

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
ADJUDICATION ORDER No. Order/BD/VS/2020-21/7840**

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

In respect of:

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

**In the matter of circulation of unpublished price sensitive information (UPSI) through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

BACKGROUND

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During November 2017, there were certain articles published in newspapers / print media referring to the circulation of Unpublished Price Sensitive Information (*hereinafter referred to as "UPSI"*) in various private WhatsApp groups about certain companies ahead of their official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

2. Accordingly, SEBI carried out an investigation in the matter of circulation of UPSI through WhatsApp messages with respect to Bata Ltd., to ascertain any possible violation of the provisions of the Securities and Exchange Board of India Act, 1992 (*hereinafter referred to as "SEBI Act"*) and SEBI (Prohibition of Insider Trading) Regulations, 2015 (*hereinafter referred to as "SEBI (PIT) Regulations"*) during the period during the period of January 1, 2016 to February 10, 2016 (*hereinafter referred to as "Investigation Period"*).
3. It was observed that Bata India Ltd. had announced financial results for quarter and nine months ended on December 31, 2015 on February 10, 2016 (15:20:32 hours on BSE, 15:21 hours on NSE). Details of the major corporate announcements made by Bata India Limited, on BSE and NSE, during IP and their impact on the price of the scrip were observed to be as follows

Table 1 – Exchange BSE
(Price in Rs.)

S.No.	Date-Time	Announcement/News	Price Impact/Shares Traded						Remarks
1.	20/01/2016 (14:26:29)	<u>Disclosures under Reg. 29(1) of SEBI(SAST) Regulations, 2011</u> Life Insurance Corporation of India has submitted the disclosures under Reg. 29(1) of SEBI (SAST) Regulations, 2011	Date	O	H	L	C	No. of shares traded	The number of shares of Bata traded recorded a increase by 2.41 times
			19.01.2016	460.25	468	459	464.9	14540	
			20.01.2016	465	465	447.9	452.45	35042	
2.	22/01/2016 (13:03:19)	<u>Revised Disclosures under Reg. 29(1) of SEBI(SAST) Regulations, 2011</u> Life Insurance Corporation of India has submitted the revised disclosures under Reg. 29(1) of SEBI (SAST) Regulations, 2011	Date	O	H	L	C	No. of shares traded	The number of shares of Bata traded recorded a decrease by 1.21 times
			21.01.2016	452	460	438.05	447.1	29199	
			22.01.2016	450	477	450	473.1	24136	
3.	27/01/2016 (15:47:55)	<u>Q3 results on Feb 10, 2016</u> Bata India Ltd has informed BSE that a meeting of the Board of Directors of the Company will be held on February 10, 2016, inter-alia, to consider and approve the Unaudited Financial Results of the Company for the third quarter and nine month period ended December 31, 2015 (Q3).	Date	O	H	L	C	No. of shares traded	The number of shares of Bata traded recorded a decrease by 1.60 times
			27.01.2016	478.85	488.4	469.05	480.55	61439	
			28.01.2016	480	486.5	474	479.05	38372	
4.	10/02/2016 (15:20:32)	<u>Announces Q3 results (Standalone), Limited Review Report (Standalone) & Results Press Release for the Quarter ended December 31, 2015</u> Bata India Ltd has announced the following Unaudited Standalone results for the quarter ended December 31, 2015 The Company has posted a net profit of Rs. 445.690 million for the quarter ended December 31, 2015 as compared to Rs. 349.470	Date	O	H	L	C	No. of shares traded	The number of shares of Bata traded recorded an increase by 3.83 times
			09.02.2016	477	484	473	481.6	18209	
			10.02.2016	479	496	456.4	488.6	69718	

S.No.	Date-Time	Announcement/News	Price Impact/Shares Traded	Remarks
		million for the quarter ended December 31, 2014. Total Income has increased from Rs. 5447.240 million for the quarter ended December 31, 2014 to Rs. 6247.090 million for the quarter ended December 31, 2015.		

Table 2– Exchange NSE

(Price in Rs.)

S.No.	Date-Time	Announcement/News	Price Impact/Shares Traded						Remarks
1.	25/01/2016 (19:49)	<u>Trading Window</u> Bata India Limited has informed the Exchange that in terms of the Company s Code of Conduct to Regulate, Monitor and Report Insider Trading and pursuant to the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015, the Trading Window for dealing in shares of Bata India Limited, will be closed from Tuesday, January 26, 2016 to Friday, February 12, 2016 (both days inclusive) for the purpose of consideration and approval of the Unaudited Financial Results for the 3rd quarter ended December 31, 2015 at the Board Meeting to be held on February 10, 2016.	Date	O	H	L	C	No. of shares traded	The number of shares of Bata traded recorded a decrease by 1.09 times
			25.01.2016	474	506.75	470.8	476.3	8,36,437	
			27.01.2016	483.4	487.9	468.75	480.55	7,67,898	
2.	10/02/2016 (15:21)	<u>Financial Results Update</u> Bata India Limited has submitted to the Exchange the standalone financial results along with the Limited Review Report for the period ended December 31, 2015.	Date	O	H	L	C	No. of shares traded	The number of shares of Bata traded recorded a increase by 3.64 times
			09.02.206	470.1	483.9	470.1	481.75	200756	
			10.02.2016	483	497	457.1	487.25	730551	

CSE, vide email dated August 26, 2019, submitted the following w.r.t corporate announcements in the scrip of Bata India Ltd. " ... *we would like to submit that as on line trading system of this Exchange namely C-STAR, was non-operational since April, 2013, this Exchange could not disseminate information pertaining to Corporate Announcement of Bata India Ltd. for the period commencing from October 01, 2015 to May 31, 2016 in the on line trading system of this Exchange .*"

Chronology of events pertaining to financial results of quarter ended December 31, 2015

4. The chronological events related to financial results for the quarter ended December 31, 2015 as furnished by Bata India Ltd., vide its letter dated July 24, 2019 were as below:

Date	Particular of events	Details of names and designations of persons involved
January 1, 2016 – January 10, 2016	Finalization of unit trial balances and start of	Aastha Grover, Assistant Manager Chandrima Malik, Manager, Finance

Date	Particular of events	Details of names and designations of persons involved
	consolidation process for preparation of yearly results of whole company for the period relating to January 1, 2015 to December 31, 2015 under US GAAP	Kundan Kumar, Group Manager – Accounts
January 11, 2016 – January 12, 2016	Preparation of the consolidated results as per US GAAP for the calendar year.	Aastha Grover, Assistant Manager Chandrima Malik, Manager, Finance Kundan Kumar, Group Manager – Accounts
January 13, 2016 – January 14, 2016	Preparation of other related reports of Monthly Information Package (MIP) and Financial Reporting Package(Finpack)	Aastha Grover, Assistant Manager Chandrima Malik, Manager, Finance Kundan Kumar, Group Manager – Accounts
January 15, 2016	Submission of financial reporting package under US GAAP to the global headquarter.	Peeyush Gupta, General Manager Saket Mohta, AVP-Finance RK Gupta, Director Finance
January 16, 2016 – January 19, 2016	Preparation of trial balances as per Indian GAAP, by eliminating US GAAP adjustments and identification and accounting for Indian GAAP adjustments.	Aastha Grover, Assistant Manager Kundan Kumar, Group Manager – Accounts
January 20, 2016	Preparation of quarterly results as per the Indian GAAP for the quarter ended on December 31, 2015(“Quarterly Financial Statements”)	Peeyush Gupta, General Manager Aastha Grover, Assistant Manager Kundan Kumar, Group Manager – Accounts
January 21, 2016 – January 25, 2016	Internal review of the Quarterly Financial Results before handing over to the statutory auditors	Aastha Grover, Assistant Manager Peeyush Gupta, General Manager Saket Mohta, AVP-Finance RK Gupta, Director Finance
January 26, 2016 – February 9, 2016	Review of the Quarterly Financial Results by the statutory auditors i.e. S R Batliboi & Co. LLP and final confirmation for publication and presentation to the board of directors of Bata India	<u>Statutory Auditors(S R Batliboi & Co. LLP)</u> Sanjay Vij (Partner) Prateek Agrawal(Senior Manager) <u>S R Batliboi & Co. LLP – Audit team members</u> Dinesh Agarwal, Abhishek Jain, R Sundar, Vijay Kumar Wadhwani, Divya Bushan, Amit Poddar, Akash Mansinka, Shreya Shah, Anchal Poddar, Manjul Prakash, Mallika Malhotra, Mayank Daruka, Naman Agarwal, Pulkit Agarwal, Deepak Arora, Nikhil Chhabra, Diksha Garg, Sachin Kumar Gupta, Avneet Singh, Anurag Agarwal, Ishan Arora, Ankit Barolia, Gaurav Goel, Himanshu Satija, Anshudhar Seth, Srishti Singhal, Paavni Vohra, Anjali Haryana, Manik Goenka, Rajat Gupta, Ateeshay Jain, Jatin Sachdeva, Santosh Suresh Maller, Vibhu Gupta, Pratik Setia, Anubhav Agrawal <u>Bata team members</u> Peeyush Gupta Aastha Grover
February 10, 2016	Final quarter Financial Results discussed with the Managing Director of Bata India	R K Gupta, Director Finance Rajeev Gopalakrishnan, Managing Director

Date	Particular of events	Details of names and designations of persons involved
February 10, 2016	Results presented before the audit committee and board of directors of Bata India	<p><u>Persons who attended the board meeting</u> Mr. Uday Khanna, Chairman (Independent director) Mr. Akshay Chudasama (Independent Director) Ms. Anjali Bansal (Independent Director) (attended over phone) Mr. Christopher Kirk (Non-executive Director) Mr. Rajeev Gopalakrishnan (Managing Director) Mr. Ram Kumar Gupta (Director Finance) Mr. Ravindra Dhariwal (Independent Director) Mr. Shaibal Sinha (Non-executive Director) Mr. Maloy Kumar Gupta (Company Secretary)</p> <p><u>Persons who attended the audit committee meeting</u> Mr. Ravindra Dhariwal, Chairman (Independent Director) Mr. Akshay Chudasama (Independent Director) Ms. Anjali Bansal (Independent Director) (attended over phone) Mr. Christopher Kirk (Non-executive Director) Mr. Shaibal Sinha (Non-executive Director) Mr. Uday Khanna (Independent Director) Mr. Rajeev Gopalakrishnan (Managing Director) Mr. Ram Kumar Gupta (Director Finance) Mr. Sanjay Vij (Partner, S.R. Batliboi & Co. LLP) Mr. Prateek Agrawal (Audit Manager, S.R. Batliboi & Co. LLP) Mr. Maloy Kumar Gupta (Company Secretary)</p>
February 10, 2016	Approved Quarterly Financial Results sent to stock exchanges for dissemination	Maloy Kumar Gupta, Company Secretary & Compliance Officer

5. The definition of ‘unpublished price sensitive information’ as prescribed under Regulation 2(1)(n) of SEBI (PIT) Regulations, 2015 is as follows:

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

- i. *financial results*
- ii. *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*

6. From the chronology of events as tabulated in para 4 above, information relating to financial results of Bata India Ltd for quarter ended December 31, 2015 was observed to be a Price Sensitive Information (PSI), which came into existence on January 01, 2016. The

corporate announcement of unaudited financial results for the quarter ended December 31, 2015 was made to the exchanges (BSE and NSE) by Bata on February 10, 2016.(15:20:32 hours on BSE, 15:21 hours on NSE). Therefore, the period from January 01, 2016 to 15:20:32 hours on February 10, 2016 was considered as the period of UPSI (unpublished price sensitive information).

7. The investigation *inter alia* revealed that Ms. Shruti Vora (hereinafter also referred to as "Noticee"/ "SV") among other had communicated the UPSI related to Bata India Ltd. viz; Sales, PAT and EBITDA for QE December 2015 through WhatsApp messages. From the WhatsApp chat of the Noticee i.e., Shruti Vora (retrieved from her device – Apple iPhone 6s, IMEI: 355767073570777) on February 10, 2016, a chat was observed stating, "*Bata hearing pat of 44 vs 43 expectation Ebitda 80 crs vs mkt exp of 73 crs Sales 617 vs exp of 601 crs*".
8. In the following table, financial figures circulated on WhatsApp pertaining to Bata India Ltd. were compared with actual figures disclosed subsequently on exchange to gauge the deviation between two sets of figures.

Abbreviations format used:

Figure1 in WhatsApp (F1W) Figure1 in Actual (F1A) Figure1 Deviation (F1Dev)

Date and time of WhatsApp message (after adding 5:30 hrs)	Figures in WhatsApp message	Date and time of disclosure on Exchange	Actual figures disclosed on Exchange	F1W	F1A	F2 W	F2A	F3 W	F3A	%ge Deviations observed in Figures		
										F1Dev	F2Dev	F3Dev
10/02/2016 12:28:32	pat of 44 vs 43 expectation Ebitda 80 crs vs mkt exp of 73 crs Sales 617 vs exp of 601 crs	10/02/2016 (15:21 NSE) (15:20:32 BSE)	Net Sales/Income from Operations(Net of excise duty) 617.227 crores Net Profit for the Period 44.569 crores Profit from Operations before other income, finance costs, exceptional item and tax 60.298 crores Depreciation and amortization expense 19.533 crores	617	617.227	44	44.569	80	79.831	-0.04	-1.28	0.21

Note: EBITDA is calculated as: EBITDA (Earnings before interest, tax, depreciation and amortization) = Profit from Operations before other income, finance costs, exceptional item and tax + Depreciation and amortization expense = 60.298+19.533 = 79.831 crores

* % ge deviation is calculated as per the following methodology:

%ge Deviation = (Figure in WhatsApp message-Actual Figures disclosed on exchange)*100/(Actual figures disclosed on exchange)

9. From the above table, it is observed that the financial figures of Bata India Ltd., were communicated through WhatsApp prior to their announcement on stock exchanges. The timing of the said message (incoming) as per extract chat from her device was 05:42:42 hours. However, expert agency, hired for retrieval and backup of the data from the instruments/devices seized, vide email dated March 12, 2018 informed SEBI that their forensic tools generate zero G.M.T. timing by default, so add +5.30 hours as our Indian G.M.T in all the report generated.

10. The details of communication of WhatsApp message related to Bata India Ltd. (“*Bata hearing pat of 44 vs 43 expectation Ebitda 80 crs vs mkt exp of 73 crs Sales 617 vs exp of 601 crs*”) as observed from WhatsApp Chat retrieved from Shruti Vora’s device were tabulated below:

Entity from whom Shruti Vora received the message		Date and Time of receipt of message by Shruti Vora (After adding 5.30 hours)		Entities to whom Shruti Vora forwarded the message		Date and Time of forwarding of message by Shruti Vora (After adding 5:30 hours)	
Name	Tel.Number	Date	Time	Name	Tel.Number	Date	Time
Aditya Gagar*	9821016310	10/02/2016	12:28:32	Parikshit Shah*	8800333788	10/02/2016	15:13:49
Shailendra Mehta*	9820393691	10/02/2016	15:13:35				
Mobile no. of Ms. Shruti Vora: 9820832032							

*Note: Remote party name displayed in messages are Adit, Shailendra and Parikshit Shah, respectively

11. It was observed from the WhatsApp chats retrieved from the Shruti Vora’s device that the aforesaid message was received by Ms. Shruti Vora from one Mr. Aditya Gagar and Mr. Shailendra Mehta on February 10, 2016 at 12:28:32 and 15:13:35, respectively. The said WhatsApp message was forwarded by Shruti Vora on February 10, 2016 to Mr. Parikshit Shah on February 10, 2016 at 15:13:49 on one-on-one chat.

12. It was observed from the WhatsApp chats retrieved from Ms. Shruti Vora's device that Mr. Aditya Gaggar had communicated the referred message on WhatsApp group namely, "Market Info." (in which Ms. Shruti Vora was also a member) comprising of the following telephone/mobile Nos:

Sr.no.	Tel/Mobile no.	Sr.no.	Tel/Mobile no.	Sr. no.	Tel/Mobile no.	Sr. no.	Tel/Mobile no.
1	9821016310	22	9821099265	43	9820042404	64	9322240978
2	9821865539	23	9920420879	44	9821447073	65	9821055180
3	9869135297	24	9820230885	45	9867645454	66	9004699578
4	9821049538	25	9833996922	46	9820013909	67	9004233300
5	9819944145	26	9828073068	47	7506072751	68	9301626212
6	9819740976	27	9892600656	48	9820011218	69	9819700544
7	9821172879	28	9820280998	49	9820122367	70	9833127332
8	9820513508	29	9619022336	50	9873426212	71	9320224321
9	9930879571	30	9920190072	51	9821434110	72	9819262102
10	9892838881	31	9833127396	52	7877905004	73	9007482736**
11	9323021372	32	9833180731	53	9820256376	74	9821223351
12	9820242405**	33	9821266696	54	9820991554		
13	8983196678	34	9820690906	55	9322214012		
14	9820126782	35	9967541721	56	9681099930		
15	9867333174	36	9830036331	57	9819616477		
16	9820832032	37	9821170817	58	9819412544		
17	9833737010	38	9821055181	59	9867751705		
18	9811067999	39	9820028634	60	9820835367		
19	9920421946**	40	9920308564**	61	9820763682		
20	9823080955	41	9799717852	62	9820086448		
21	9820128379	42	9820021673	63	9324740098		

*Whatsapp group name as per chat extracts retrieved from Ms. Shruti Vora's device was "Market Info."

**UCC/PAN details were not available with BSE, NSE, CSE, NSDL, CDSL, R&D Infotech Pvt. Ltd.(Registrar and Share Transfer Agent of Bata India Ltd.), CAMS(Computer Age Management Services Pvt. Ltd.), Karvy and Link Intime India Pvt. Ltd. (copies of emails at Annexure 6) for the telephone/mobile nos. In absence of UCC/PAN details, for these numbers, their trading/off-market transfer(s) details could not be verified. UCC/PAN details of entities corresponding to the remaining telephone/mobile no.s received are at Annexure 6.

13. It was noted that the financial figures of Bata India Ltd. (viz; Sales, PAT and EBITDA) circulated through WhatsApp closely matched with those disclosed subsequently by Bata India Ltd. on stock exchanges (deviation in financial figures was within a range of -1.28% to 0.21%). Hence, it was alleged that the aforesaid message related to Bata India Ltd., would fall under UPSI and such circulation of financial figures through WhatsApp was considered as communication of UPSI.

14. The Noticee who was in possession of the UPSI was termed as Insider as per Regulation 2 (1) (g) of SEBI (PIT) Regulations, 2015, the provisions of which are furnished hereunder:

“insider” means any person who is:

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

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

15. Therefore, it was alleged that the Noticee being insider had communicated the UPSI relating to Bata India Ltd., to other person(s) through Whatsapp messages.

16. Accordingly, it was alleged that the Noticees had communicated UPSI related to Bata India Ltd. viz; Sales, PAT and EBITDA for QE December 2015, to other person (s) through WhatsApp message, which is prohibited and thereby acted in violation of the provisions of Section 12 A (d) & 12 A (e) of the SEBI Act, 1992 and Regulation 3 (1) of SEBI (PIT) Regulations, 2015.

APPOINTMENT OF ADJUDICATING OFFICER

17. The undersigned has been appointed as the Adjudicating Officer (*hereinafter referred to as “AO”*) vide Order dated November 26, 2019 under Section 19 read with Sub-section (1) of Section 15-I of the SEBI Act, 1992 and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (*hereinafter referred to as “SEBI Adjudication Rules”*) to inquire into and adjudge under section 15G of the SEBI Act, 1992 for the alleged violations of provisions of section 12A(d) and 12A(e) of SEBI Act, 1992 and Regulation 3(1) of SEBI (PIT) Regulations, 2015, committed by the Noticee.

SHOW CAUSE NOTICE, HEARING AND REPLY

18. A Show Cause Notice dated January 8, 2020 bearing ref No. EAD-7/BJD/VS/ 1225/3/2020 (*hereinafter referred to as 'SCN'*) was served on the Noticee under Rule 4 of the SEBI Adjudication Rules, calling upon to show cause as to why an inquiry should not be held against her in terms of Rule 4 of the SEBI Adjudication Rules read with Section 15-I of SEBI Act, 1992 and why penalty should not be imposed on her in terms of Section 15G of SEBI Act, 1992 for the aforesaid alleged violations. In reply, Noticee vide her reply sought for the additional documents in support of the allegation made against her, besides seeking inspection of the documents.
19. On her request to the additional documents in the instant matter, it was informed to the Noticee that the inspection and supply of documents relied upon for the proceedings had already been granted in consonance with the principles of natural justice.
20. The Noticee vide email dated February 10, 2020 submitted that since the Hon'ble SAT had already seized of the matter and is deciding on the issue of inspection and keeping due reverence to the fact that the Order has been reserved by the Hon'ble Tribunal, requested to await for the decision of the Hon'ble SAT and once the same is passed, further directions to file the reply within a reasonable time and fixing of a date of hearing, can be given by the Adjudicating Officer.
21. Vide email dated February 10, 2020 it was reiterated to the Noticee that all the relevant and relied upon documents in support of the charges have already been made available to her along with the SCN and therefore filing of reply on merits does not suffer from any constraint/ prejudice. Accordingly, the Noticee was given time till February 20, 2020 to furnish its reply.
22. The Hon'ble SAT vide Order dated February 12, 2020 (Appeal {L} No. 28 of 2020) while upholding the decision taken by the AO on inspection and supply of documents, made the following observations, which are summarized hereunder:

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

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

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

- a. No Connection established between company and me or the sender of the message: No connection has been established between the company, its promoters /directors /employees/ auditors with either me or the person who forwarded the said HOS to me.
- b. No leak established from the Insiders: SEBI has relied on the declarations given by the said company/promoters/directors/employees/auditors who had access to the financial results prior to the date of announcement of the same. They have declared and SEBI has accepted that they have not leaked any UPSI. SEBI has investigated and found no leak in this matter or the other matters covered by SCNs issued to me.
- c. Without establishing even a remote connection and without leak there cannot be UPSI: Thus, if there was no connection with the company and there was no leak from the insiders it is humbly submitted that the concerned estimate cannot change its nature from being a market guess to a full proof UPSI. Admittedly, individuals who have sent me the HOS messages alleged to be UPSI have also on numerous instances sent me HOS messages which were not closely matching and therefore not UPSI. While choosing whether a particular message is UPSI or gossip, the holistic view of the entire evidence, including the exculpatory evidence is required to be taken. The entire

evidence if taken into consideration would give the reason to any judicial mind that I have the benefit of doubt and that the messages were not UPSI.

- d. Without the guarantee about the source that the information is from the company there cannot be UPSI: There is no information/allegation that the source of the estimate is the company or any person who was factually in possession of the UPSI. In fact, HOS means that the estimate is not from the company and, therefore, estimate received by me was from an unknown source and such estimate whose origin is not known cannot be regarded as UPSI. UPSI necessarily means estimates whose origin is definitely the company and/or a person who is in possession of UPSI. It is second nature to participants in the securities market to keep on guessing about estimates and the same is not a prohibited activity.
- e. HOS forwarded by me just closely matching with the actual numbers does not make it UPSI. The SCN fails to consider numerous instances where estimates did not match: While the SCN has cherry picked a few instances, it clearly ignores the more evolved analysis of my messages which establish that closely matching of numbers was a rare occurrence and more of an aberration than the rule. In any event, I have never been the originator of any of the alleged messages and have merely received and forwarded the same. The person sending the message to me is not even alleged to be a person who could reasonably be in possession of the UPSI.
- f. Cherry picking of HOS which have closely matched: SEBI has admittedly analysed thousands of messages from my phone. SEBI has also analysed my husband's phone. SEBI has not found a single instance where I forwarded the HOS to any family member. There are several instances where the HOS turned out to be preposterously incorrect, however SEBI has cherry picked only those HOS which have closely matched with the actual numbers and issued the SCN. All HOS were speculative in nature. Any post facto analysis done post result declaration is useless. In this background of estimates, the nature of a HOS estimate cannot change to UPSI retrospectively once the actual numbers match as there is no benefit of hindsight.
- g. I forwarded HOS/Estimate/speculation and not UPSI: The SEBI PIT Regulations prohibit sharing of price sensitive information which has not been published. By its very definition, information is something that is accurate, certain or based on facts. An analysis of the messages on WhatsApp would reveal HOS was sent and clearly understood as market gossip and the same cannot be treated as "information". Admittedly, there was no source-based credibility to any of such HOS.
- h. Forwarding of HOS to various persons including non-clients: Since I did not deem the said HOS to be UPSI, I merely forwarded the same to clients/market groups/acquaintances who actively track the securities market) without application of mind. Had the information been UPSI, I would not have widely circulated the same.
- i. No nexus/no definite pattern of access to UPSI: There has been no pattern / no arrangement established from my phone available with SEBI which suggests that any insider kept sharing any UPSI with me or that I was soliciting the same from any person. There has been no trading or quid pro quo arrangement established or alleged. The HOS received by me were random / sporadic in nature and did not follow any quarterly pattern. If I would have had access to UPSI for one Quarter then I would reasonably have access to UPSI on a continuing basis. There is no such pattern

established even with respect to any one company. On the contrary, there have been instances when the HOS matched for one quarter and for another quarter it did not match.

- j. No mens rea: There is no allegation in the SCN that there was a wilful attempt to source UPSI and then share the same. On the contrary, all the information received was without solicitation and all the information shared did not result in insider trades. All the messages were intact on my phone and there has never been an intent to evade questions or escape the investigation for two years.*
- k. No breach of law established: The SCN, on a plain reading, does not establish any breach of law / rules / regulations by me and merely makes a bald allegation. The SCN is contrary to the SEBI PIT Regulations, that mandates SEBI to prove that I had access to UPSI.*

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

- a. I am currently working in the institutional sales and cater to institutional clients for the firm like Mutual Funds, Insurance companies etc.*
- b. I act as the bridge between my company’s research team and the clients and my job also involves sending updates to such institutional clients on various aspects including:*
 - *Indices and expected technical analysis of the same;*
 - *Calls and recommendations on scripts;*
 - *News about events in the market;*
 - *Analysing reports from other brokerage house on several scripts;*
 - *Market intelligence in the form of news items, news appearing on TVs etc., heard on street estimates.*
- c. I have been employed in the said role since 2016 and prior to the same I was in the Derivatives Sales Department and prior to that I worked as a technical analyst. I have been working with Antique since 2008.*
- d. As you would appreciate, it is part and parcel of my daily job to accumulate information about movements in the market, possible stock prices, news about important elements in the financial world and communicate the same to the institutional clients of Antique.”*

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

Concept of Heard on Street (HOS)

- a. *Heard on Street or HOS is a common practice within traders, market analysts, institutional investors etc. whereby unsubstantiated gossips are widely shared and the said gossips are clearly understood as speculation / rumours in the market. In fact, reputed journals in the USA like the Wall Street Journal also have an entire page dedicated to such speculations. In fact, the Wall Street Journal runs a twitter handle @WSJHeard (Title: Heard on the Street) and the said handle shares "The first word on what Wall Street is talking about.". Even in India, the Economic Times carried an entire column dedicated to such market chatter. Leading news channels like CNBC, ETNOW also regularly have talk show hosts citing anonymous sources on probable results, developments etc.*
- b. *The Street expectation is the average estimate of a public company's quarterly earnings and revenues that is derived from forecasts of research analysts who provide research coverage on the company. The Street expectation is a closely-watched number that becomes prominent during the period when most public companies report their results. The term is derived from the fact that analysts of the biggest brokerages are typically based on Wall Street in the U.S., Bay Street in Canada and Dalal Street in India.*
- c. *HOS used to be shared by the way of newspaper articles earlier and with the advancement of technology, HOS estimates started floating across instant messaging platforms like WhatsApp. It is a well-known fact that nobody gives undue weightage to HOS while making investment decisions as it is pure speculation / gossip from unverified sources. However, a lot of traders and investors rely upon HOS to get a pulse of market and make their decisions on the basis of several factors, one of which is HOS. HOS functions like a grapevine whereby the said is shared by news agencies (like CNBC / Reuters), analysts with broking houses, traders, active investors etc. News agencies typically are a part of such groups for sourcing their news and also share news on such groups. It is common knowledge that HOS cannot be a sole factor for making a trade decision, however, traders consider awareness about the same as important to understand market sentiment. Every element that a trader uses has some level of probability attached to it as the price of a scrip is not a direct function of any one factor. The market sentiment around a scrip is affected by several factors (technical charts, volumes in F&O Segment, general economy news, sector specific news, news about any Key Managerial Person, HOS about results etc.,). Therefore, any person trading has to factor in several elements and then plan his trades accordingly.*

.....
- d. *It is a common practice that the analysts of various brokerage houses come out with a preview report and estimate the results across all coverage companies. These estimations are based on several factors including financial modelling, management guidance, global factors, meetings with management of listed companies etc. Once the official results are*

declared, the estimated numbers are compared with the actuals and an analysis is done as to whether the numbers “in line with estimates” / “beats estimates” / “misses estimates”. The entire trading community / active investors use these estimates to plan their trades. Even the comment board on popular websites like “moneycontrol.com” / “ET poll” are used frequently by investors / traders to get a sense of the market.

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

“....

- a. Despite the fact that such a detailed search was conducted, there is no allegation that I forwarded the said HOS to any of my family members or that I have gained any money from the said forwards. Further, the SCN is completely silent on any arrangement between me and any other person / persons for forwarding of such alleged UPSI. The SCN is completely silent on any quid pro quo arrangement for sharing the information. The same is only attributable to the fact that I always believed the information being forwarded was to be HOS / speculative in nature and not UPSI as alleged or at all.*
- b. SEBI has analysed the entire data on my phone and would appreciate that the nature of my messages shows that there is widespread conversation on stock charts, fundamentals, historical behaviours, analysis and pattern, estimates-in house and external, market talk, market intelligence. It would be appreciated that as an employee working in the institutional sales team, it was my role and responsibility to provide the clients all such information. While the SCN has cherry picked a few messages, it conveniently ignores the pattern whereby the larger role of coordination and knowledge sharing as a part of sales function and sharing HOS information being a very small element of it.*
- c. Analysing a pattern of WhatsApp Chats, it would be evident that the same HOS/Market Gossip was shared at times by more than one person clearly signifying that I was not the sole person who had the said market gossip and this I believed that said information was widely and generally available to several parties. I had no idea or any reason to believe that the said information was confidential. Also, since the information never came from a person who is connected to the Company, I further had no reason to ever believe that the same was UPSI;*
- d. All the messages were forwarded to clients / market chatter groups instantly, without any specific thought applied to the same and it therefore shows that there was no reason for me to believe that the information was confidential; no message ever came from a connected person.*

- e. *There was not a specific entity/person who would regularly send me HOS every quarter of company in question and the information, the HOS information was sent to me by different entities for different quarters. The pattern of receiving information and forwarding the same is sporadic and therefore belies the evidence of a larger conspiracy to communicate UPSI.*
- f. *Neither me nor my family members have ever traded on the basis of the alleged UPSI or have had any arrangement that would give us any monetary gain for sharing this UPSI. Further, the alleged HOS / UPSI was never shared with any family member. Further, it must be appreciated that the information was shared on WhatsApp chats/groups, which had several members including journalists from reputed financial news channels. If the intention was to communicate UPSI to select entities, I would have never shared information with larger groups of people. There was no reason for me to hoard the message for myself or my company alone or even delete any such evidence as these HOS numbers had no special significance for me. The very fact that journalists also use such HOS information clearly belies the allegation that the information so shared was UPSI.*

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

- g. *Annexure 4 is a copy of WhatsApp chat extracted from my phone. It is pertinent to note that the said document is an incomplete document and only select few pages have been annexed to the SCN. It is submitted that reliance on an incomplete document is bound to give an incorrect picture and incomplete documents extracted from a report cannot be relied upon to frame a charge.*

An analysis of the messages would reveal that:

- a. *The said message was sent on the market info group containing the HOS about several companies by Aditya Gaggar. The said message was not shared with me individually but with a larger group clearly indicating that the same was no secret.*
- b. *Three hours later, Shailendra Mehta also sent me the same message, which he had perhaps received from some other source. Shailendra is not a part of the "Market Info" group where Aditya Gaggar had sent the message.*
- c. *A perusal of my chat with Parikshit Shah (from QVT, a hedge fund) would show that I have forwarded the said message in less than a minute without any application of mind as to the veracity of the same. QVT Hedge Fund is a client of Antique.*

- d. *An analysis of my chat with Omkar would show that I asked him to analyse the HOS numbers to which he responded that the same were in line with the consensus estimate;*
 - e. *A perusal of my chat with Jai would show that there was no reaction from him after he received the message from me, clearly ignoring the same as HOS / market rumour;*
 - f. *A perusal of my chat with Rajatdeep Singh (who works for Canara HSBC Mutual Fund) would show that there was no reaction from him after he received the message from me, clearly ignoring the same as HOS / market rumour. At the same time, I also shared the Axis Bank results, which turned out to be completely wrong;*
 - h. *Annexure 6 to the SCN contains the correspondence exchanged between SEBI and BSE / NSE / NSDL / CDSL regarding the UCC details of the mobile numbers who had received the message in the group. It appears from the annexure that despite receiving the message, SEBI has been unable to find a single instance of a person trading on the basis of the alleged UPSI. This itself shows that none of the recipients on that group including myself had any reason to believe the veracity of the message and all of us treated the same as market gossip. However, all relevant emails have not been annexed to the SCN. The present proceedings are not adversarial proceedings but with an intent to establish the truth. Such emails, which exculpate me from the charges, being hidden by a regulator amounts to breach of principles of natural justice and fair play and are liable to render the present proceedings as void and illegal.*
-
- i. *A perusal of above provisions makes it abundantly clear that the SCN makes out no case of violation of the SEBI Act, 1992 or the PIT Regulations, 2015. The only case against me is that I have received certain WhatsApp forwards about estimates of a company's result, from a person who is in no manner a "connected person" (within the meaning of the PIT Regulations or otherwise) with the Company and I forwarded the information to several clients and some market chatter groups on an "as is where is" basis without any specific application of mind. Therefore, it is submitted that the information shared with me and the information that I forwarded, was not UPSI as the said information was in the nature of mere speculation about the results and rumours. Since the information was mere gossip and market speculation forwarded by people, the same was generally available information and not UPSI.*

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

- j. *The PIT Regulations entail a prohibition on trading by insiders in securities when in possession of UPSI, thus obtaining an unfair advantage. They also entail outlawing communication of UPSI by any insider except where such communication is legitimately necessary for performance of duties or discharge of legal obligations. It is humbly submitted that the information available with me was market rumours and therefore fall within the realm of generally available information about the company. The very fact that the information shared by me was “HOS” clearly proves that the same was a mere speculation and not actual financial results of the company.*
- k. *Essentially, information that is accessible to the public on a non-discriminatory basis would be considered generally available information. Analysis and research based on generally available information would also be generally available information. Information that is capable of being accessed by any person without breach of any law would be considered generally available. It is submitted that in the facts of the present case, the information that was forwarded to me was in the nature of market gossip and I have given several other examples to show that it is common practice among market participants to keep on predicting future events and the said market gossip is not prohibited under any law. The HOS messages received by me and forwarded by me were clearly understood to be mere speculative estimates and nothing more. Further, it is evident that more often than not, in fact, in more than 90% of the cases, the news did not turn out to be true.*
- l. *The High-Level Committee to Review the SEBI (Prohibition of Insider Trading) Regulations, 1992 under the Chairmanship of Mr. Justice N K Sodhi (“**Justice Sodhi Committee Report**”) made it abundantly clear that while defining the terms “insider” and “generally available information”, due care was taken. The Committee concluded that the term – “insider should be defined to mean all – connected person// and those in possession of UPSI leaving it to the definitions of – generally available information// to safeguard against an over-reach of the prohibition being read as a ban on – informed trading as opposed to – insider trading. The Committee has also provided robust defences against bringing a charge without satisfying the essential ingredient and rationale behind the prohibition on insider trading.*
- m. *While determining the fine nuances as to what constitutes to be generally available information and how the same information could be both UPSI and generally available information, the Justice Sodhi Committee Report discusses several illustrations as the difference between the same forms the backbone of Regulation 3. At para 25 to 33, the Justice Sodhi Committee Report discusses:*

“

..... “

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

- None of the senders of the messages are even remotely connected to the Company or any person who may be in possession of the UPSI;
 - Despite the information being forwarded to several parties, not one of them has alleged that the said information was UPSI; and
 - The SCN also does not allege that anyone traded on the basis of the alleged UPSI;
 - The correct interpretation of law would be that the said WhatsApp messages are merely market gossip and generally available information and not UPSI as alleged in the SCN.
- o. Even in cases where it was proved beyond doubt that the tipper had shared information leading to trades by relatives of the tipper, the same lead to profits by such tippees, SEBI decided not to impose any monetary penalty on the said Noticee.
- p. An analysis of the bare provisions of the law and the Justice Sodhi Committee Report would clearly signify that I was not an “insider” or a “connected person” and the information that I have forwarded is merely speculation about the probable results of the company, it cannot be alleged that I have violated the SEBI Act, 1992 and the PIT Regulations.

- q. *I repeat and reiterate that neither I am the originator of any of the messages nor have I ever traded on the basis of such messages. Merely because an estimate closely matches the actual number does not change the fact that the same was a gossip / speculation and converts itself into UPSI.*

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

- a. *I was working at the relevant period and continue to work with the Institutional Sales team to cater to the needs of Institutional Clients at Antique. I have been employed in the said role since 2016. I am associated with Antique since 2008 in different roles as a Technical analyst and Derivatives Sales Department. I act as the bridge between my company's research team and the clients who are various mutual funds, Insurance Companies, Hedge funds etc.*
- b. *My job during the relevant period and presently involves sending updates to such institutional clients on various aspects including:*
- *Calls and recommendations –fundamental/technical/quantitative parameters on scrips;*
 - *News about events in the market;*
 - *Sector reports published by Antique research analysts team from time to time. Arrange calls and set up meetings between Antique research team and fund representatives from time to time to discuss these research reports. “*

28. Further, the Noticee also submitted that she, February 10, 2016, had received the message from 2 people- Adit as a part of market info group and from Shailendra 3 hours later suggesting that it was in wide circulation and that other BATA related messages in different quarters were inaccurate suggesting no pattern.

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

- a) *that all the said numbers in the WhatsApp messages were in fact closely matching with estimates given by brokerages in their report preview (released prior to result announcement).*

- b) That the Bloomberg terminal had all such broker estimates complied and upon finding; we have observed that the alleged messages in fact match the broker estimates and other publicly available information and submitted a copy of the screenshot of the website stating the report as under:

Company	Financials	Broker estimates (Rs. Cm)	Whatsapp message (Rs. Cm)	Actual Results as per SCN (Rs.Crs)	Deviation between the Whatsapp message and Broker estimate (%)	Deviation between WhatsApp message and Actual Results from SCN (%)	Broker estimate available on Bloomberg	Date of Broker estimate as per bloomberg	Date of Whatsapp message	Date of published Results
Bata	Sales	617	617	617.227	0.00	-0.04	CIMB	4'Feb 16	10 Feb 16	10Feb 16
	Ebitda	82	80	79.831	-2.44	0.21	Am bit	4'Feb 16	10 Feb 16	10Feb 16
	PAT	44	44	44.569	0.00	-1.28	Bloomberg consensus	4'Feb 16	10 Feb 16	10 Feb16

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

CONSIDERATION OF ISSUES AND FINDINGS

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

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

FINDINGS

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

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

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

Section 12 A (d) of SEBI Act, 1992

No person shall directly or indirectly engage in insider trading

Section 12 A (e) of SEBI Act

No person shall directly or indirectly deal in securities while in possession of material or non-public information or communicate such material or non-public information to any other

person, in a manner which is in contravention of the provisions of this Act or the rules or the regulations made thereunder

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

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

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

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

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

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

35. I note from the record that Bata Ltd. vide its letter dated July 24, 2019 submitted the chronology of events leading to the quarterly disclosure on February 10, 2016 for Q4 December 2015 which is noted in the paras above. From the same, I further note that period of alleged UPSI in the matter started from January 1, 2016 when finalization of unit trial balances and start of consolidation process for preparation of yearly results of whole company for the period relating to January 1, 2015 to December 31, 2015 under US GAAP was initiated and existed till 15:20:32 on February 10, 2016 when the financial results were disclosed to the stock exchanges. Admittedly the message with respect to the same viz., “Bata hearing pat of 44 vs 43 expectation Ebitda 80 crs vs mkt exp of 73 crs Sales 617 vs exp of 601 crs” was received by Shruti Vora from one Aditya Gaggar on at 12:28:32 on February 10, 2016 and from one Shailendra Mehta at 15:13:35 on February 10, 2016. The said WhatsApp message was forwarded by Shruti Vora on the same day i.e. February 10, 2016 at 15:13:49 to one Mr. Parikshit Shah on one-on-one chat. While I note that the investigation has not revealed any material directing to the source of the UPSI, however I note that the significant fact is that the content of the message that was communicated between the Noticee exactly matched with that of the financial results of Bata Ltd announced later on the same day. I am of the opinion that such information which was in the nature of price sensitive information and remained unpublished, was in the possession of the Noticee. I do not find merit in the submission of the Noticee claiming that, in the absence of proof of leak and the source of UPSI, the information does not stand to qualify as a UPSI. In this regard, I find it pertinent to refer to the peculiar facts and circumstances involved in the instant case where the mode of circulation of information has been by way of WhatsApp messages. I note from the record that efforts were made to track back to the source of the message; however severe technological constraints were faced in this regard owing to the end-to-end encryption of WhatsApp messages. I note that WhatsApp itself communicated to SEBI stating that WhatsApp users are protected with end-to-end encryption protocol, third parties and WhatsApp cannot read such messages or search for

such messages and that WhatsApp does not store information regarding the sender and recipient of a message, the same could not be tracked despite all the efforts. Besides, in the instant case, the information has not been claimed as received from any direct source other than the whatsapp communications.

36. As noted above, it is not the case of the Noticee that the information shared through the WhatsApp in the instant case were generated by her through market research or by any other data and in fact, apart from denying the connection to the source, the Noticee has stated that the information was passed on generally and she was part of the chain that carried on the information. Further, it is also the contention of the Noticee that the information was the outcome of the estimates from the brokers which was already in the public domain. Such being the case, I deem it relevant to examine the content of the information to ascertain its nature.

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

Abbreviations format used:

Figure1 in WhatsApp (F1W) Figure1 in Actual (F1A) Figure1 Deviation (F1Dev)

Date and time of WhatsApp message (after adding 5:30 hrs)	Figures in WhatsApp message	Date and time of disclosure on Exchange	Actual figures disclosed on Exchange	F1W	F1A	F2W	F2A	F3W	F3A	%ge Deviations observed in Figures		
										F1Dev	F2Dev	F3Dev
10/02/2016 12:28:32	pat of 44 vs 43 expectation Ebitda 80 crs vs mkt exp of 73 crs Sales 617 vs exp of 601 crs	10/02/2016 (15:21 NSE) (15:20:32 BSE)	Net Sales/Income from Operations(Net of excise duty) 617.227 crores Net Profit for the Period 44.569 crores Profit from Operations before other income, finance costs, exceptional item and tax 60.298 crores Depreciation and amortization expense 19.533 crores	617	617.227	44	44.569	80	79.831	-0.04	-1.28	0.21

Note: EBITDA is calculated as: EBITDA (Earnings before interest, tax, depreciation and amortization) = Profit from Operations before other income, finance costs, exceptional item and tax + Depreciation and amortization expense = 60.298+19.533 = 79.831 crores

* % ge deviation is calculated as per the following methodology:

%ge Deviation = (Figure in WhatsApp message-Actual Figures disclosed on exchange)*100/(Actual figures disclosed on exchange)

38. While it is evident that the information related to the financial results were sensitive in nature, I note that the financial figures matched almost exactly with that circulated through the WhatsApp messages. I also find it very pertinent to note that the information relating to financial results that included Sales, EBIDTA and PAT were not even stated in any approximate range of values but were stated as a definite amount in the messages and exactly matched with that of the subsequently announced results. In addition, I also note from the chronology of events with respect to the preparation of accounts during the UPSI period, on February 10, 2016, after discussion with the Managing Director of Bata India, Final quarter Financial Results were presented before the audit committee and board of directors of Bata India. Therefore, in spite of the fact that the source of leak of information could not traced back due to the technological constraints owing to deletion of whatsapp messages, in the circumstances as above, I note that it is reasonably possible that the information that was communicated by the Noticee had already come into existence on February 10, 2016 at the time when the Noticee further communicated the messages she received. In view of the above, I am of the opinion that Noticee's submission claiming that the aforesaid information did not constitute UPSI for the reason of non-establishing the leak and connection with the source is devoid of any merit.
39. Further, the main contention of the Noticee is that the information constituting the whatsapp messages were the outcome of the estimates from the brokers which was already in the public domain. In support of the aforesaid contention, the Noticee has produced before me the screenshots from the Bloomberg indicating the estimates from the broker with respect to Bata Limited, which were published on Bloomberg much before the whatsapp messages were forwarded by the Noticee.
40. In this regard, I have carefully perused the aforesaid documents produced before me. The Noticee have submitted before me the several screenshot of such estimates of brokerage firms appearing on bloomberg, one of which is reproduced hereunder:



41. The Noticee has submitted that the source of the information of her whatsapp messages dated February 10, 2016 was the estimates of broker firm/analysts as available on Bloomberg which was in public domain and thus could not be considered as a UPSI. She contended that such message was merely forwarded by her as received. I note from the snapshot that there were about 9 estimates of analysts of various broking firms regarding estimated Revenue of Bata Ltd till February 10, 2016. I note that there was no reports attached except for the details of the analyst and the broking firm representing and each estimated stated significantly varied estimated from the other. As already noted, it is the primary submissions of the Noticee that the information forming part of Whatsapp was in essence arising from aforesaid estimates mentioned in Bloomberg. However, considering that there were several estimates given out by several analysts of the broker firms on

several days for Bata Ltd for the quarter ending on December 2015, the onus is on the Noticee to demonstrate as to on what basis the specific estimates have been claimed to be the source distinguishing that from the rest of the estimates. Further, the Noticee has referred to the estimates from Varun Lohchab, analyst of CIMB dated January 8, 2016, which closely matched with her whatsapp message and was in public domain. However, I note that in the snapshot submitted by the Noticee which is reproduced above, there were as many as 5 estimates out of the remaining 8 estimated that were published after the aforesaid estimate by CIMB which significantly varied in their estimated revenues of Bata Ltd for the aforesaid quarter and the Noticee has not stated any basis for referring to the said estimates (which is published a month before her whatsapp message) as the source. Similarly, the Noticee has referred to the estimates of Ambit Capital Pvt. Ltd. dated January 14, 2016 for the EBIDTA and BEst Standard dated January 14, 2016 for the PAT information of her whatsapp message. I am of opinion that if Noticee had in fact relied upon any specific research estimates or her forwarded messages had originated the information from such estimates, it should be demonstrable, verifiable trail of well documented and laid down process in consonance with the job profile or description. In the instant case, I note that Noticee was associated as sales team handling equity sales in a broking firm and therefore as per job profile would be primarily on liaisoning between its broking firms research team and clients, if necessary. I note that noticee instead of seeking inputs from its internal research team, which is part of her job description, had submitted totally unrelated estimates in Bloomberg without any demonstrable and verifiable trail of events for relying on any specific research report. I note that Noticee has failed to demonstrate the basis in above lines and merely produced some estimates which were appearing in Bloomberg. If Noticee had relied upon such estimates, it would have been communicated only to clients of its broker as part of her job and not to share with other unconnected entities as noted from the closed whatsapp groups, some of whom were admittedly participants of Reuters trading platform, as per her own submissions dated May 09, 2019 before SEBI.

42. From all the above, I am of the opinion that the submissions of the Noticee that the information shared through the whatsapp messages was of generally available nature by referring to the estimates consensus of broker firms on Bloomberg as the source is far-

etched and clearly an afterthought. Therefore, based on the facts above, the information circulated among the closed group through whatsapp by the Noticee which accurately matched with the subsequently announced results ought to have originated from the closed group.

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

43. The Noticee has also argued that the information as in the instant case are in the nature of HOS i.e. Heard on Street as noted at para 25 above. I note that the said submission is in effect contending that the information was in the nature of an unsubstantiated gossip that was being forwarded as speculation or rumours. The Noticee has contended that such information was of the same nature that were published in the newspaper estimating/speculating the results of the public companies and that the same were being shared over WhatsApp due to the advancement of technology. Further that it is a common practice that the analysts of various brokerage houses come out with a preview report and estimate the results across all coverage companies and such estimations are based on several factors including financial modelling, management guidance, global factors, meetings with management of listed companies etc., which are used by the entire trading community/active investors to plan their trades. In light of the aforesaid contention by the Noticee before me, I primarily note that the information of the nature of HOS that is published in the newspaper or by the brokerage houses estimating the results are in the public domain and there is generally no disparity in the access to such information. However, such information when being circulated among a closed group as in the instant case, such group and the people forming part of the information communication chain alone become privy not only to the content of the information, but also to the knowledge of very existence of such information. Further, as submitted by the Noticee herself, it is a common practice that the broking houses arriving at an estimate on results based on several factors including financial modelling, management guidance, global factors, meetings with management of listed companies etc. I am of the opinion that such information generated as above by the brokerage houses may not constitute UPSI even if the same subsequently matches with the result announced. However, in the instant case

before me, the information communicated by the Noticee is neither being claimed as arising from the market research nor was it the estimates/predictions of Noticee herself. In fact, the Noticee has stated that such information was received by Mr. Aditya Gaggar and Mr. Shailendra Mehta from a third party and the same was forwarded to Noticee.

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

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

Noticee:

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

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

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

48. The Noticee has also vehemently argued that the information claiming to be in the nature of HOS had never been forwarded to any of her family members or was taken advantage by them. In this regard, as already noted, due to the technological challenges, the trail of the messages (which were deleted) could not be made out so as to identify the actual source or the complete list of persons who were part of the communication trail and therefore it is not entirely acceptable that no gain was made by any investor being privy to such information shared through WhatsApp messages. Due to the same, I am also not inclined to accept Noticee's submission that the information lacked the credibility of the source and hence cannot be qualified as a UPSI. Furthermore, irrespective of the factors whether the information was originated from the Noticee or that her families had traded based on such information, the charge against the Noticee sustain to be considered as the same is concerned with whether the Noticee was in possession of UPSI and had shared it further.

At this stage, I note that I am primarily of the opinion that it is against the interest of the investors to encourage any sharing of sensitive information within a closed group to the exclusion of general public especially when the source of such information cannot be traced back. If the same is allowed to continue in the pretext of sharing of HOS as stated by the Noticee, the insiders having access to the UPSI would be granted themselves with an unfettered mode of transmitting such information without having to be concerned about being tracked back to the source of the information. Considering the extent of impact, such UPSI involving financial results hold on the price of the securities, I am of the opinion that a lenient view cannot be warranted so as to consider such information qualifying to be an UPSI as a mere HOS.

49. It is also the submission of the Noticee that she did not believe the information to be a UPSI and therefore forwarded to clients/market groups/acquaintances without application of mind. In the established facts of the case, the Noticee who is reasonably expected to be well acquainted with the working of the securities market and the nature of sensitive information that an unpublished financial results cannot claim ignorance of the nature of information. I am of the opinion that such category of persons who are well aware of the sensitive nature of UPSI has an ethical obligation on their part to inform the regulators in case of coming across an accurate details regarding UPSI from a suspicious source rather than taking care of the interest of their acquaintances by forwarding the same. However, in the instant case, I note that admittedly there have been several communications which happened frequently with respect to the financial results of the companies between the personals who are closely associated with the market. I note that the Noticee in all probability must have observed that some of the information she received had very closely matched with the subsequently announced financial results. Especially considering that she was not aware of the source of the UPSI that she had received, it was to alarm the Noticee or give raise to a suspicion on the source of the information. Surprisingly, it has not been the case and the Noticee had chosen to accept the information and further communicate the same ignoring the material nature of the information.

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

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

“insider” means any person who is:

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

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

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

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

a) Whether the information constituted UPSI

52. Firstly, it is the contention of the Noticee that the information forming part of the WhatsApp messages were generally available and was in the nature of market gossip/rumour/ HOS. In this regard, as already opined above, I do not find that the

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

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

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

....

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

30. A piece of research work that is available on a discriminatory basis but is based entirely on generally available information would not change the character of the research work from being —generally available// to being —UPSI. The Committee is conscious that generally available information well analyzed by an insightful mind would not be transformed into UPSI. Therefore, the regulation explicitly provides that conclusions, deductions and analyses of generally available information too would be regarded as generally available information.

.....

33. To conclude, whether or not a piece of information is generally available or is unpublished would necessarily be a mixed question of fact and law. A bright line indicating the types of matters that would ordinarily give rise to UPSI are listed to give illustrative guidance. It could well also be possible that information from such events could be routine in nature and consistent with a long history. Information about the repetition of the same event on

predictable lines would not render it to be UPSI unless deviated from. For example, the declaration of dividend at the same rate at which a company has declared dividend for the several years as per publicly stated dividend policy.

”

54. Having noted the above, I further note that the Noticee has *inter alia* contended before me that “*Analysis and research based on generally available information would also be generally available information. Information that is capable of being accessed by any person without breach of any law would be considered generally available. It is submitted that in the facts of the present case, the information that was forwarded to me was in the nature of market gossip and I have given several other examples to show that it is common practice among market participants to keep on predicting future events and the said market gossip is not prohibited under any law.*” In this regard, while I note that whether or not a piece of information is generally available or is unpublished would necessarily be a mixed question of fact and law, the statement that the information was an outcome of the research does not by itself make it generally available. I note that the test to ascertain an information to be UPSI or not is its non-discriminatory nature of availability. In the instant case, the Noticee while referring to one of the estimates of CIMB published on Bloomberg which matched with her information related to Revenue claimed that the information was already generally available. However, as noted in the preparas, she has failed to exhibit how one specific estimate (that matched her information) out of several estimates published on Bloomberg in one month before the sharing of her whatsapp message made the whatsapp information already generally available. As already noted, I am of the opinion that such argument without any explanation on the nexus between her message and the aforesaid estimates published on Bloomberg is clearly farfetched, afterthought and does not merit consideration in her favour. Further, the Noticee has not placed before me any evidence to indicate that the information was derived from any research work of her own or any other specific report. Furthermore, as stated at paragraph 26 of the Committee Report, an illustration where a research work that is priced at *a level not in line with market practice such that only some identified persons may be able to acquire it was opined to be of discriminatory nature*. Therefore even if the information is said to be have been formed

based on the research, firstly the research should have been based on the generally available information and secondly the research work should have been accessible on a non-discriminatory basis. However, in the instant case, even if the information is to be accepted as based on the research, there is no evidence brought on record by the Noticee to show that the research information emerged based on the generally available information. Further, the said information has been circulated between the closed groups of entities including the Noticee through the WhatsApp messages which by its very nature make it a discriminatory access to the selected few. Therefore the information in this case fails the test to be called generally available information as contended by the Noticee.

55. Furthermore, with respect to the submissions of the Noticee, I also note from the job description of the Noticee, it was not a requisite task arising from her duty to forward the messages of the nature as in the instant case. Yet, the Noticee have been admittedly been continuously involved in sharing such information being an active chain in the transmission of information. While I note that the information shared/forwarded by the Noticee had not matched with that of the actual results on several occasions, the fact it matched so accurately in a few instances also cannot be viewed leniently. Especially when the information included the exact details with respect to crucial part of financial results such as Sales, EBIDTA and PAT. I cannot ignore the fact that such information have been shared with a closed set of people and the general public had no knowledge of such information being shared on the WhatsApp platform to even have any access to the same. Further, the Noticee being financially literate personal who has been associated with the securities market by holding significant position noted at paras above, it was well within a reasonable expectation out of her to be triggered alarm when the information that were being circulated through WhatsApp messages so accurately matched with the subsequently announced actual figures of the company, even if such occurrence happened with respect to selected few messages out of several messages as stated by the Noticee. However, the Noticee has allowed herself to continue to be an instrument in the chain of communication of such sensitive information through WhatsApp messages. From the summary of aforesaid findings, I am of the considered view that the messages about the financial results were circulated prior to the official announcement made by the

Companies, is UPSI. In my opinion, the disclosure of this information violates the rule of parity of information and perpetuated information asymmetry. The prohibition against insider trading helps in ensuring fairness, achieving information symmetry and ultimately market efficiency.

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

&

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

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

57. In her defense against being alleged as the insiders in the instant case, the Noticee has based her contentions on the argument that the information contained in the WhatsApp messages were in the nature of market rumor/gossip/HOS and hence cannot be regarded as UPSI and thus she did not act as insider in the instant case. However, from the conclusions arrived in the preparas of this Order, it has been already been noted that the financial results that were part of the WhatsApp messages constituted UPSI as on February 10, 2016 at the time the Noticee forwarded the messages for the reasons mentioned above. Further from the admitted fact that Noticee had forwarded the said message to one Parikshit Shah, it is imperative that the Noticee was in possession of UPSI even though it was only 8 minutes before the said UPSI became public and consequently she is considered as insider with respect to the UPSI she possessed.

58. Further with respect to the circulation of the aforesaid UPSI by the Noticee, it is contended by the Noticee that despite the information being forwarded to several parties, none of

them alleged that the said information was UPSI and in spite of the communication of the information, there is no evidence as to anyone has traded on the basis of the UPSI. In this regard, I note that the Regulation 3(1) of PIT Regulations, 2015 prohibits communication of UPSI from an insider in any mode. I note that the regulation does not exempt the person from the guilt of communicating merely on the fact that no trades had taken place based on the UPSI thus communicated. The main problem in case of dissemination of information through WhatsApp is the end to end encryption system of transfer of information because of which the data cannot be accessed by third party except receiver and sender. In case of the deleted messages as in the case, the complete trail is lost. Furthermore, I again take note of the fact that the technological constraint arising in the peculiar facts and circumstances of circulating messages through WhatsApp, the complete trail of messages could not be discovered though the message was admittedly circulated among several market associated personals. Therefore, I am of the opinion that in order to safeguard the interest of the investors and the integrity of the securities market, one cannot import a liberal interpretation of the aforesaid provision so as to warrant the Noticee, who has been involved in the circulation of UPSI on a routine basis over the WhatsApp, with a benefit of doubt. Considering the same, as evident from the record, the Noticee being an insider for having the UPSI in possession on February 16, 2016 had forwarded such UPSI through WhatsApp messages to one Mr. Parikshit Shah before the UPSI was made public by the Company. In view of the same there is no reasonable doubt in concluding the Noticee as an insider under the provisions of Regulation 2 (1) (g) of SEBI (PIT) Regulations who as in possession of UPSI and that she communicated the same further.

59. In light of the facts concluded above, I find it relevant to note that the Hon'ble Supreme Court has been consistently of the view that what cannot be done directly, cannot be done indirectly. I note that in *Jagir Singh v. Ranbir Singh* (MANU/SC/0097/1978 : 1979 AIR 381), the Hon'ble Supreme Court has held that what cannot be done directly, cannot be allowed to be done indirectly as that would be an evasion of the statute. The Supreme Court has held that it is a well-known principle of law that the provisions of law cannot be evaded by shift or contrivance, and that the objects of a statute cannot be defeated in an indirect or circuitous manner. (As per Abbott C.J. in *Fox v. Bishop of Chester* (1824) 2 B & C 635 "To

carry out effectually the object of a Statute, it must be construed as to defeat all attempts to do, or avoid doing, in an indirect or circuitous manner that which it has prohibited or enjoined"). I also note that the same principle is also enshrined in Section 12A of the SEBI Act, which inter alia states that no person shall directly or indirectly engage himself with communicating the UPSI when being in possession of the same.

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

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

61. A basic premise that underlines the integrity of securities market is that persons connected with the market conform to the standards of transparency, good governance and ethical behavior prescribed in securities laws and do not resort to fraudulent and deceptive activities like insider trading. Such activities are detrimental to the interests of the investors as well as the securities market. No person can be allowed to enrich himself/herself by way of wrongful or ill-gotten gains or avoidance of potential loss made on account of such activity. SEBI has been entrusted with the important mandate of protecting investors and safeguarding the integrity of the securities market. In this regard, necessary powers have been conferred upon SEBI under the securities laws. The SEBI (PIT) Regulations have put in place a framework for prohibition of insider trading in securities. The prohibitions provided in the Regulations ensure a level-playing field in the securities market and safeguard the interest of investors and integrity of securities market. I am of the view that the object and spirit of the SEBI (PIT) Regulations would get defeated if the alleged violators of the said Regulations are not made to face the consequences.

62. It is established from the findings that the Noticee being an insider had communicated the UPSI relating to Bata Ltd., to other person through WhatsApp messages, which is in violation of the provisions of Sections 12 A (d) & 12 A (e) of the SEBI Act, 1992 and

Regulation 3 (1) of SEBI (PIT) Regulations, 2015, for which the Noticee is liable for monetary penalty under Section 15G of the SEBI Act which reads as under.

Penalty for insider trading

15G.If any insider who,—

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

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

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

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

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

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

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

(c) the repetitive nature of the default.”

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

ORDER

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

66. The Noticee shall remit / pay the said amount of penalty within 45 days of the 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 online payment facility available on the SEBI website www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT → Orders → Orders of AO →PAY NOW

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

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

68. In the event of failure to pay the said amount of penalty within the timelines as mentioned in Para 66 above, recovery proceedings may be initiated under Section 28A of the Securities and Exchange Board of India Act, 1956 for realization of the said amount of penalty along

with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

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

Date: June 4, 2020
Place: Mumbai

B J Dilip
Adjudicating Officer