

WTM/ AB /SRO/SRO/8554/2020-21

**SECURITIES AND EXCHANGE BOARD OF INDIA
FINAL ORDER**

Under Sections 11(1), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992.

In respect of: -

S. No.	Name of the Entity	PAN
1.	M/s. Top Class Capital Markets Pvt. Ltd.	AACCT5800G

In the matter of Aurobindo Pharma Ltd.

1. Present proceedings have emanated from a Show Cause Notice no. EFD/DRA-4/SD/RSL/21238/3/2017 dated September 06, 2017 (hereinafter referred to as '**SCN**') issued by Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') to the following six Noticees:

Noticee No.	Name of the Noticees
1	Shri Ramprasad Reddy
2	Smt. P Suneela Rani
3	M/s. Trident Chemphar Ltd.
4	Shri Kambam P Reddy
5	M/s. Top Class Capital Markets Pvt. Ltd.
6	M/s. Veritaz Health Care Ltd.

2. The SCN called upon the aforesaid Noticees to show cause as to why suitable directions under Sections 11(1), 11(4) and 11B of Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act, 1992**'), including disgorgement of gains (disgorgement against Noticee no. 1 to 5 only), should not be passed against them for violation of Regulations 3 & 4 of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as '**PIT Regulations**,

1992') read with Regulation 12 (2) of SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as '**PIT Regulations, 2015**').

3. Pursuant to aforesaid SCN, all the noticees filed their replies to SCN. Subsequently, all the Noticees were also granted personal hearing and the matter was reserved for passing of final order. In the meantime, Noticee no. 1, 2, 3, 4 and 6 vide their letter dated October 25, 2019, applied for settlement of the present proceedings initiated by the SCN, in terms of SEBI (Settlement Proceedings) Regulations, 2018. Thus, though the personal hearings in the matter were concluded, however, in terms of Regulation 8(1) of SEBI (Settlement Proceedings) Regulations, 2018 and because of common SCN against the Noticees, the passing of the final order in respect of Noticees including Noticee no. 5, was kept in abeyance, till the disposal of the settlement applications. The proceedings against the Noticee no. 1, 2, 3, 4 and 6 came to be settled vide Settlement Order dated May 6, 2020 passed by SEBI. As can be noted from the above, Noticee no. 5 did not apply for consent and therefore, the SCN is to be adjudicated upon qua Noticee no. 5 only. Thus, the present order shall be dealing only with the allegations levelled in the SCN against Noticee no. 5 only.
4. The SCN in the matter, came to be issued as SEBI had conducted an investigation into the trading in the scrip of Aurobindo Pharma Ltd. (hereinafter referred to as '**APL**') during the period from July 22, 2008 to March 20, 2009 (hereinafter referred to as '**the investigation period**'). Investigation revealed that Pfizer Inc. (hereinafter referred to as '**Pfizer**') issued a Press Release dated March 2, 2009 (hereinafter referred to as '**Pfizer Press Release**') and APL issued a Press Release dated March 3, 2009 (hereinafter referred to as '**APL Press Release**') regarding certain Licensing and Supply Agreements entered into between them on July 22, 2008, November 30, 2008 and December 29, 2008 (hereinafter collectively referred to as '**the Licensing and Supply Agreements**'). Investigation found that the news of entering into these Licensing and Supply Agreements was not made public until the press releases, hence, it was Unpublished Price Sensitive information (hereinafter referred to as "**UPSI**") till

then. Investigation revealed that, due to their connection with APL, Noticee Nos. 1 to 6, were alleged to be insiders in terms of Regulation 2 (e) of PIT Regulations, 1992) and since they bought shares of APL during July 22, 2008 (i.e. date of entering into first licensing and supply agreement between APL and Pfizer Inc.) to March 3, 2009 (i.e. date of press release made by APL) (hereinafter referred to as '**UPSI Period**'), they were alleged to have traded in APL shares in violation of Regulation 3 and 4 of the PIT Regulations, 1992.

SHOW CAUSE NOTICE, REPLY AND HEARING:

5. The brief facts stated in the SCN and the allegations made therein are as follows:

- i. On March 03, 2009, after market hours, APL had issued a Press Release, stating inter-alia that "...*APL is pleased to announce it has expanded its partnership further by executing licensing and supply agreements for several Solid Dosage and Sterile Products with Pfizer Inc.....*". The said Press Release quoted the Chairman of APL, Noticee no. 1, comment on the said alliance as "*It is an exciting opportunity for Aurobindo and provides for stability towards company's earnings and accelerate its growth plans....*".
- ii. From the market movement on March 03, 2009 the price of the scrip of APL was observed to have touched an intra-day high of 13% compared to the opening price and closed at 7% higher compared to previous day's close. As against this, the benchmark indices Sensex and Nifty had closed down 2% each on that day as against the previous day's close. The price of the scrip rallied 5% on March 04, 2009 to reach a high of Rs. 164.70 and closed at Rs. 160.40 a gain of 2.56% to the previous day's close.
- iii. As per APL's letter to SEBI dated January 20, 2011, the chronology of events on execution of the Licensing and Supply agreements between Pfizer and APL was as follows:-
 - Discussions for the agreements started in May 2008.

- Supply Agreement signed on July 22, 2008 for 5 Solid Oral Dosage ('SOD') products for USA.
 - License & Supply Agreements signed on November 30, 2008 for 44 SOD products for USA and for 31 SOD products for France.
 - License & Supply Agreements signed on December 29, 2008 for 20 SOD products for Pan European Countries (excluding France) and for 12 Sterile Inj. products for USA and for 12 sterile Inj Products for Pan Europe (including France).
- iv. In view of the above chronology of events, price sensitive information came into existence on July 22, 2008 and such information became public only on issuance of the APL Press Release (after market hours). Hence, the aforesaid information was Unpublished Price Sensitive Information ('UPSI') from July 22, 2008 (date of the first Supply Agreement with Pfizer) to March 03, 2009 (when the Licensing and Supply Agreements were disseminated by APL to the Stock Exchanges through a Press Release).
- v. Determination of insiders:
- Noticee no. 1: the Chairman of APL and being aware of the UPSI as per APL's letter to SEBI dated January 20, 2011.
 - Noticee no. 2: being the wife of Noticee no. 1, held 10.49% of the total paid up shares of APL (as per December 2008 shareholding pattern).
 - Noticee no. 3: a Promoter Group company of APL, and having traded in the shares of APL during the Investigation Period. 99.98% of the shareholding of Noticee no. 3 was held by Shri P Sarath Chandra Reddy (son of Noticee no. 1, Chairman, APL, who was privy to the series of Licensing and Supply Agreements between APL and Pfizer).
 - Noticee no. 4: being promoter of APL and also the brother of Shri Nithyananda Reddy, then Managing Director of APL.

- Noticee No. 5: connected to Noticee No. 6 through fund transfers in February, March and April 2009 just before and soon after APL's Press Release dated March 3, 2009 regarding the Licensing and Supply Agreements with Pfizer. It was also observed from bank account statements of Noticee No. 6 that Noticee No. 5 executed corresponding trades in the scrip of APL upon receipt of funds from Noticee No. 6. For example, transfer of Rs. 10 Cr. was made by Noticee No. 6 to Noticee No. 5 on February 09, 2009, before publication of information regarding the UPSI. Upon receipt of the said funds from Noticee No. 6, Noticee No. 5 transferred the same to its trading member's bank account on February 11, 2009. Immediately upon transfer of the Rs. 10 Cr into the trading member's bank account, buy trades for APL shares were executed on behalf of Noticee No. 5 on February 11 and 12 of 2009. It was noted from the Bank account of Noticee No.6 that Rs. 13.38 Cr. was transferred back by Noticee no. 5 to Noticee No. 6 on June 10, 2009 (the last day of its selling the entire holding in APL). It was observed that no other trades were executed by Noticee No. 5 in its trading account in any scrip during April 01, 2008 to June 10, 2009 except the trades in APL. Also, apart from funds received from Noticee No. 6 and two other entities, Business Match Services and Centrum Infra Reality, which were used for trades in shares of APL, no other funds were received by Noticee No. 5 from any other sources. Thus, it was observed that Noticee No. 5 was acting on behalf of / front entity of Noticee No. 6 for trading in the shares of APL and did not have any business operations/revenue of its own. In view of aforesaid connections between Noticee No. 5 and Noticee 6, it was alleged that Noticee No. 5 was reasonably expected to have received or had access to such UPSI which was in possession of Noticee no. 6.
- vi. It is alleged that the trades done by the Noticees during the UPSI period was motivated by the possession/access to UPSI. Therefore, it is alleged that by

dealing in shares of APL while in possession of UPSI, the Noticee Nos. 1-6 violated Regulations 3 and 4 of the PIT Regulations, 1992 read with Regulation 12(2) of PIT Regulations, 2015.

- vii. It is further observed that the Noticees while trading when they were in possession of UPSI also made gains out of such trading. Noticee No. 5 sold a small part of the shares after the APL Press Release dated March 3, 2009.
- viii. As these shares were purchased with prior knowledge of UPSI and had not been sold prior to the UPSI becoming public, the closing price of March 04, 2009 was taken as the reference price for calculating the value of sale. Hence, the notional profit out of this UPSI was arrived at as difference between the purchase price and the closing price of APL on the next trading date post the APL Press Release, i.e., March 04, 2009. Details of the alleged Notional profit made by the Noticee no. 5 is arrived at, as under: -

Sr. No.	Name of the Person/Entity	Avg. Purchase Price (Rs.) (A)	Closing Price on March 04, 2009 (Rs.) (B)	Qty. purchased during UPSI period (C)	Notional Profit (Rs.) (D) = {(B)-(A)}*(C)
1	Shri PV Ramprasad Reddy	111.54	160.40	5,30,000	2,58,95,800
2	Smt. P.Suneela Rani	112.69	160.40	2,00,050	95,44,385
3	Shri Kambam Prasad Reddy	150.34	160.40	22,900	2,30,374
4	Trident Chemphar	113.88	160.40	6,36,000	2,95,86,720
5	Veritaz Health care Ltd	173.37	160.40	7,87,026	-1,02,07,727.22
6	Top Class Capital Markets Pvt. Ltd.	140	160.40	18,52,405	3,77,89,062

6. Noticee no. 5 filed its reply dated April 12, 2019, to the SCN. Personal hearing to the Noticee no. 5 was granted on April 15, 2019. Subsequent to hearing, Noticee no. 5 also filed written submissions dated April 25, 2019. As noted above, passing of final order in the matter was kept in abeyance in terms of Regulation 18 of the SEBI (Settlement of Proceedings) Regulations, 2018, in view of application for settlement filed by the Noticees except Noticee no. 5. The proceedings initiated

against the Noticee no. 1, 2, 3, 4, and 6 by the present SCN came to be settled by settlement order dated May 06, 2020.

7. The following is a summary of the submissions made by Noticee no. 5 in its reply dated April 12, 2019, written submissions dated April 25, 2019 and during the personal hearing held on April 15, 2019:

- i. SCN is absolutely vague as to on what basis is the Noticee no. 5, an "insider" and whether it is a connected or a deemed to be connected person. It is apparent and self-evident that Noticee No. 5 does not fit into either of the said definitions of "connected" and "deemed to be connected" persons as understood under the PIT Regulations. In respect of the second test (i.e. under Regulation 2(e)(ii)), the language of the provision clearly indicates that it is the obligation of SEBI/investigating officer to establish that the UPSI has in fact been received or accessed by the Noticee. The SCN and the references contained therein does not make out such a case. It is because in the second test (unlike the words and the language used in the provision for the first test under subsection (i) of Regulation 2(e)), it is not only a likelihood or a reasonable possibility that has to be established by SEBI but there is a higher threshold prescribed where owing to the facts and circumstances and the material and documents on record it needs to be positively established by SEBI that the information which is unpublished and price sensitive was in fact received or accessed by a person. No such documents and materials are on record neither are there any allegations to this effect where this access has been by SEBI in the SCN. Therefore, even the conditions of the second test have not been satisfied.
- ii. It is the burden of SEBI to prove all the elements of the person being an "insider" and "having access to the UPSI", which SEBI has not discharged while issuing the SCN and making allegations against Noticee no. 5. This threshold has not been met by SEBI in the SCN against Noticee No. 5 as the only basis for alleging violation of PIT Regulations against Noticee No.

5 are the trades done by Noticee No. 5. Reliance is placed on the following case laws:

- *Samir C. Arora v SEBI (SAT Appeal No. 83 of 2004, decided on 15.10.2004)*
- *order dated May 12, 2016 issued by SEBI in respect of trading by certain entities in the scrip of the Sabero Organics Gujarat Ltd.*
- *Dilip S. Pendse v SEBI (SAT Appeal No. 80 of 2009, decided on 19 November 2009)*

- iii. There was no UPSI at all which warranted a disclosure to the stock exchange by APL. This is because the agreements with Pfizer, were executed by APL in its ordinary course of business. There is no charge or allegation or analysis in the SCN that the agreements which were being regularly executed since July 2008 were falling in the category of "price sensitive information". The disclosure which has been considered in the SCN to trigger the investigation is only with respect to the agreement dated March 03, 2009 and which disclosure itself indicates that such agreements have been executed in the past as well.
- iv. The allegation in the SCN that these licensing and supply contracts are significant for Pfizer only indicates that in respect of Pfizer these may have been price sensitive information requiring a disclosure at its end before the relevant authorities in United States of America. However, this would not automatically mean that this is also a price sensitive information in respect of APL.
- v. Analysis of trades and fund transfer from Noticee no. 6 reveals Noticee no. 5 did not immediately sell the shares procured during the alleged UPSI Period, immediately upon the end of such alleged UPSI Period to make instant gains, which is what any insider would normally do to take benefit of the immediate price rise, if any, upon the information becoming public.

- vi. Noticee no. 5 remained invested in APL till June 2009 where all shares purchased by the Noticee no. 5 was sold through the stock exchange mechanism at the prevailing market price. Further, during March, 2009, the Noticee only sold 19,227 shares on March 31, 2009 out of a total of 18,52,405 shares purchased by the Noticee. This shows that the investment was not made only for a short period to exit after any alleged UPSI becomes public information.
- vii. In no manner it can be suggested that the trading by the Noticee no. 5, in the scrip of the APL was at the behest of Noticee no. 6. or on the basis of any UPSI received from Noticee no. 6. The Noticee no. 5 in fact used other sources of funds for his trades in the shares of APL. The Noticee no. 5 proposed to commence its dealings/ trading in the shares as a part of its business sometime in the year 2009. For this purpose, the Noticee no. 5 was looking for a loan to avail certain funds which it could utilize for purchasing shares. Accordingly, a loan agreement was entered into between the Noticee no. 5 and Noticee no. 6 in 2009, pursuant to which it was agreed that Noticee no. 6, would provide a loan of an amount of Rs. 13 crores as loan to the Noticee no. 5, at the rate of 12% interest per annum, repayable within six months from the date of disbursement of the first tranche. This amount (to the extent of Rs. 10 crores) was utilised by the Noticee No. 5 to invest in the shares of APL. In fact, the Noticee no. 5 continued to borrow from Noticee no. 6, even after the alleged UPSI period and this factor would further indicate that there was no intent to use any monies received from Noticee no. 6, to trade in the shares of APL on the basis of any alleged UPSI available with Noticee no. 5. It can be seen that regular interest was serviced on this loan amount and eventually the loan amount together with interest @ 12% was repaid to Noticee no. 6 on 10th June 2009. Similar loans were also availed by the Noticee no. 5, from other entities (in respect of which there is no allegation in the SCN) for even larger sums as compared to the loans availed from Noticee no. 6.
- viii. The SCN has been issued to the Noticee no. 5 on September 6, 2017, for

transactions and trades having taken place in 2009. The SCN suffers from significant delays and the proceedings are now sought to be initiated against the Noticee for trades undertaken by it approximately 8.5 years prior to the issuance of the SCN. From the records available it appears that SEBI had this information since March 2009 and commenced an alleged investigation in December 2010. The delay in this case by SEBI in concluding the investigation and issuing the SCN is significant. Further, on account of lapse of significant amount of time, the Noticee is also handicapped from accessing the information and records in order to present to SEBI the facts and circumstances in their proper context. Such delay by SEBI has been severely prejudicial to the Noticee and has effectively taken away its ability to adequately defend itself. On this ground alone the SCN deserves to be quashed and no further proceedings ought to be initiated or continued against the Noticee no. 5.

CONSIDERATION OF ISSUES AND FINDINGS:

8. I have perused the allegations made in the SCN and considered the contentions/objections raised by the Noticee no. 5 in his reply and submissions made during the hearing. Before dealing with various contentions raised by Noticee no. 5 regarding merits of the case, it would be appropriate to deal with preliminary contention raised by it. Noticee no. 5 has raised a preliminary contention that there has been significant delay in initiation of these proceedings and that because of this, it has been denied a fair opportunity to defend itself, which is against the principles of natural justice. It is case of Noticee no. 5 that the long efflux of time has made it difficult to recollect facts and retrieve/trace evidence to effectively defend itself. I further note that Noticee no. 5 has been provided with all the documents that have been relied upon in the SCN. Noticee no. 5 has filed a detailed reply and written submission, raising all possible contentions in its defence. I also note that Noticee no. 5 has not specifically pointed out any document which it could not retrieve due to delay in initiation of proceedings which has impacted its defence in the present proceedings or has rendered the same

ineffective. Hence, I do not find merit in the contention of the Noticee no. 5 that efflux of time has affected their ability to retrieve evidence to defend themselves.

9. I further note that investigation in the present matter was initiated by SEBI in the year 2010. Investigation involved examining the trades of various entities, collecting data from exchanges, depositories and banks, examination of funds flows, seeking responses from the various entities, etc. and thereafter, various dots were connected to get the complete picture and thus, investigation was concluded on March 31, 2017. After conclusion of investigation, SCN was issued to the Noticees on September 06, 2017. Inspection of documents by the Noticees concluded in the year 2018 and a date of personal hearing was given to the Noticees on February 27, 2019 before another WTM of SEBI, when the Noticees sought adjournment of hearing. The matter was placed before undersigned for adjudication in March, 2019 and accordingly, hearing for Noticees was fixed for April 10, 2019. Noticees again sought adjournment of hearing and accordingly, hearing for the Noticees was fixed for April 15, 2019 and the personal hearing of the Noticees concluded on the said date. In the meantime, Noticee no. 5 filed its reply dated April 12, 2019 and Noticee no. 1, 2, 3, 4 and 6 filed their reply dated April 15, 2019. As already noted, Noticee no. 1, 2, 3, 4 and 6 vide their letter dated October 25, 2019, applied for settlement of the present proceedings initiated by the SCN, in terms of SEBI (Settlement Proceedings) Regulations, 2018. Thus, though the personal hearings in the matter were concluded, however, in terms of Regulation 8(1) of SEBI (Settlement Proceedings) Regulations, 2018 and because of common SCN against the Noticees, the passing of the final order in respect of Noticees including Noticee no. 5, was kept in abeyance, till the disposal of the settlement applications. The proceedings against the Noticee no. 1, 2, 3, 4 and 6 came to be settled vide Settlement Order dated May 6, 2020 passed by SEBI. In view of this, I note that there is no delay in the matter. I further note that there is no provision in the SEBI Act, 1992 which may have the effect of prohibiting SEBI from taking action beyond a particular period of time in a given case. In **Ravi Mohan & Ors. v. SEBI** and other connected appeals decided on August 08, 2013, Hon'ble Securities Appellate Tribunal, Mumbai (hereinafter referred to as 'Hon'ble SAT') while referring to its own decision in **HB Stockholdings Ltd. v.**

SEBI (Appeal no. 114 of 2012 decided on 27.08.2013) and decision of Hon'ble Supreme Court in **Collector of Central Excise, New Delhi v. Bhagsons Paint Industry (India)** reported in **2003 (158) ELT 129 (S.C.)**, observed as under:

"...Based on decision of this Tribunal in case of HB Stockholdings Ltd. vs. SEBI (Appeal no. 114 of 2012 decided on 27.08.2013) it is contended on behalf of the appellants that in view of the delay of more than 8 years in issuing the show cause notice, the impugned order is liable to be quashed and set aside. There is no merit in this contention, because, this Tribunal while setting aside the decision of SEBI on merits has clearly held in para 20 of the order, that delay itself may not be fatal in each and every case. Moreover, the Apex Court in case of Collector of Central Excise, New Delhi vs. Bhagsons Paint Industry (India) reported in 2003 (158) ELT 129 (S.C) has held that if there no statutory bar for adjudicating the matter beyond a particular date, the Tribunal cannot set aside the adjudication order merely on the ground that the adjudication order is passed after a lapse of several years from the date of issuing notice...."

The observations made by Hon'ble SAT in the aforesaid case, were reiterated by it, in a subsequent order in the matter of **Kunal Pradip Savla & Ors. v. SEBI** (Appeal no. 231 of 2017) decided on April 04, 2018. Further, I note that all relevant information relied on for crystallizing the allegations against the Noticee no. 5 has been provided to it. In view of the above, I am unable to accept the preliminary submissions made by the Noticee no. 5 regarding delays and laches in issuance of SCN in the instant proceedings.

10. Noticee no. 5 has raised another preliminary contention that as per SCN investigation in the present matter was carried out to find out violations under the provisions of PIT Regulations, 2015, however, charges alleged against Noticee no. 5 are for violation of PIT Regulations, 1992, therefore, it appears that charges against the Noticee no. 5 have been levelled without conducting an investigation as regards to violation PIT Regulations, 1992. On this ground alone SCN deserves to be quashed and set aside alone. In this regard, I note that investigating is conducted by SEBI in exercise of powers conferred on it under Section 11C of SEBI Act, 1992. Investigation is a fact - finding exercise. Facts found during the investigation, may constitute the violation of any provision of the securities laws. In the present case, investigation might have started for finding

out the violation of provisions of PIT Regulations, 2015. However, facts found during the investigation revealed the violation of provisions of PIT Regulations, 1992. There is no illegality or irregularity in the SCN issued pursuant to such investigation. The important thing is that the facts found during the investigation must satisfy the ingredients of the provisions of law which are alleged to have been violated in the show cause notice. Whether the facts alleged in the SCN, constitutes the violations, as alleged in the SCN, has been dealt in the following paras in this order. In view of this, I find the contention raised by the Noticee no. 5 as misplaced and hence, untenable.

11. Since the allegation of “insider trading” levelled in the SCN with respect to Noticee No. 5 rests on a finding regarding whether the Licensing and Supply Agreements with Pfizer constituted UPSI at all, in terms of the PIT Regulations, 1992, I proceed to examine this issue in the following paragraphs.

12. The terms “Price Sensitive Information” and “unpublished” has been defined under Regulations 2(ha) and (k) of PIT Regulation, 1992, as under:

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

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

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

“(k) “unpublished” means information which is not published by the company or its agents and is not specific in nature.”

13. A perusal of the aforesaid definition of ‘price sensitive information’ shows that an information pertaining to a company can be termed as price sensitive, which if

published is likely to materially affect the price of the securities of the company. Thus, it is likelihood of material effect on the price of the securities of a company which makes an information price sensitive information. Theoretically, in fact, an information may not impact the price of securities at all, however, if there was a likelihood of its having an impact on the price of the securities of a company, that will make the information 'price sensitive information' with in the meaning of Regulation 2(ha) of PIT Regulations, 1992.

14. The SCN alleges that signing of series of Licensing and Supply Agreements by APL with Pfizer Inc. was the unpublished price sensitive information from the date of signing of the first supply agreement on July 22, 2008, in the series of the Licensing and Supply Agreements till the issue of press release by APL about these agreements on March 3, 2009 when the same became published in terms of Regulation 2(k) of PIT Regulations, 1992. Thus, UPSI was in existence from July 22, 2008 to March 03, 2009 which as per SCN, is the UPSI period in the present case.
15. Noticee no. 5 has contended that there was no UPSI as alleged in the SCN, because the agreements with Pfizer Inc. was executed by APL in its ordinary course of business. The said agreement is misplaced on the face of it. A company will have price sensitive information, mostly pertaining to its ordinary course of business. If the contention of Noticee no. 5 is accepted as correct then all the price sensitive information emanating from the ordinary course of business of a company will never constitute as price sensitive information so as to attract PIT Regulations, 1992. On the contrary, as quoted above, definition of "price sensitive information" as given under Regulation 2(ha) clearly provides that any information pertaining to a company which if published would likely to materially affect the price of securities of the company, is a price sensitive information. Therefore, the contention of Noticee no. 5 in this regard, being contrary to the plain language of Regulation 2(ha) of PIT Regulations, 1992, is untenable.
16. Another contention raised by the Noticee no. 5 is that the SCN does not make out a case that this information is price sensitive information and therefore, no question even arises of defining a UPSI period. In this regard, I note that SCN states that on

March 03, 2009, after market hours, APL had issued a Press Release (Annexure 1 to SCN), stating inter alia that “.....*APL is pleased to announce it has expanded its partnership further by executing licensing and supply agreements for several Solid Dosage and Sterile Products with Pfizer Inc.....*”. SCN further states that APL vide its letter dated January 20, 2011 (Annexure 2 to SCN) had informed SEBI about the following chronology of events regarding the announcement of its series of Licensing and Supply Agreements with Pfizer Inc.:

- Discussions for the agreements started in May 2008;
- Supply Agreement signed on July 22, 2008 for 5 Solid Oral Dosage products for USA;
- License & Supply Agreements signed on November 30, 2008 for 44 SOD products for USA and for 31 SOD products for France;
- License & Supply Agreements signed on December 29, 2008 for 20 SOD products for Pan European Countries (excluding France) and for 12 Sterile Inj. products for USA and for 12 sterile Inj. products for Pan Europe (including France).

17. From the aforesaid facts stated in the SCN, I find that SCN made it clear that APL entered into series of licensing and supply agreements with Pfizer Inc. I find that Pfizer Inc., at the relevant time, was amongst the world's largest pharmaceutical companies and a Fortune 500 company, ranked amongst the largest international pharmaceutical companies in terms of revenue. The APL Press Release of March 3, 2009 itself described Pfizer as a “*global leader in Pharmaceuticals*” with a “*global commercial presence*”. Thus, the facts stated in the SCN clearly convey that the licensing and supply agreements entered into with Pfizer Inc. had the potential to give rise to a reasonable inference in the mind of reasonable investor that information about such agreements if published would likely to materially affect the price of the securities of APL, which is the requirement of “price sensitive information” given under Regulation 2(ha) of the PIT Regulations, 1992. Though not required under the PIT Regulations, 1992, SCN further goes on to demonstrate the actual impact which the press releases by the Pfizer Inc. and APL about entering into series of licensing and supply agreements between them,

had on the shares of APL. SCN, in this regard states that on March 03, 2009 (i.e. trading day after the Pfizer Press Release), the price of the scrip touched an inter day high of 13% compared to the opening price and closed at 7% higher compared to previous day's close, as opposed to price movement of other prominent pharma stocks like Lupin, Piramal Enterprises, and Sun Pharma which fell by 1% to 2% along with a broader market fall of 2%. The price of the scrip rallied 5% on March 04, 2009 (i.e. the trading day after the APL Press Release) to reach a high of Rs. 164.70 per share and closed at Rs. 160.40 per share i.e. a gain of 2.56% to the previous day's close as opposed to a flat movement of the Sensex as well as other pharma stocks which either fell 1% or remained around the same level as the previous day. In view of this, I find that the contention raised by Noticee no. 5, in this regard, is misplaced and hence, untenable.

18. I shall now proceed to determine whether the Noticee no. 5 can be termed as 'insider' within the meaning of the term "insider" as defined under PIT Regulations, 1992. Regulation 2(1)(e) of the PIT Regulations, 2015 defined "insider" as under:

"(e) "insider" means any person who,

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

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

19. As per aforesaid definition of insider, a person can be termed as insider, if he falls either in clause (i) or clause (ii) of the definition. I note that the SCN on the basis of the connections, between Noticee No. 6 and Noticee No. 1, who is alleged as an insider, as well as the trades executed by Noticee No. 6 in the shares of APL proximate to the Licensing and Supply Agreements (and no other trades during the Investigation Period, barring a single exception), alleges that Noticee No. 6 was connected to APL and traded in the shares of APL while in possession of the alleged UPSI. Regarding Noticee no. 5, SCN alleges that Noticee No. 5 was acting as a front entity for executing the trades of Noticee no. 6 in

the shares of APL on the basis of UPSI. SCN terms Noticee no. 5, as insider, on the premise that he had access to UPSI.

20. The Noticee no. 5 has contended that on the basis of the allegations made in the SCN, it does not fall under either clause (i) or clause (ii), as aforesaid, and hence, it is not an insider. In this regard, I note that SCN alleges that Noticee no. 5 is connected to Noticee No. 6 (who was alleged to have traded in the shares of APL while in possession of UPSI) through fund transfers, immediately, before and soon after the APL's Press Release dated March 3, 2009, a fact which has not been denied by the Noticee no. 5. Following are the details of funds transferred by Noticee no. 6 to Noticee no. 5:

Date of Fund Transfer	Details of Bank Account of Notice no. 5	Amount (in Rs. Crore)
09.02.09	HDFC Bank Account No. 00602320013964	10.00
18.03.09		1.00
07.04.09		1.00
15.04.09		0.25
21.04.09		0.75
Total		13.00

21. SCN further alleges that Noticee No. 5 used these funds for corresponding trades in the scrip of APL upon receipt of funds from Noticee No. 6. As mentioned above, SCN alleges that there is a fund transfer of Rs. 10 Crore from Noticee no. 6's Axis Bank Account No. 008010200052012 to Noticee no. 5's HDFC Bank Account no. 00602320013964 on February 09, 2009. Upon receipt of the same, Noticee no. 5 has transferred the sum of Rs. 10 Crore from its aforesaid HDFC Bank A/c. to Centrum Broking (trading member's) bank account on February 11, 2009. Upon receipt of the above funds into the trading member's bank account, trades have been executed by the trading member on behalf of Noticee no. 5 on February 11 and 12, 2009. The SCN further notes that from the Bank account of Noticee No. 5, Rs. 13.38 Cr. was transferred back to Noticee No. 6 on June 10, 2009 i.e. the last day of selling of its entire holding in APL by Noticee no. 5. SCN also notes that Noticee no. 5 opened a trading account with

Centrum Broking on March 07, 2008. However, no other trade in any scrip other than APL was executed by Noticee No. 5 during the period between April 01, 2008 to June 10, 2009. Further, SCN alleges that no other funds were received by Noticee No. 5 from any sources other than Noticee No. 6 and two other entities viz. Business Match Services and Centrum Infra Reality, which were all used for executing trades in the scrip of APL.

22. I note that Noticee no. 5 has contended that it was in the business of dealing/trading in securities and its trade in the shares of APL were independent of and not based on any UPSI alleged to have been received from Noticee no. 6. It is the case of Noticee no. 5 that its relationship with Noticee no. 6 was merely that of a creditor and debtor. Noticee No. 5 has submitted that it proposed to commence its dealing/trading in the shares as a part of its business sometimes in the year 2009. For this purpose, Noticee no. 5 was looking for a loan to avail certain funds so that it could utilize the funds for purchasing shares. Accordingly, a loan agreement was signed between Noticee no. 5 and Noticee no. 6, in the year 2009, for a loan amount of Rs. 13 Crore repayable within a period of six months and a rate of interest of 12% which was repaid completely by Noticee no. 5 to 6, by June 10, 2009. Noticee No. 5 has also contended that similar loans were availed from other entities which are mentioned in the SCN, and that for purchasing shares of APL, Noticee No. 5 took loan of a total of Rs. 15.5 Crore from two other entities as well.

23. However, I do not find any merit in the contentions raised by Noticee no. 5. I note that, Noticee No. 5 has not produced any documents to counter the evidence brought on record by the SCN. It has merely stated that funds were received by it from Noticee no. 6 as part of a loan agreement. But, no copy of any such agreement or any other document like its books of accounts showing the amount received from Noticee no. 6 as loan, has been produced before me. On the contrary, the attendant circumstances and facts including the trading behavior of Noticee no. 5, the time of trades executed by it and the time of transfer of funds between Noticee no. 5 and 6, unequivocally lends strong credence to the

finding that Noticee no. 5 was in possession of UPSI at the time of trade in the scrip of APL. The fact that during the period from April 01, 2008 to June 10, 2009 (which also includes the UPSI Period), Noticee no. 5 has not traded in any scrip other than APL (a fact also attested by the demat statements provided by Noticee no. 5 alongwith his reply), and the fact that Noticee No. 5 upon receipt of funds from Noticee No. 6, immediately used the funds for corresponding trades in the scrip of APL (such as the transfer of 10 Crore from Noticee no. 6 to Noticee no. 5 on February 9, 2009 and the subsequent trades executed by Noticee no. 5 on February 11 and 12, 2009) and also the fact that no other funds were received by Noticee No. 5 from any sources other than Noticee No. 6 and two other entities viz. Business Match Services and Centrum Infra Reality, which funds were all used for executing trades in the scrip of APL, all these facts gives rise to an inference which leads to higher degree of preponderance of probabilities that purchase of shares of APL by Noticee no. 5 on February 11 and 12 of 2009 was made because of UPSI regarding Licensing and Supply Agreements of APL with Pfizer, in its possession. Therefore, Noticee no. 1 is an insider within the meaning of Regulation 2(1)(e)(ii) of PIT Regulations, 1992, as alleged in the SCN.

24. Noticee no. 5 has also contended that it had borrowed larger amount of funds i.e. Rs.15.05 crores from two separate entities, in respect of which there is no allegation in the SCN, which were also used for buying shares of APL. I note that, in order to establish that Noticee No.5 acted on UPSI which was available with Noticee No. 6, it is not necessary to prove that all the funds for the said trades were provided to Noticee No. 5 by Noticee No. 6.
25. Noticee No. 5 has also contended that it did not sell the shares of APL immediately after APL's Press Release dated March 3, 2009 or attempt to make any instant gains as an insider normally would have, and remained invested in APL till June 2009, does not dilute the charge of insider trading levelled against Noticee No. 5. In this regard, I note that Regulation 3(i) of PIT Regulation prohibits trading in the securities of a company by an insider while in possession of UPSI. In the present case, SCN alleges that Noticee no. 5 was an insider and it purchased shares of APL on February 11, 2009 and February 12, 2009 while

in possession of UPSI regarding the series of licensing and supply agreements entered into by APL with Pfizer Inc. Thus, in the present case, Regulation 3(i) stands attracted. The fact that Noticee no. 5 did not immediately sell the shares after UPSI became public is extraneous to the prohibition contained in Regulation 3(i) of PIT Regulations, 1992. At the most, such a fact can be considered to weigh the preponderance of probabilities as being showing absence of motive to trade in the securities of APL, in violation of the prohibition contained in Regulation 3(i) of PIT Regulations, 1992. However, in the facts and circumstances of the present case, I find that the fact that Noticee no. 5 did not immediately sell the shares of APL stands outweighed by the other circumstantial evidence brought on record. Without prejudice to this, I note that an insider can take advantage of UPSI by purchasing a stock at low price, knowing well that he may not again get such an attractive price after the UPSI becomes public. I note that price sensitivity or price impact of UPSI cannot be judged entirely on the basis of price impact immediately upon disclosure, and while UPSI impacts price upon publication/disclosure, the impact may continue to affect prices over a longer period than just the day of publication. Thus, I find the fact that Noticee no. 5 did not sell entire stake or sold only some of the stake, does not have any bearing on the prohibition contained in Regulation 3(i) of PIT Regulations, 1992.

26. In view of the above, and after considering all surrounding circumstantial evidence including timing of trades in shares of APL, absence of trades in any other scrip, closely-proximate fund flows and thereby a connection between Noticee No. 5 and Noticee No.6, and lack of any justification for purchase of shares of APL at that particular time, I find that there is sufficient circumstantial evidence on record to establish that Noticee No. 5 had access to UPSI regarding the Licensing and Supply Agreements of APL with Pfizer Inc. and hence, was an 'insider' in terms of Regulation 2 (e) (ii) of PIT Regulations.

27. SCN has alleged that Noticee no. 5 has violated Regulations 3 and 4 of PIT Regulations, 1992. Regulations 3 and 4 of PIT Regulations, 1992 provides as

under:

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

3. No insider shall—

(i) either on his own behalf or on behalf of any other person, deal in securities of a company listed

on any stock exchange when in possession of] any unpublished price sensitive information; or

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

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

.....

Violation of provisions relating to insider trading.

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

.....”

28. In the preceding paras, Noticee no. 5 has been found to be an ‘insider’ during the UPSI Period as he had access to UPSI. Further, the execution of the Licensing and Supply Agreements with Pfizer Inc. has also been found to be UPSI, in the preceding paras. I note that Noticee no. 5 has not disputed the trades executed by him on February 11 and 12, 2009, during the UPSI Period i.e. July 22, 2008 to March 03, 2009. As the Noticee no. 5 has been found to be “insider” because he had access to UPSI, therefore, trading in the shares of APL by Noticee no. 5, an insider, while in possession of UPSI is in violation of Regulation 3 (i) of PIT Regulations, 1992. Therefore, I find that Noticee no. 5 has violated Regulation 3(i) of PIT Regulations and thus, it is guilty of the charge of ‘insider trading’ in terms of Regulation 4 of the PIT Regulations.
29. Noticee no. 5 has relied on certain case laws to contend that the allegations in the SCN should be based on documents or materials or evidence to support such allegations which is not there in the present SCN and that the threshold to be met to support the allegations of insider trading is higher as compared to other civil

proceedings which has not been met in the present case. Specifically, the following orders passed by SEBI/Hon'ble SAT have been relied on by the Noticee no. 5 in this regard:

- Samir C. Arora v SEBI (SAT Appeal No. 83 of 2004, decided on 15.10.2004).
- Order dated May 12, 2016 issued by SEBI in respect of trading by certain entities in the scrip of the Sabero Organics Gujarat Ltd.
- Dilip S. Pendse v SEBI (SAT Appeal No. 80 of 2009, decided on 19 November 2009).

30. I have perused the aforesaid orders and find that as discussed in the aforesaid paras of this order, SCN supports all the allegations levelled therein including the allegations regarding the Noticee no. 5 being insider and the information regarding execution of licensing and supply agreements between APL and Pfizer Inc. being price sensitive information which came into existence on July 22, 2008 with the signing of first such agreement in a series of agreement and remained and UPSI till it was published by APL on March 03, 2009. The allegations levelled in the SCN are duly supported by direct as well as circumstantial evidence which proves the present case with higher degree of preponderance of probabilities, as is observed in the aforesaid orders of the Hon'ble SAT relied on by the Noticee no. 5.

31. Noticee no. 5 has also relied on the judgments in Gorkha Security Services Vs. Govt. (NCT of Delhi) (2014) 9 SCC 105 and S. L. Kappor Vs. Jagmohan & Ors. (1980) 4 SCC 379 to contend that SCN nowhere makes out any specific case against the Noticees and in no manner provides an opportunity or details of any allegations that the Noticees have to meet. It is contended that SCN is general and vague in nature and there is no specific case made out against the Noticees. I have perused the aforesaid judgments. I find that as discussed above, the SCN makes out a specific case of insider trading against Noticee no. 5. Further, the SCN gives details of each allegations levelled against the Noticee no. 5 as dealt

in the foregoing paras. I do not find any vagueness or generality, as contended by the Noticee no. 5. As discussed in the foregoing paras SCN makes out a specific case against Noticee no. 5. Noticee no. 5 has filed detailed replies and written submissions, taking all available contentions against the charges alleged in the SCN. Therefore, the contentions made by the Noticee no. 5 against the SCN on the basis of the aforesaid judgments of Hon'ble Supreme Court is not available to Noticee no. 5 in the facts and circumstances of the present case.

32.I note that para 13 of the SCN has indicated an amount of Rs. 3,77,89,062/- (rupees three crore seventy seven lakh eighty nine thousand sixty two) as the amount of notional profits that was earned by the Noticee no. 5 by engaging in the trading in the shares of APL in violation of Regulation 3(i) of the PIT Regulations, 1992. The notional profit out of the insider trading was arrived at as difference between the average price of purchase of shares of APL by Noticee no. 5 and the closing price of shares of APL on the next trading day after the APL Press Release, i.e., March 04, 2009. I note that Noticee no. 5 has not disputed the calculation of notional profit, as made in the SCN. As the Noticee no. 5 has made notional profits, as alleged in the SCN, by violating the provisions of securities laws i.e. Regulation 3(i) of PIT Regulations, 1992, therefore, Noticee no. 5 is liable to disgorge such notional profits.

33.I note that PIT Regulations, 1992 has been repealed by PIT Regulations, 2015. Regulation 12 of PIT Regulations, 2015, provides as under:

“Repeal and Savings.

12.(1) The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 are hereby repealed.

(2) Notwithstanding such repeal, —

(a) the previous operation of the repealed regulations or anything duly done or suffered thereunder, any right, privilege, obligation or liability acquired, accrued or incurred under the repealed regulations, any penalty, forfeiture or punishment incurred in respect of any offence committed against the repealed regulations, or any investigation, legal proceeding or remedy in respect of any such right, privilege,

obligation, liability, penalty, forfeiture or punishment as aforesaid, shall remain unaffected as if the repealed regulations had never been repealed;

(b) anything done or any action taken or purported to have been done or taken including any adjudication, enquiry or investigation commenced or show-cause notice issued under the repealed regulations prior to such repeal, shall be deemed to have been done or taken under the corresponding provisions of these regulations;

(3) After the repeal of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992, any reference thereto in any other regulations made, guidelines or circulars issued thereunder by the Board shall be deemed to be a reference to the corresponding provisions of these regulations.”

34. As can be seen from Regulation 12(2) of PIT Regulations, 2015, the present proceedings initiated by the SCN alleging violation of PIT Regulations, 1992 are unaffected and can be continued.

DIRECTIONS:

35. In view of the above, I, in exercise of the powers conferred upon me under Sections 11(1) and 11B of the SEBI Act, 1992, read with Section 19 of thereof, hereby, direct that:

- (i) M/s. Top Class Capital Markets Pvt. Ltd. - Noticee no. 5 shall disgorge the illegal gains of Rs. 3,77,89,062/- made by it, along with interest at the rate of 12% per annum from March 04, 2009 till the date of actual payment of disgorgement amount along with interest, within 45 days from the date of coming into force of this order;
- (ii) M/s. Top Class Capital Markets Pvt. Ltd. - Noticee no. 5 is restrained from accessing the securities market and is further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of one (1) year from the date of this order; and

- (iii) M/s. Top Class Capital Markets Pvt. Ltd. - Noticee no. 5 is restrained from buying, selling or otherwise dealing in the securities of APL, directly or indirectly, in any manner whatsoever, for a period of three (3) years from the date of this order.

36. This Order comes into force with immediate effect. However, in view of the extraordinary circumstances arisen because of COVID-19 pandemic and consequential lockdown imposed till August 31, 2020, the direction contained in para 35(i) above, shall come into force on September 01, 2020 or on such date when the lockdown if extended beyond August 31, 2020, comes to an end.

37. A copy of this Order shall be forwarded to the Noticee no. 5, all recognized stock exchanges, all depositories and all Registrars and Transfer Agents (RTA) of mutual funds for information and necessary action at their end.

Sd/-

Date: August 04, 2020
Place: Mumbai

ANANTA BARUA
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA