have a different gravity.

xxx. I was informed of the Board Meeting on 13th February, 2012 morning which I attended. As per the code of conduct which is required to be followed, I have not traded as soon as UPSI came to my knowledge and also during the period of 24 hours post its publication in public domain. The information is price sensitive only on these two days. Hence the trading was restricted on 13th and 14th February, 2012 only.

xxxi. I am allowed to trade freely on 15th February, 2012 as 24 house had already passed from the conclusion of Board Meeting. Also the Company has published the financial results in 2 leading newspapers namely Financial Express and Haribhoomi, and hence the information is no more price sensitive and hence my trades are genuine. Enclosed is the Original cutting of the Newspapers as desired by you as Annexure-A.

xxxii. I have sold much before the date of Board Meeting, also I have sold very miniscule quantity of my holding. If I had any knowledge of the UPSI I would have sold substantial stake to earn undue profit, my trades itself is clear that I have sold only 29,900 shares before the Board Meeting and that too at a very low rate.

xxxiii. As per SEBI, 21st February, 2012 was the last day of the period of UPSI. It is a false assumption of SEBI as the results were already declared on 13th February, 2012 and also published in the newspapers on 15th February, 2012. The entire SCN is based on this false period, hence the entire SCN does not hold any validity and is void.

xxxiv. I place reliance on the *Order dated 8/3/2016 passed by SEBI in respect of Reliance Petroinvestments Ltd. and Order dated 22/9/2016 passed by SEBI in the matter of KLG Capital Services Limited.Reliance placed on Order dated 31/1/2012 passed by this Tribunal in the case of Mrs. Chandrakala vs. SEBI "Wherein the Securities Appellate Tribunalfound that the pre-requisite to a charge of insider trading is to show that trading took place on the bases of unpublished price sensitive information, i.e., that the trades took place on the basis of or being motivated by the information in the possession of the insider."*

xxxv. In para 2(vii) SEBI only on assumptions calculated the period of UPSI from 2nd February, 2012 to 21st February, 2012. The period calculated by SEBI itself is vague and so the SCN is also vague. The period for which the information was price sensitive was only from the date of board meeting till 24 hours from the conclusion of board meeting.

xxxvi. The chronology of events is detailed below:-

| **Date** | **Allegation by SEBI** | **Remarks** | **Shares Sold** |
|---|---|---|---|
| 2nd February, 2012 | Notice of BM submitted to Director | Notice was not received by me on 2nd February, 2012 | No |
| 7th February, 2012 | Possessing UPSI and sold shares | Not possessing UPSI as I did not receive the notice of BM and had no knowledge of the same. | Yes. 15000 shares sold @ ` 296.80 |
| 8th February, 2012 | Possessing UPSI and sold shares | Not possessing UPSI as I did not receive the notice of BM and had no knowledge of the same. | Yes. 14900 shares @ ` 299.21 |
| 13th February, 2012 | Declaration of Financial Result | Not sold any shares during this period | No |
| 15th February, 2012 | Still Possessing UPSI and sold shares | Baseless allegation, as the result is already declared and 24 hrs has | Yes. 12600 shares @ ` 315.51 |

| | | | |
|---|---|---|---|
| | | already passed from the declaration of result, hence now the information is no more price sensitive. If the result was not uploaded due to some technical default, I am not responsible for the same as I am Non-Executive Director. Also the Company has published the result in two newspapers on this day, hence the information is no more price sensitive. | |

18. After taking into account the allegations, replies of the Noticees and evidences / material available on records, I hereby, proceed to decide the case on merit.

**CONSIDERATION OF ISSUES AND FINDINGS**

19. The issues that arise for consideration in the present case / SCN are :

a) Whether the Noticees had traded in the scrip of MFL during the period from February 02, 2012 to February 21, 2012?

b) Whether the UPSI period in the scrip of MFL started from February 02, 2012 to February 21, 2012?

c) Whether the Noticees were the “Insider” in terms of PIT Regulations?

d) If yes, then, whether trading by insider / Noticees during UPSI period is in violation of regulation 3 (i) and 4 of the PIT Regulations read with 12 A (d) and (e) of the SEBI Act?

e) Whether the Noticee No. 1 had failed to close the trading window during the time when PSI remained unpublished and whether the Unaudited Financial Results' for Quarter ended December 2011 was communicated belatedly to the stock exchange i.e. 6 days after stipulated time of 45 days as required under listing agreement i.e. clause 41(l) (c)?

f) If yes, then whether the Noticee No. 1 had violated clause 1.2 of the model code of conduct under Part A of the Schedule I read with regulation 12 (1) and 12(3) of PIT Regulations?

g) Whether the aforesaid violations/failure, if any, on the part of the Noticees, would attract monetary penalty under section 15 G and 15 HB of the SEBI Act?

h) If yes, then, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors stipulated in section 15J of the SEBI Act read with rule 5 (2) of the Adjudication Rules?

**ISSUE No.1 & 2:**

**Whether the Noticees had traded in the scrip of MFL during the period from February 02, 2012 to February 21, 2012? AND Whether the UPSI period in the scrip of MFL started from February 02, 2012 to February 21, 2012?**

20. The trading details of the Noticees as alleged in the SCN are not in dispute. Before going to examine the issue of UPSI, it would be

appropriate to indicate as to what the PSI is and upto what time it exists so. Regulation 2 (ha) of the PIT Regulations defines PSI as under;

*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;*
*(ii) intended declaration of dividends (both interim and final);*
*(iii) issue of securities or buy-back of securities;*
*(iv) any major expansion plans or execution of new projects.*
*(v) amalgamation, mergers or takeovers;*
*(vi) disposal of the whole or substantial part of the undertaking;*
*(vii) and significant changes in policies, plans or operations of the company;*

21. From the above definition is its clear that "periodical financial results of the company" is well covered within the definition of PSI and same remains so till it is published.

22. As regards to the period of UPSI, from the letter dated January 30, 2015 of the MFL which was signed by Noticee No.1 himself as Managing Director of MFL (Annexure - II of the SCN) details / chronological events leading to PSI are shown as below:

| ***Sl. No.*** | ***Date*** | ***Time (approx.)*** | ***Nature of event*** |
|---|---|---|---|
| *1.* | *01-Feb-12* | *N.A.* | *The accountant finalized the financial result on February 01, 2012 for the quarter ended December 2011.* |
| *2.* | *02-Feb-12* | *N.A.* | *The company had finalised the date of the Board Meeting and issued the notice of Board Meeting to consider the financial results for the quarter ended* |

| | | | |
|---|---|---|---|
| | | | *December 2011.* |
| *3.* | *13-Feb-12* | *N.A.* | *The Statutory Auditors completed the limited review of the financial results and presented the same further for review by the Audit Committee and for consideration of the Board of Directors.* |
| *4* | *13-Feb-12* | *N.A.* | *The financial results were reviewed by the Audit Committee and the same were taken on record by the Board of Directors at their meeting.* |
| *5.* | *13-Feb-12* | *10.30 hrs* | *Board Meeting* |
| *6.* | *21-Feb-12* | *13:00 hrs* | *Official Public Announcement to stock exchange* |

23. I have noted that on February 01, 2012 Accountant of MFL have finalized the financial results for the quarter ended December 2011. Also, the MFL have finalized the date of Board Meeting and issued the notice of Board Meeting to consider the said Financial Results. I can not ignore the material fact that finalizing of Financial Results itself becomes very important as the said process / finalization takes place only after deliberation within the Company and are supposed to be known to its directors etc. Finalization of Financial Results on 1st February 2012 itself signifies that all the crucial details of Company's financial position etc. has been collected / examined and the director (s) / other official involved in the process of such finalization are aware of the same. Thereafter, issuing notice for Board Meeting to consider the Financial Results which have been finalized a day before (i.e. 1st February 2012), apparently indicates that all such information relating to Financial results are in possession of managing Director / Directors etc. I have also noted that on February 13, 2012, Board Meeting was held for consideration of said financial results and from the records it is noted that such PSI remained unpublished till 21st February 2012 (the day on which such PSI was published to Stock Exchange at time 13:00hrs).

24. Therefore, in my opinion when the financial results for the Quarter ended December 2011 were finalized and a notice of board meeting (which is signed by the managing director / Noticee No. 1) was officially issued to consider the same, at that moment itself, the PSI came into existence (viz. February 02, 2012 in this case) and remained UPSI till 21st February 2012 (i.e. the day when the same was published to stock exchange). Accordingly, it is established that the UPSI period started from 2nd February to 21st February 2012.

**ISSUE No. 3**

**Whether the Noticees were the "Insider" in terms of PIT Regulations?**

25. Now to examine the issue whether the Noticees were the "insider", it would be relevant to refer the definition of 'insider' as stipulated under regulation 2 (e) of the PIT Regulations which is as under;

*2(e) "insider" means any person who,*
*(i) is or was connected with the company or is deemed to have been connected with the company and is reasonably expected to have access to unpublished price sensitive information in respect of securities of company, or*

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

26. In order to examine whether such person is or was 'connected' with the company or 'deemed to have been connected' with Company, following definition under PIT Regulations are noted which are as under;

*Reg. 2 (c) "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:*

*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;*

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

*(vi) is a relative of any of the aforementioned persons;*

*(vii) is a banker of the company.*

*(viii) relatives of the connected person; or*

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

27. Section 6 of the Companies Act, 1956 [now section 2(77) of the new Companies Act, 2013 read with rule 4 of the Companies (specification of definition details) Rules, 2014, includes 'wife' within the definition of relative.

28. It is undisputed fact the Noticee No. 1 is the Managing Director and the Noticee No. 2 is Non-Executive director of the MFL. Further, undisputedly, the Noticee No. 2 is the wife of Noticee No. 1 and falls within the definition of 'relative' of Noticee No. 1 for the purpose of 'insider" determination. By virtue of their being as the director(s) of the Company/MFL and also being the "relative', it is established that the Noticees are the 'insider' within the meaning of PIT Regulations.

**ISSUE No. 4**

**If yes, then, whether trading by insider / Noticees during UPSI period is in violation of regulation 3 (i) and 4 of the PIT Regulations?**

29. Since, it is established that the Noticees are the 'insider' and they have undisputedly traded during the UPSI period viz. (2nd February to 21st February 2012), therefore, another core issue arises whether their such trading amounts to insider trading in violation of regulation 3(i) and 4 of the PIT Regulations. Before that, I would like to point out that the Noticee No. 1 was aware of PSI of Financial Results (especially when he had issued notice for Board meeting on 2nd February 2012) and being so aware, he had dealt in the scrip on 2nd, 7th and 8th February 2012 which undoubtedly is within the UPSI period. Also, the Noticee No. 2 being the non-executive director (part of Board of Directors) and wife of Noticee No. 1, had dealt in the scrip on 7th, 8th and 15th February 2012 during the UPSI period.

30. Now, in order to examine whether their such trading amounts to insider trading in violation of regulation 3(i) and 4 of the PIT Regulations or not, I have taken into account the provisions of regulation 3(i) and 4 of the PIT Regulations which states that –

*Reg. 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;*

*(ii) communicate or counsel or procure directly or indirectly any unpublished price sensitive information to any person who while in possession of such unpublished price sensitive information shall not deal in securities :*

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

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

31. It would be pertinent to mention that legislative intention has been made clear to define the “insider” and if it is established that a person is “insider’ and had dealt in the scrip “when in possession” of UPSI, then such trading done by him would be against the regulatory framework / in violation of regulation 3 (i) & 4 of the PIT Regulations.

32. At this juncture, it would be appropriate to refer a judgment of Hon’ble Securities Appellate Tribunal (Hon’ble SAT) in case of *Mrs. Chandra Mukherjee & Ors. vs. SEBI* decided on November 30, 2016 wherein the insider trading done by the appellants were found to be in violation of PIT Regulations with following observations-

*“36. ……. In any case being an insider no trades could be executed during the existence of the UPSI from 19th June, 2009. Admittedly, trades were executed by the appellant on 3rd July, 2009 i.e. during the subsistence of UPSI. The argument made by the Counsel for the appellant that she did not sell the shares bought on 3rd July, 2009 and as such did not benefit from the UPSI even assuming that if she was privy to the UPSI is also without any merit. Under the relevant regulations trading in the shares of the company (whether buy or sell) by an insider is prohibited.”*

33. It is relevant to mention that the cases relied upon by the Noticees in the instant proceedings (viz. Order dated 8/3/2016 passed by SEBI in respect of Reliance Petroinvestments Ltd; order dated 22/9/2016 passed by SEBI in the matter of KLG Capital Services Limited, Order dated 31/1/2012 passed by Hon’ble SAT in the case of Mrs. Chandrakala vs. SEBI), were also not considered helpful to appellant in case of *Mrs. Chandra Mukherjee (supra)* by the Hon’ble SAT while deciding the insider trading violation. The Noticee’s plea of dual requirement (viz. being a connected person and secondly existence of a reasonable expectation of access to UPSI) and the relevance of aforesaid case laws relied upon by them, are being examined as under.

34. It is noted that the regulation 3(i) of the PIT Regulations, 1992 originally stated as follows:

*"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 <u>on the basis of</u> any unpublished price sensitive information; or"*

35. The regulation 3 (i) was amended by the SEBI (Insider Trading) (Amendment) Regulations, 2002 which came into effect from February 20, 2002 and after this amendment, the phrase "on the basis of" was substituted by "when in possession". After the amendment, regulation 3 (i) reads as follows:

*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 <u>when in possession</u> of any unpublished price sensitive information; or*

36. In the light of said 2002 Amendment the requirement of 'on the basis' was kept away and the prohibition under regulation 3(i) attracts if the person was an 'insider' and such insider had dealt in securities 'when in possession" of UPSI. It is noted from the undisputed records that the Noticee No. 1 is the Promoter/Managing Director/Compliance Officer of the MFL and the Noticee No. 2 is the Promoter / Non Executive Director of MFL as well as wife of the Noticee No. 1. By virtue of such position / part of the Board and being insider as established above, in my opinion, they were in the situation to know all crucial details or day to day affairs of the MFL and therefore are 'reasonably expected to have access to UPSI' in terms of regulation 2 (e) (i) of PIT Regulations.

37. Here, it would not be out of place mention that Hon'ble SAT in case of *SRSR Holdings Private Limited & Ors. vs. SEBI* decided on August 11, 2017 (para 11)

while upholding the case of insider trading done by the appellant(s) had 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'....*

*In the present case, admittedly, CSR was a Director of Satyam till 23.01.2003 and therefore, being responsible for all the acts / deeds of Satyam, the WTM of SEBI was justified in holding that CSR was an insider under the PIT Regulations".*

38. Further, the legislative intent while amending and incorporating the words "when in possession' in place of word "on the basis" had amply made clear that if the person is found to be "insider' within the definition of regulation 2(e) of the PIT Regulations, and being so he trades during UPSI, then, the bar under regulation 3 (i) and 4 of PIT Regulations is attracted or in other words he is liable for violation of insider trading. Also, I cannot loose sight that the requirement of "when in possession' of UPSI is already covered under regulation 2 (e) (i) i.e. "reasonably expected to have access to UPSI" to consider him as 'insider'. Therefore, once it is established a person is "insider" in terms of regulation 2 (e) (i) taking into account the requirement of "reasonably expected to have access to UPSI", then, it is deemed that he was in 'possession" of UPSI and such trading during UPSI period is certainly would be in contravention of regulation 3(i) of the PIT Regulations. The onus to disprove that he is not an "insider' and not in 'possession' of UPSI, lies on the said person/insider only. In the instant case, the Noticees had failed to disprove the same.

39. I am of the opinion that basic premise that underlines the integrity of securities market is that persons connected with such market conform to the standards of transparency, good governance and ethical behaviour prescribed in securities laws. The Insider Trading Regulations have put in

place a framework for prohibition of insider trading in securities and the prohibitions provided in the PIT Regulations ensure a level-playing field in the securities market and safeguard the interest of investors and integrity of securities market. I am of the view that the object and spirit of the Insider Trading Regulations would get defeated if the alleged violators of the said Regulations are not dealt as per the spirit of PIT Regulations.

40. In view of the above, it is established that the Noticees being 'insider' had traded in the scrip "when in possession" of aforesaid UPSI against the bar contained in regulation 3 (i) and 4 of the PIT Regulations and section 12 A (d) – (e) of the SEBI Act.

41. The Noticees contended that the UPSI came into existence on 13th February, 2012 when the Financial Results finalized by Accountant were presented before the Statutory Auditors and they had traded in scrip without possessing UPSI. Such plea of the Noticees cannot be accepted as it was clearly established at pre paras that the PSI came into existence on 2nd February 2012 and remained unpublished till February 21, 2012 (13:00 hrs.) and they being 'insider' had dealt in scrip while in possession of UPSI. Further, even as per admission by the Noticee(s) that UPSI came into existence only on 13th February, Noticee No. 2 cannot be immuned from liability as she had traded on 15th February which was within UPSI period.

42. The plea taken by the Noticee(s) that they are not personally liable for any act done by them during the course of engagement with MFL, is not acceptable at all. Being in position of Promoter / Managing Director / Director, / part of the Board of Company, the compliance of regulatory obligation were upon them. However, as established above, they have traded against the regulatory framework. The plea of the Noticee No. 2 that she is non – executive director and not involved into day to day affairs of the MFL cannot be accepted as she is the part of the Board of MFL / wife of the Noticee No. 1 (who is promoter/MD/Compliance Officer of MFL) and being so, she is

reasonably expected to have access to the UPSI. Further, dealing as 'insider' in violation of PIT Regulations, is different from other non-compliance of Company's activities.

43. The contention of the Noticees that the announcement regarding said PSI has been made to Stock Exchange on 13th February 2012, but, the same could not be uploaded due to some error, is not acceptable in absence of any proof thereof. Instead, it is established that the announcement has been made to Stock Exchange only on February 21, 2012 at 13:00 hrs.

44. It is also contended by the Noticees that the public announcement was made under two leading newspaper on February 15, 2012 regarding such PSI / Financial Results. Such contention of the Noticees cannot be accepted as the mandate of public announcement of PSI under PIT Regulations is stipulated to be made to the Stock Exchanges only and not in the newspaper.

45. The plea of Noticees that separate SCNs has been issued against the Company and therefore they should not be charged, is not acceptable as the instant proceedings has been initiated against them on the basis of allegation of insider trading which is independent to the charges against the Company MFL.

46. The following contentions of the Noticees viz. (i) that they would have sold more number of shares if they wanted to take undue advantage and the quantity sold are negligible, (ii) that no harm have been caused to investors / shareholders, (iii) that price of the share of MFL had not reduced after declaration of financial results etc., are not acceptable in view of the aforesaid observations made at pre paras of this order including the legislative mandate prohibiting insider trading during the UPSI period, aforesaid judgments of Hon'ble SAT in *Chandra Mukherjee* and *SRSR Holding (supra)* and such indulgence into insider trading is independent of resulting any harm to investors. Thus, the case laws relied upon by the Noticees i.e. Dilip S. Pendse vs. SEBI, Mausam Singh Roy vs State of West Bengal, Chandrakala

vs SEBI, would not be helpful to them in view of the observations made by me at pre para including the Amendment of 2002 in PIT Regulations and case laws of *Mrs. Chandra Mukherjee and SRSR Holdings* (*supra*).

47. The Noticee(s) contented that letter dated 30th January, 2015 was misunderstood by SEBI and selective portion of letter was used as evidence. The Noticee No.1 also stated that as per SCN, the Company has taken two contradictory views (i.e. the company was not aware about closing of trading window and secondly the clause 3 & 7 of model code of conduct of MFL provides about 'closing period'). The Noticee No. 1 had pleaded that SEBI cannot selectively use the submission made by Company as the information submitted by Company is confusing and contradictory. The Noticee No. 1 therefore, submitted that he is withdrawing the earlier submissions made under said letter dated 30th January, 2015 and same cannot be used as evidence against him.

48. The aforesaid contention cannot be accepted as the Noticee No.1 (being the Managing Director / Compliance Officer of MFL) had himself signed the said letter and portrayed the information before SEBI. Needless to say that deviation from his earlier stand / information that too without any substance/proof, cannot be acceptable in the present proceedings. I have also noted from para 8 of letter dated January 30, 2015, wherein the Noticee No. 1 / MFL had clearly stated that Company was not aware about closing of Trading Window earlier. Whereas from clause 3 and 7 of the code of conduct of MFL, it is seen that "Close period" has been prescribed by MFL as under-

*3.1 "Close Period" means*
*(a) the period commencing from the time of announcement of the Board of Directors meeting for consideration of all matters which are deemed to be 'Price Sensitive Information' and ending 24 hours after the public announcement of the decision taken by the Board of Directors of the company; or*
*(b) such other period as may be notified by the 'Compliance Officer from time to time under the authority of Managing Director(s) /Chief Executive Officer.*
*3.16 'Trading window means the period which is not a 'Close Period' for trading or Dealing in the Company's Securities.*

*Clause 7 - "Trading Restrictions"*

*"All Directors, Officers, and Connected Persons shall conduct all their Dealings in the Securities of the Company only in a valid trading window and shall not enter into any Dealing in the Company's Securities during the 'close period' ".*

49. Therefore, plea of the Noticee No. 1 regarding misunderstanding of his aforesaid letter dated January 30, 2015 and his deviation / withdrawal of content/information from said letter in the instant proceedings, cannot be accepted especially taking into account the fact that said letter (covering such information) was signed by the Noticee No. 1 only.

50. The contention of the Noticee No. 2 that she was an Non-Executive Director and it is settled position that Non-Executive Director are not liable for any act done by the Company /other Directors. In support, the Noticee No. 2 had relied upon case laws [viz. Pooja Ravinder Devidasani v/s. State of Maharashtra, [Criminal Appeal Nos. 2604 – 2610 of 2014 (Arising out of Special Leave Petition (Crl) Nos. 9133-9139 of 2010].

51. I have perused the said case laws and observed that the facts and circumstances of said case is completely different from the present case. The case laws relied upon by the Noticee No. 2 is related to the issue of 'dishonour of cheque' wherein it was held that the appellant had resigned as Director much before the issuance of the cheques in question. Also, her aforesaid contention cannot be accepted in view of established insider trading by the Noticees which is prohibited under regulation 3(i) and 4 of PIT Regulations read with section 12A (d)- (e) of the SEBI Act.

52. It was submitted by the Noticee No. 2 that the Company had issued notice of Board meeting on February 02, 2012 calling Board Meeting on February 13, 2012, however, there is nothing in records to prove that such notice was available on public domain nor the said notice was available on the Stock Exchange. Accordingly, the Noticee No. 2 pleaded that at no stretch of imagination it can assumed that the notice of board meeting ever came to her

knowledge on February 02, 2012. It was contented by Noticee No. 2 that even if notice was given to all, it does not establishes that along with the Notice, the Company had circulated the financials of the Company to their directors including her and therefore, the information which is incorrectly assumed to be PSI was not communicated or passed through by the officials who were in possession of the same. It was also contended by her that the result which were finalized by the Accountant was subject to limited review by the statutory auditors and in no case it can be considered as PSI. It was also stated that only on February 13, 2012, when the auditors reviewed the results, it falls under the definition of PSI.

53. From the aforesaid submission of Noticee No. 2 itself I note that the announcement of Board meeting notice was not made available to the Stock Exchange. Further, as noted at pre paras that the notice of Board Meeting has been issued and the Noticee No.2 being the part of the Board of the Company / MFL is reasonably expected to have received such notice. Therefore, the plea that she had not received such notice, cannot be accepted. The submission of the Noticee No. 2 that the financial results of the Company were not provided during the Board Meeting cannot be accepted by virtue of admitted fact (as per information under letter dated January 30, 2015) that the meeting has been called for to consider the financial results.

54. At this juncture, it would be relevant to refer the findings of Hon'ble SAT in case of *Mrs. Chandra Mukherjee (Supra)* as under:-

> *37 ……..Being a director of both the companies i.e. the target as well as the acquirer company, the appellant cannot take shelter by alleging ignorance that just because he did not attend the two meetings of the Board of the target company held prior to the signing of the SPA, he was not privy to the information. Not attending the two meetings of the board of directors of the target company when rules permitted him to attend the same, without assigning any reason itself shows*

*that the appellant was privy to the UPSI and therefore the appellant chose not to attend the meetings"*

55. Therefore, the plea of Noticee No. 2 that she was not aware of Board Meeting / notice of Board Meeting / non availability of financial results with her etc. bears no merit in light of aforesaid observations.

56. In view of the aforesaid observations at pre paras of this order and taking into account the aforesaid judgments, it is concluded that the Noticees being the 'insider' had traded in the scrip of MFL during the UPSI period and therefore had violated regulation 3(i) and 4 of the PIT Regulations read with section 12A (d) and (e) of SEBI Act.

**ISSUE No. 5 & 6**

**Whether the Noticee No. 1 had failed to close the trading window during the time when PSI remained unpublished and whether the Unaudited Financial Results' for Quarter ended December 2011 was communicated belatedly to the stock exchange {i.e. 6 days after stipulated time of 45 days as required under listing agreement i.e. clause 41(l) (c) }? AND If yes, then whether the Noticee No. 1 had violated clause 1.2 of the model code of conduct under Part A of the Schedule I read with regulation 12 (1) and 12(3) of PIT Regulations?**

57. It was alleged that the Unaudited Financial Results for Quarter ended December 2011; however, same was communicated to the stock exchange on February 21, 2012 (i.e. 6 days after stipulated time of 45 days as required under listing agreement after Quarter ended). It was also alleged that Noticee No.1 being the Compliance Officer / Managing Director of MFL had failed to close the trading window during the time when the PSI remained unpublished and also had failed to promptly disclose PSI (financial results for the quarter ended December 2011). It was alleged that by such failure the Noticee No.1

had violated clause 1.2 of the Code of Conduct under Part A of Schedule I read with regulation 12(1) and 12(3) of PIT Regulations.

58. In respect to the said allegations, the Noticee No.1 had contended that trading window was closed for the period February 13, 2012 to February 14, 2012; however, this intimation was not uploaded / recorded at BSE due to some technical issue. It was stated by Noticee No.1 that SEBI has made an incorrect assumption by deciding the trading closure period from February 02, 2012 to February 21, 2012 ("deemed closure period").

59. Here, I cannot ignore the material fact that the notice (under clause 41 of Listing Agreement) of Board Meeting dated February 02, 2012 (Annexure 7 of letter dated January 30, 2015) was signed by the Noticee No.1 only stating that the meeting would be held on February 13, 2012 to consider the unaudited financial results for the quarter ended December 2011. The fact that the Noticee No.1 was the Managing Director as well as the Compliance Officer of MFL has been shown in the annexures provided by him along with the aforesaid letter dated January 30, 2015.

60. It is observed from the records that no proof has been provided by the Noticee No. 1 showing that he had made any announcement / uploaded to the stock exchange regarding trading window closure. No proof is provided that due to some technical issue, the same was not uploaded to Stock Exchange. Also, from the said letter dated January 30, 2015 (Annexure II of the SCN) of the Noticee No. 1 / MFL, it is not shown that he had ever made such window closure announcement. Even no proof was made available to show his attempt in doing such upload or announcement. Moreover, it has been clearly stated by the Noticee No. 1 in his said letter at para 8 that Company was not aware about closing of Trading Window and this letter was signed by him only. From the above, it is clear that Noticee No. 1 being the Compliance Officer of the MFL had failed to close the trading window.

61. It is also noted that as per clause 41(l) (c) of listing agreement of BSE which stipulates that -*" The company has an option either to submit audited or unaudited quarterly and year to date financial results to the stock exchange within forty-five days of end of each quarter (other than the last quarter), subject to the following:..... ."* However, it is noted from the records that the 'Unaudited Financial Results' for Quarter ended December 2011 were communicated to the Stock Exchange only on February 21, 2012 (6 days after stipulated time of 45 days as required under listing agreement).

62. The plea taken by Noticee No.1 that he came to know about PSI only on February 13, 2012 (date of Board Meeting), is not acceptable at all in view of aforesaid observations at pre-paras. I also cannot ignore the fact that the Noticee No.1 was the Managing Director / Compliance Officer and was in-charge of day to day affairs of the Company and being in such a position he was aware of the PSI etc. and consequently required to inform the Stock Exchange.

63. The plea of Noticee No. 1 that SEBI has wrongly taken into account the disclosure period from 2nd to 21st of February, is not accepted in view of observations as discussed in earlier part of this order. I note that being a Compliance Officer, the Noticee No.1 was under an obligation to take steps to close the trading window during the existence of PSI and also to make the timely disclosure to the Stock Exchange regarding trading window closure period / PSI of financial results for the quarter December 2011 etc. which in fact he had failed to do so. Also, he had not provided any proof of making announcement to stock Exchange even for the period from February 13 to February 14 of 2012.

64. In view of the foregoing observations, I am of the opinion that the Noticee No. 1 had violated clause 1.2 of the code of conduct under Part A of the Schedule I read with regulation 12 (1) and 12(3) of PIT Regulations, which is as under;

*"The compliance officer shall be responsible for setting forth policies, procedures, monitoring adherence to the rules for the preservation of "Price Sensitive Information", pre-clearing; of designated employees' and their dependents' trades (directly or through respective department heads as decided by the company), monitoring of trades and the implementation of the code of conduct under the overall supervision of the Board of the Board of the listed company."*

**ISSUE No. 7 & 8**

**Whether the violation/failure, if any, on the part of the Noticees, would attract monetary penalty under section 15 G and 15 HB of the SEBI Act? AND If yes, then, what would be the monetary penalty that can be imposed upon the Noticees taking into consideration the factors stipulated in section 15J of the SEBI Act read with rule 5 (2) of the Adjudication Rules?**

65. As it has been established that the Noticees being the insider had traded in the scrip of the MFL during the UPSI period in violation of regulation 3(i) and 4 of the PIT Regulations and keeping in view that such indulgence is against the regulatory framework of PIT Regulations and serious in nature, I am of the view that the aforesaid violations makes them liable for penalty under section 15 G of the SEBI Act which read as follows:

**Penalty for insider trading.**

*15G. If any insider who,—*
*(i) either on his own behalf or on behalf of any other person, deals in securities of a body corporate listed on any stock exchange on the basis of any unpublished price-sensitive information; or*
*(ii) communicates any unpublished price-sensitive information to any person, with or without his request for such information except as required in the ordinary course of business or under any law; or*
*(iii) counsels, or procures for any other person to deal in any securities of any body corporate on the basis of unpublished price-sensitive information;*
*shall be liable to a penalty of twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher.*

66. Also as has been established that the Noticee No. 1 had failed to close the trading window / belatedly communicated to the stock exchange the Unaudited Financial Results etc., which resulted into violation of clause 1.2 of the code of conduct under Part A of the Schedule I read with regulation 12 (1) and 12(3) of PIT Regulations; therefore, I am of the view that the aforesaid violation makes the Noticee No. 1 liable for penalty under section 15 HB of the SEBI Act which reads as follows;

***15HB.Penalty for contravention where no separate penalty has been provided.***

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

67. Besides the regulatory intent as observed in pre paras of this order, I have also taken into account the following the well-known judgments of in Hon'ble Supreme Court of India as under;

***The Chairman, SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC)*** wherein it was held that *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant".*

68. It is relevant to mention here that said case of *Shri Ram Mutual Fund* (*supra*) was maintained by the three judge bench of the Hon'ble Supreme Court of India in the case of ***Union of India vs. Dharmendra Textile Processor 2008 (13) SCC 369 decided on September 29, 2008*** on the issue related to income tax act. It was held by the Hon'ble Supreme Court that penalty under the provision is for breach of civil obligation and is mandatory and the *mens- rea* is not an essential element for imposing the penalty. The adjudicatory authority has no discretion to levy duty less than what is legally and statutorily leviable. The

Hon'ble Supreme Court also specifically observed that the case of *Shri Ram Mutual Fund* (*supra*) has been analysed in the legal position and in the correct perspectives.

69. While determining the quantum of penalty under section 15 G and section 15 HB of the SEBI Act, it is important to consider the factors stipulated in section 15 J of the SEBI Act read with rule 5 (2) of the Adjudication Rules, which reads as under:-

***Factors to be taken into account by the adjudicating officer***

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

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

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

*(c) the repetitive nature of the default."*

70. Investigation did not reveal any specify disproportionate gains or unfair advantage made by the Noticees or the specific loss suffered by the investors. No past action against the Noticees has been revealed under the investigation report. However, taking into account the legislative intent especially after Amendment in Insider Regulations in 2002 debarring the "insider' from dealing in the shares when in possession of UPSI and considering the failure of Noticee No. 1 in not closing the trading window / not uploading the PSI promptly in accordance with norms specified, the same are serious in nature and a justfiable penalty needs to be imposed upon the Noticees to meet the ends of justice.

**ORDER**

71. After taking into consideration all the aforesaid facts / circumstances of the case and mitigating factors, in exercise of the powers conferred upon me under section 15 I (2) of the SEBI Act read with rule 5 of the Adjudication Rules, I hereby impose penalty upon the Noticees as shown in table below;

| **Name of the Noticee** | **Amount of Penalty** | **Penalty Provisions and Violations** |
|---|---|---|
| Mr. Pavel Garg (Noticee No. 1) | ` **15,00,000/- (Rupees Fifteen Lakh only)** | Under section 15 G of the SEBI Act for violation of regulation 3 (i) and 4 of the PIT Regulations read with section 12A (d) and (e) of SEBI Act. |
| Mrs. Poonam Garg (Noticee No. 2) | ` **15,00,000/- (Rupees Fifteen Lakh only)** | Under section 15 G of the SEBI Act for violation of regulation 3 (i) and 4 of the PIT Regulations read with section 12A (d) and (e) of SEBI Act. |
| Mr. Pavel Garg (Noticee No. 1) | ` **5,00,000/- (Rupees Five Lakh only)** | Under section 15 HB of the SEBI Act for violation of clause 1.2 of the model code of conduct under Part A of the Schedule I read with regulation 12 (1) and 12(3) of PIT Regulations. |

72. I am of the view that the said penalty would commensurate with the violations committed by the Noticees.

73. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through e-payment facility into Bank Account the details of which are given below;

| **Account No. for remittance of penalties levied by Adjudication Officer** | |
|---|---|
| Bank Name | State Bank of India |
| Branch | Bandra-Kurla Complex |
| RTGS Code | SBIN0004380 |
| Beneficiary Name | SEBI – Penalties Remittable To Government of India |
| Beneficiary A/c No. | 31465271959 |

74. The Noticees shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Enforcement Department – Division of Regulatory Action – IV of SEBI. The Format for forwarding details / confirmations of e-payments shall be made in the following tabulated form as provided in SEBI Circular No. SEBI/HO/GSD/T&A/CIR/P/2017/42 dated May 16, 2017 and details of such payment shall be intimated at e-mail ID- tad@sebi.gov.in

| Date | Department of SEBI | Name of Intermediary/ Other Entities | Type of Intermediary | SEBI Registration Number (if any | PAN | Amount (in `) | Purpose of Payment (including the period for which payment was made e.g. quarterly, annually | Bank name and Account number from which payment is remitted | UTR No |
|---|---|---|---|---|---|---|---|---|---|
| | | | | | | | | | |

75. In terms of rule 6 of the Adjudication Rules, copies of this order are being sent to the Noticees and also to the SEBI.

**Date: November 27, 2017**
**Place: Mumbai**

**(RACHNA ANAND)**
**GENERAL MANAGER &**
**ADJUDICATING OFFICER**