

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. EAD-9/ AO/SM/3628- 3629/44-45/2019-20]**

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

In respect of:

Mr. Chetan S Kothari (**PAN: AAFPK8568A**)

Ms. Chetana Kothari (**PAN: AIXPK4898H**)

In the matter of Tricom India Limited

Facts of the case:

1. The Hon'ble Securities Appellate Tribunal (hereinafter referred to as 'SAT'), in Appeal nos. 328 of 2017 and 329 of 2017, vide its Order dated March 25, 2019 set aside the adjudication order dated September 29, 2017 in respect of Chetan S Kothari (hereinafter referred to as "Noticee1") and Chetana Kothari (hereinafter referred to as "Noticee 2") in the matter of Tricom India Ltd. (hereinafter referred to as "TIL/Company ") and remanded the case to the undersigned.
2. Securities and Exchange Board of India ("SEBI") had conducted an investigation in the scrip of TIL for possible violation of the provisions of the Securities and Exchange Board of India Act, 1992 ("SEBI Act") and regulation 3(i) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as "PIT 1992") read with 12(2) of SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as "PIT 2015") during the investigation period between August 03, 2012 and August 14, 2012 (hereinafter referred to as the 'IP') by Noticee 1 & 2. Both of them shall be collectively referred to as Noticees.

Appointment of Adjudicating Officer

3. Pursuant to the order of Hon'ble SAT order dated March 25, 2019, the matter was forwarded to the undersigned to adjudicate after giving opportunity of personal hearing to the Noticees.

Show Cause Notice, Reply and Personal Hearing:

4. I have taken the cognizance of the common Show Cause Notice dated March 8, 2016 (hereinafter referred to as "SCN") issued to the Noticees in terms of Rule 4 of AO Rules read with Section 15 (I) of SEBI Act, calling upon the Noticees to show cause as to why an inquiry should not be held against the Noticees for the alleged provisions of law.
5. I have also taken the cognizance of the reply (dated April 20, 2016) of the Noticee 1, wherein he, inter alia, stated the following:

5.1 *Alleged transactions in the scrip of TIL have been executed in my account before the trading window was closed i.e., the alleged transactions were executed on August 6, 2012 and August 7, 2012. The trading window was closed between August 12, 2012 and August 16, 2012, as per the code of conduct of the company. During which time, no trades have been alleged to be executed in my account in the scrip of TIL. Therefore, no violation of any provisions of SEBI Act 1992 or the provisions of the various Rules, Regulations and Guidelines made thereunder, may be attributed to me.*

5.2 *The profit for the quarter ended June 30, 2012 as compared to the profit for the quarter ended March 31, 2012 is notional. The company's income is received in dollars and the expenses are made in INR (Indian Rupees). The dollar rate for quarter ended June 30, 2012 was approximately Rs.56.31 and for the quarter ended March 31, 2012 was approximately Rs.51.16. Therefore, there was a notional rise in the income of the said June quarter as compared to that of March.*

5.3 *Further, the aforesaid financial results for the quarter ending June 30, 2012 were not received by me until August 14, 2012 at 03:00 pm at the audit committee's meeting. It was then, that for the first time the said financial results were presented before the committee for the committee's approval. Thereafter the results were presented before the board of directors at 06:00 pm for*

their approval and subsequently uploaded on the BSE Ltd website by BSE Ltd at 21:10 hrs. Therefore, the said figures do not have a bearing on the alleged transactions.

5.4 Further, the facts and figures more specifically the profit figures for the quarter ended September 30, 2012 were not within my knowledge, in any manner what-so-ever, during the alleged period of investigation i.e., between August 3, 2012 and August 14, 2012. Therefore, the profit figures for the quarter ended September 30, 2012, cannot be construed to have any bearing on the alleged transactions or the alleged violations against me.

5.5 The alleged indication in the Notice dated August 3, 2012 for finalization of the financial results for the quarter ended June 30, 2012 cannot be considered as the alleged UPSI.

5.6 I was not privy to the facts and figures of the alleged UPSI until August 14, 2012 at 03:00 pm. The alleged UPSI was thereafter published on the BSE website at 21:10 hrs. on the same day i.e., August 14, 2012. Further, the alleged UPSI cannot be said to have a bearing on the alleged transactions which were executed before the trading window was closed as per the code of conduct of the company. Moreover, it is pertinent to mention that, the alleged transactions were executed before August 14, 2012 i.e., before the alleged UPSI came into existence.

5.7 I further reiterate that I was not privy to the facts and figures of the financial results for quarter ended June 30, 2012, before August 14, 2012 at 03:00 pm since it is at that time that the Audit Committee finalized the results and submitted the same to the Board of Directors at 06:00 pm on the same day for their approval.

5.8 I reiterate that all my alleged transactions during the alleged investigation period were executed before the closure of the trading window. Further, assuming without admitting, the question of me using the alleged UPSI to a disadvantage does not arise as the alleged transactions were executed before the closing of the trading window.

5.9 I reiterate that I have not violated any provisions as laid down by SEBI from time to time and I have not contravened any provisions of SEBI (Prohibition of Insider Trading) Regulations 1992 read with SEBI (Prohibition of Insider Trading) Regulations, 2015 as specifically set out in SCN and pray that in view of the facts and circumstances the proceedings against may be concluded based on the aforesaid submissions without levying any penalty. I also pray that I may be granted a personal hearing in the matter for making further submissions to sustain my case.

6. I have also taken into consideration of the reply of Noticee 2 (dated April 20, 2016) stating, inter alia, the following:

6.1 SCN Issued against me is the first of its kind and no proceedings have ever been issued against me by SEBI with regards to violations of any provisions as laid down by SEBI from time to time.

6.2 I was not a director of Tricom India Ltd and therefore I was not in any way involved in the day to day management of the company. I barely hold shares in any other company other than TIL.

- 6.3 *The alleged sell transactions in my account are concerned the same were executed by my brokers on his own volition to recover my outstanding. It is pertinent to mention that the alleged buy transactions in my account were executed before the closure of the trading window and before the alleged UPSI came into existence.*
- 6.4 *The profit for the quarter ended June 30, 2012 as compared to the profit for the quarter ended March 31, 2012 is notional. The company's income is received in dollars and the expenses are made in INR (Indian Rupees). The dollar rate for quarter ended June 30, 2012 was approximately Rs.56.31 and for the quarter ended March 31, 2012 was approximately Rs.51.16. Therefore, there was a notional rise in the income of the said June quarter as compared to that of March.*
- 6.5 *I was not privy to the financial results for the quarter ending June 30, 2012 before August 14, 2012 at 21:01 hrs. at which time the said results were published on the BSE website and made available to the general public. Therefore, the financial results or profits figures cannot be said to have a bearing on the alleged buy and sell transactions which were executed before the closure of trading window and towards recovery of my outstanding, respectively.*
- 6.6 *Further the facts and figures more specifically profit figures for the quarter ended September 30, 2012 were not within my knowledge, in any manner what-so-ever during the alleged period of investigation i.e., between August 3, 2012 and August 14, 2012. Therefore, the profit figures for the quarter ended September 30, 2012 cannot be construed to have any bearing on the alleged transactions.*
- 6.7 *I say that the price movement of the TIL scrip was well under the permissible limits of the stock exchange and has no bearing on the alleged charges as sought to be levied against me vide the SCN. Further, the price of scrip of TIL has shown a steady downward trajectory for the entire year of 2012, thereby does not make me liable for the alleged violations and contraventions of SEBI (Prohibition of Insider Trading) Regulations, 1992 read with SEBI (Prohibition of Insider Trading) Regulations, 2015 as specifically set out in the SCN or otherwise.*
- 6.8 *Further, I reiterate that at the relevant time I was not the director of the company and was not involved in the meeting of the audit committee and board of directors on August 14, 2012. But, assuming without admitting, considering the fact that only the notice for the board meeting which was to be held on August 14, 2012 was dispatched on August 3, 2012, the said notice cannot be considered as a UPSI. Further, it is pertinent to mention that the relevant facts and figures of the financial results for the quarter ended June 30, 2012 were not before me prior to 21:10 hrs. August 14, 2012. Further, assuming without admitting, that if the unaudited financial results were presented before the board of directors only on August 14, 2012 at 06:00 pm respectively how can it be said that the alleged UPSI came into existence on August 3, 2012 at which time only the notice for the board meeting was sent. Therefore, my transactions before*

the closing of the trading window cannot be considered as violation of provisions of SEBI (Prohibition of Insider Trading) Regulations 1992 read with SEBI (Prohibition of Insider Trading) Regulations, 2015.

6.9 I reiterate that I have not violated any provisions as laid down by SEBI from time to time and I have not contravened any provisions of SEBI (Prohibition of Insider Trading) Regulations 1992 read with SEBI (Prohibition of Insider Trading) Regulations, 2015 as specifically set out in SCN and pray that in the interest of the justice take a compassionate view against me in the matter taking into the account the aforesaid submissions and all the proceedings initiated against me be concluded without levying any penalty. I also pray that I may be granted a personal hearing in the matter for making further submissions to sustain my case.

7. In the interest of natural justice and following the directions of Hon'ble SAT, an opportunity of personal hearing was given to the Noticee on April 22, 2019. The Authorised Representative (hereinafter referred to as "AR") appeared on the scheduled date of hearing and reiterated the submission made vide letter dated April 20, 2016. The Noticee also undertook to make further submissions on or before April 29, 2019. Hon'ble SAT vide order dated March 25, 2019 had also directed the Noticees to deposit ₹ 5,00,000/- each to the undersigned. The Noticees had submitted ₹ 2,00,000/- each. Hon'ble SAT vide its order dated April 24, 2019 had given the Noticees six weeks' time from April 24, 2019 deposit the balance amount. Further SAT vide order dated June 03, 2019 directed SEBI to decide the matter within six weeks from the date of the order.

8. The Noticee, vide letter dated May 17, 2019 made the following submissions:

8.1 Tricom India Limited was a flourishing company and was doing wonderful business in non-voice based Business Process Outsourcing till 2008 and was a fast growing company. Its business and profits grew manifolds in 5 years period between 2003 to 2008.

8.2 In and around this time the management also entered into fruit processing business under the name and style Tricom Fruit Products Ltd.

8.3 However due to financial slowdown in USA and unsuccessful adventure of Tricom Fruit Products Ltd., the Company and its promoters went through severe financial stress and mental duress.

- 8.4 As a result lot of employees left the company and the businesses were virtually closed down. Assets of Tricom Fruit Products Limited has been taken over by Edelweiss ARC under SARFESI.
- 8.5 Also some of our shares were with Brokers and due to debit balance in our accounts they sold some of them several times including the dates mentioned in the SCN.
- 8.6 Therefore the brokers themselves sold the shares to recover the debit balance without our instructions. Further these were not delivered from our demat accounts and the broker delivered the same from his own deposits and we were completely unaware at the time of transaction.
- 8.7 It is pertinent to note that I (Chetan Kothari) had 23, 04,383 shares of TIL in my demat account before even on August 31, 2012. If I wanted to benefit from trading as alleged, I would have sold far more number of shares than those mentioned in the SCN.
- 8.8 Further we reiterate that the UPSI was non-existent on August 3, 2012 as alleged and Mr Chetan Kothari accessed the financials only during the meetings of Audit Committee. Mrs Chetna Kothari did not have access to this information even thereafter as she was involved in business in any manner.
- 8.9 We also submit that the results of the company were also not substantially different from earlier quarter that we would have derived any benefit by selling shares before declaration of result.”

Information about the company

9. The shares of the company were listed on the Bombay Stock Exchange (BSE) and the National Stock Exchange (NSE). Noticee 1 was the promoter and Executive Director of TIL during the IP and Noticee 2 is the spouse of Noticee 1.
10. The shareholding pattern of TIL is observed as under:

Quarter Ending	30-Jun-12			30-Sep-12		
Particular	No. of share holders	No. of shares	Of %	No. of share holders	No. of shares	Of %
Promoter Holding	14	68,29,789	9.20	14	50,99,871	6.44
Non Promoter Holding	6,288	6,14,25,661	82.78	6,441	6,81,55,579	86.05
Held by Custodians against DRs	1	59,50,000	8.02	1	59,50,000	7.51
Total share capital	6,303	7,42,05,450	100	6426	7,92,05,450	100

11. The price volume data of the scrip of TIL for the period before, during and after the investigation period at BSE and NSE is as under:

Period	Exchange	Opening Price	High Price	Low price	Closing price	Total & Avg. no. of shares traded during the period
Pre-Investigation Period 03-Jul-12 to 02-Aug-12	BSE	6.68	7.10	5.25	6.64	32,67,326 (1,42,058)
		03-Jul-12	25-Jul-12	18-Jul-12	02-Aug-12	
	NSE	6.70	7.25	5.25	6.70	33,42,562 (1,45,329)
		03-Jul-12	26-Jul-12	18-Jul-12	02-Aug-12	
Investigation Period 03-Aug-12 to 14-Aug-12	BSE	6.60	6.60	4.44	4.44	6,82,163 (85,270)
		03-Aug-12	03-Aug-12	14-Aug-12	14-Aug-12	
	NSE	6.60	6.70	4.60	4.60	4,15,924 (51,991)
		03-Aug-12	03-Aug-12	14-Aug-12	14-Aug-12	
Post-Investigation Period 15-Aug-12 to 14-Sep-12	BSE	4.22	5.12	3.99	4.80	19,30,121 (87,733)
		16-Aug-12	23-Aug-12	28-Aug-12	14-Sep-12	
	NSE	4.40	5.10	3.90	4.75	18,19,963 (82,726)
		16-Aug-12	23-Aug-12	07-Sep-12	14-Sep-12	

12. TIL had made a corporate announcement post its Board meeting on August 14, 2012:

Date & Time of display as per BSE	News Body	Price Impact	Remarks
14-Aug-11	TIL has informed BSE about the Financial	14-Aug-2012 Open High Low Close	On 16-Aug-2012, the scrip opened at

21:10 hours	Results & a copy of the Limited Review Report for the period ended June 30, 2012.	<table><tr><td>4.44</td><td>4.44</td><td>4.44</td><td>4.44</td></tr><tr><td colspan="4">Volume: 48,162 shares</td></tr></table>				4.44	4.44	4.44	4.44	Volume: 48,162 shares				Rs.4.22 (fall of 4.95% from previous close) and closed at Rs.4.22 (fall of 4.95% from previous close).				
		4.44	4.44	4.44	4.44													
		Volume: 48,162 shares																
		16-Aug-2012																
		<table><tr><td>Open</td><td>High</td><td>Low</td><td>Close</td></tr><tr><td>4.22</td><td>4.40</td><td>4.22</td><td>4.22</td></tr><tr><td colspan="4">Volume: 7,33,334 shares</td></tr></table>				Open	High	Low	Close	4.22	4.40	4.22	4.22		Volume: 7,33,334 shares			
		Open	High	Low	Close													
4.22	4.40	4.22	4.22															
Volume: 7,33,334 shares																		

13. The chronology of events which finally lead to the official announcement of the quarterly results for the quarter ending June 30, 2012 as provided by the company vide its letter dated July 10, 2015 are as under:

Sr. No.	Nature of Events	Date & Time	Persons involved
1	Dispatch of notice of board meeting to all concerned persons.	August 03, 2012	All Directors, Auditors & Financial Controller
2	Intimation of Notice of Board meeting to Stock Exchange	August 03, 2012	Company Secretary
3	Publication of Notice on News Paper	August 10, 2012	Company Secretary & Newspaper agency
4	Preparation of Financial Results	From the end of June quarter till the date of meeting.	Financial Controller
5	Conduction of Audit Committee meeting	August 14, 2012, 3:00 PM	Audit committee members & Company Secretary
6	Conduction of Board meeting	August 14, 2012, 6:00 PM	Board of Directors & Company Secretary
7	Sending outcome of board meeting to Stock Exchanges	August 14, 2012, 8:05 PM	Company Secretary
8	Publication of Results on Newspaper.	August 15, 2012	Company Secretary & News Paper Agency

Issues and Consideration

14. I have carefully perused the charges levelled against the Noticees in the SCN, written submissions made in response to SCN and during hearing and all the documents available on record. In the instant matter, the following issues arise for consideration and determination:

14.1 **Issue I:** *Whether there was any unpublished price sensitive information during August 03, 2012 till August 14, 2012.*

14.2 **Issue II:** *Whether Noticees were Insiders or deemed Insiders as per PIT Regulations*

14.3 **Issue III:** *Whether Noticees were having access to UPSI.*

14.4 **Issue IV:** *Whether the trading done by the Noticees during the trading window closure period was based UPSI and hence violated Regulation 3(i) of PIT Regulations*

14.5 **Issue V:** *Does the violation, if any, on the part of the Noticees attract monetary penalty under Section 15 G of the SEBI Act?*

14.6 **Issue VI:** *If so, what would be the quantum of monetary penalty that can be imposed on the Noticees taking into consideration the factors mentioned in Section 15J of the Act?*

15. Before proceeding further, I would like to refer to the relevant provisions of the PIT 1992 and PIT 2015 which read as under:

PIT Regulations, 1992

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

PIT Regulations, 2015

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; and*

(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*

16. Issue I: Whether there was any unpublished price sensitive information during August 03, 2012 till August 14, 2012.

As per Regulation 2(ha) of PIT Regulations,

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

Explanation-- The following shall be deemed to be price sensitive information --

17. TIL had submitted that the company had closed the trading window during the period between August 12, 2012 and August 16, 2012 on account of declaration of financial results for the quarter ended June 30, 2012. Therefore, the corporate announcement related to financial results for the period ending June 2012 made by TIL was considered as a price sensitive information (PSI) in terms of Regulation 2(ha) of the PIT Regulations. Further, the said information was unpublished and was therefore, considered to be unpublished price sensitive information (UPSI). From the chronology of events mentioned above, it was observed that the notice of board meeting regarding declaration / discussion of financial results of company for the quarter ending June, 2012 was sent to all directors on August 03, 2012. Since, the notice of board meeting was for discussion of quarterly results, it indicated finalization of quarterly results on that day. Therefore, it was alleged that the UPSI came into existence on August 03, 2012. Further, the financial results for

quarter ended June 2012 were published on BSE's website on August 14, 2012 at 21:10 hours. Therefore, it was noted that the UPSI became public on August 14, 2012 at 21:10 hours. In view of the same, the period between the date when the notice for meeting of Board of Directors was dispatched i.e. on August 03, 2012 and the date when the results were published by BSE on August 14, 2012 at 21:10 hours was alleged to be the period of the UPSI and thus unaudited quarterly results of June 2012 was UPSI.

18. **Issue II:** Whether Noticees were Insiders or deemed Insiders as per PIT Regulations.

As per Regulation 2(e) "insider" means any person who,

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

2(c) *"person is a connected person", if such person—*

"Connected person" means any person who—

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

2 (h) Person is deemed to be connected person, if such person

(viii) Relatives of any of the aforementioned persons

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

I note that since Noticee 1, being the Executive Director was the connected person as per definition mentioned above and Noticee 2 being the relative (spouse) of connected person, hence they were insiders as per PIT 1992.

Issue III: Whether Noticees were having access to UPSI.

19. It was alleged that the notice of board meeting scheduled on August 14, 2012 had stated “to take on record of unaudited financial results for the quarter ending June, 2012” as one of the agenda and the same was acknowledged by Noticee 1 on August 04, 2012. Noticee 1 had disputed that he was not provided details of unaudited financial results along with Board meeting agenda and he was made aware of these figures only during audit committee meeting and Noticee 2 got to know about it only after corporate announcement was made by the company in this regard on August 14, 2012.
20. TIL vide its letter dated July 10, 2015 has stated that Noticee 1 (one of the members of Audit Committee) was one of the persons having access to the quarterly financial results of June 2012 before official announcement. I note from the minutes of the Audit Committee meeting that the said meeting was held on August 14, 2012 at 9 am during which Noticee 1 was made aware of the unaudited financial results of the company.
21. There is no evidence on record that unaudited financial results were circulated along with Agenda item sent on August 03, 2012. Though TIL in its submission had mentioned that Quarterly results were finalized on August 10, 2012 and was shared with Audit Committee (where Noticee 1 was the member) on August 14, 2012 at 9 am. There is no evidence to suggest how Noticee 2 (Spouse of Noticee 1) was made aware of the unaudited financial results prior to disclosure to Stock Exchange on August 14, 2012.
22. There is nothing on the record to prove that Noticees who had traded in the shares of TIL were having access to UPSI. I also note that there is no mention about who had communicated UPSI and to whom, day and time of the communication. However being Executive Director of the Company, Noticee 1 was expected to be aware of the quarterly performance of the company and hence it can be assumed

that he was aware of UPSI during August 4-14, 2012 and Noticee 2 being his spouse can also be expected to be aware of this information owing to her relationship with Noticee 1.

23. **Issue IV:** Whether the trading done by the Noticees during the trading window closure period was based UPSI and hence violated Regulation 3(i) of PIT Regulations:

Here, first I would like to verify whether the timing of trading window closure by the company was correct. Based on SEBI investigation, trading window should have been closed from August 03, 2012 till August 16, 2012, hence it was alleged that Noticees had traded during this period when UPSI was in existence. However Noticees had defended by stating that as per Company's Insider trading policy, trading window was kept closed between August 12- 16, 2012. TIL has informed that as per its code of conduct for prevention of insider trading, window closure period was August 12, 2012 – August 16, 2012. However, as per SCN, SEBI Investigation Department has reckoned the date of window closure from August 03, 2012 as on this day Agenda item for the next Board meeting to adopt the quarterly results was circulated. Here I have perused the pattern the window closure by TIL.

24. Dates of Board meeting and respective dates of trading Window closure

Sr. No	Dates of Board Meeting	Trading Window Closure Period
1.	29.1.2011	27.01.2011 to 31.01.2011
2.	12.2.2011	10.02.2011 to 14.02.2011
3.	22.2.2011	20.02.2011 to 24.04.2011
4.	16.04.2011	14.04.2011 to 18.04.2011
5.	14.5.2011	12.05.2011 to 16.05.2011
6.	12.8.2011	10.08.2011 to 14.08.2011
7.	14.11.2011	12.11.2011 to 16.11.2011
8.	30.11.2011	28.11.2011 to 02.12.2011
9.	09.01.2012	07.01.2012 to 11.01.2012
10.	14.2.2012	12.02.2012 to 16.02.2012
11.	14.5.2012	12.05.2012 to 16.05.2012
12.	14.8.2012	12.08.2012 to 16.08.2012

25. The above pattern suggest that as a matter of practice TIL was closing its trading window two days in advance from the Board meeting and keep it close for another following two days post Board meeting . In the light of the same, it would be improper to hold that TIL had deliberately closed its trading window just two days ahead of Board Meeting (held on August 14, 2012) only to allow its Executive director and his spouse to trade during UPSI period.

Trading during UPSI

26. The following trading of Noticees was alleged to be based on UPSI and during window closure period

Noticee 1						
Date	BSE			NSE		
	Buy Qty	Sell Qty	Net Qty	Buy Qty	Sell Qty	Net Qty
06-Aug-2012	-	3,600	(3,600)	-	-	-
07-Aug-2012	-	27,301	(27,301)	-	23,683	(23,683)
Total	-	30,901	(30,901)	-	23,683	(23,683)
Noticee 2						
Date	BSE			NSE		
	Buy Qty	Sell Qty	Net Qty	Buy Qty	Sell Qty	Net Qty
03-Aug-2012	15,200	200	15,000	-	27,181	(27,181)
06-Aug-2012	-	-	-	-	6,502	(6,502)
07-Aug-2012	-	-	-	5,233	75,000	(69,767)
13-Aug-2012	-	40,000	(40,000)	-	-	-
14-Aug-2012	-	-	-	-	5,509	(5,509)
Total	15,200	40,200	(25,000)	5,233	1,14,192	(1,08,959)

27. In order to ascertain whether the trading done by Noticees in the company's scrip during the trading window closure period was based on UPSI, I would like to refer the details of trades done by the Noticees prior and post investigation period. I have perused the trading pattern of Noticees (as per the ledger account produced by them of Stock Broker- Amrapali Aadya Trading, Guinness Securities Limited and KGR Securities Limited) for the period prior to UPSI and post UPSI period (Jan

2012-September 2012), the following was the trading of Noticees during this period in the scrip of TIL.

Chetan Kothari

<u>Dates</u>	<u>Buy</u>	<u>Sell</u>	<u>Closing Price of the scrip Tricom</u>
25.01.2012	350,000		11.5
27.01.2012	350,000		11.57
30.01.2012	318,369		11.49
31.01.2012	311,421		11.52
09.03.2012	200,000		12.16
04.06.2012	190,000		8.66
05.06.2012	189,835	74,995	7.78
07.06.2012	218,509	103,000	8.01
08.06.2012		120,000	7.88
11.06.2012	75,000	177,893	7.89
12.06.2012		65,500	7.74
13.06.2012	130,833		7.77
15.06.2012	1,651		7.71
18.06.2012	38,497	36,000	7.7
19.06.2012	76,150	129,000	7.8
20.06.2012	20,750	12,000	7.65
21.06.2012	28,081		7.64
22.06.2012	25,544	77,600	7.75
25.06.2012	249,637	245,530	6.37
26.06.2012	135,000		5.11
27.06.2012		20,000	5.62
28.06.2012	99,006	95,000	6.18
29.06.2012	175,246	53,531	6.75
02.07.2012	160,359		6.47
03.07.2012	1,299		6.42
04.07.2012	30,000	61,000	6.53
06.07.2012	164,000		6.66
09.07.2012	41,020	1,760	6.5
10.07.2012	50,000	25,000	6.44
11.07.2012	150,000	100,000	6.49
12.07.2012	77,500	81,500	6.26
13.07.2012		30,500	5.95
17.07.2012	80,000	80,000	5.52
18.07.2012	50,000	157,881	5.76
19.07.2012		170,862	6.04

<u>Dates</u>	<u>Buy</u>	<u>Sell</u>	<u>Closing Price of the scrip Tricom</u>
20.07.2012	23,900	67,000	6.34
26.07.2012	237,000	195,000	6.89
27.07.2012		42,007	6.75
30.07.2012		21,900	6.64
01.08.2012	24,807		6.5
02.08.2012	60,901	32,100	6.64
06.08.2012		3,600	6
07.08.2012		50,984	5.71
17.08.2012		161,256	4.43
21.08.2012		10,061	4.65
22.08.2012	8,150	32,000	4.88
23.08.2012		18,685	4.64
28.08.2012	58,768	109,546	4.21
29.08.2012		15,636	4.23
30.08.2012		32,121	4.15
31.08.2012		8,900	4.22
03.09.2012	4,000	4,000	4.35
Total	44,05,233	27,23,348	

Chetana Kothari

<u>Dates</u>	<u>Buy</u>	<u>Sell</u>	<u>Closing Price of the scrip Tricom</u>
27.07.2012		70,550	6.75
30.07.2012	85,500		6.64
01.08.2012		26,100	6.5
02.08.2012	47,350	32,100	6.64
03.08.2012	15,200	27,381	6.31
06.08.2012		6,502	6
07.08.2012	5,233	75,000	5.71
13.08.2012		40,000	4.67
14.08.2012		5,509	4.44
16.08.2012		114,100	4.22
22.08.2012	16,000		4.88
30.08.2012	12,500	16,000	4.15
31.08.2012		12,200	4.22
Total	1,81,783	4,25,442	

28. It can be seen that Noticee 1 has been regularly trading in the scrip of TIL from January 2012 until September 2012 wherein he had bought 44,05,233 shares at the average price of ₹ 8.52 per share and sold 27, 23,348 shares at the average price of ₹ 6.46 . Similarly Noticee 2 had bought 1,81,783 shares at the average price of ₹ 6.25 per share and sold 425,442 shares at the average price of ₹ 5.42 during July-August 2012.
29. The said trading pattern of Noticee 1 suggests that he was a regular trader in the scrip of TIL and trading done by him during UPSI period cannot be held that it was based on the UPSI of quarterly results of June 2012.
30. Noticees have claimed that shares sold during UPSI period were sold by their brokers owing to debit balance in their ledger maintained with them. Noticees were advised to demonstrate whether shares sold by brokers not done only during UPSI period, however it was done otherwise also and pursuant to an agreement between the parties. It was also ascertain whether this was an *alibi* created by the noticees to deal in the shares of Tricom during existence of UPSI. Noticees have demonstrated that their brokers had sold shares of TIL owing to debit balances in the ledger account of the Noticees. The details are as under:

KGR Securities- Chetan Kothari				
Date	Debit Balance	Shares sold	Number of shares sold	Amount Recovered
29/06/2012	3,03,833	TIL	20,000	1,11,800
		Tricom Fruits	5000	2,05,500
01/08/2012	3,53,064	TIL	21900	148263
		TFPL	4950	2,03,494
08/08/2012	3,46,896	TIL	3600	21,492
		TFPL	2878	74,568
09/08/2012	2,51,048	TIL	27301	1,55,069

Amrapali Aadhya Trading and Investment Private Limited- Chetan Kothari				
Date	Debit Balance	Shares sold	Number of shares sold	Amount Recovered
07/06/2012	776812	TIL	74,995	5,94,496
11/06/2012	683694		13000	1,02,391
12/06/2012	1166150		1,20,000	9,51,150
13/06/2012	1875154		1,77,893	14,08,186
14/06/2012	468932		65,500	5,16,694
20/06/2012	1966946		36000	2,78,177
21/06/2012	1689213		1,29,000	10,03,257
22/06/2012	480109		12000	95,725
04/07/2012	1238152		53,531	3,57,257
13/07/2012	366692		50000	3,24,864
16/07/2012	371136		50,000	3,19,864
19/07/2012	374893		50,000	281362
20/07/2012	376555		49850	274985
23/07/2012	351786		48862	287173
31/07/2012	332305		42007	289383
09/08/2012	302434		23,683	136822
Guiness Securities Limited- Chetana Kothari				
Date	Debit Balance	Shares sold of	Number of shares sold	Amount Recovered
31/07/2012	10,02,690	TIL	70,550	4,85,685
03/08/2012	5,15,403		24000	1,58,878
16/08/2012	5,23,021	TIL	40,000	186800
		TFPL	49,,379	8,49,900
17/08/2012	-	TIL	5509	25,251
Amrapali Aadya Trading and Investment Private Limited- Chetana Kothari				
Date	Debit Balance	Shares sold of	Number of shares sold	Amount Recovered
06/08/2012	6,07,260		2100	13,581

07/08/2012	5,96,379	TIL	42,181	2,73,331
08/08/2012	5,46,849		6502	38,295
09/08/2012	5,08,554		69,767	4,00,884

TFPL: Tricom Fruits Limited

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

Unaudited Quarterly results of TIL

32. As proclaimed by the Noticees that there was no substantial change in the quarterly results of the company and hence they have no reasons to act upon the news of unaudited quarterly results of June 2012. I have perused the quarterly results of the company, the details are as following

Quarter Ending	Profit before Tax
Mar 2012	3.80
June 2012	6.58
Sep 2012	5.58
Dec 2012	4.92

(Figures in Rs Millions)

33. Noticees (engaged into software exports and increase in US \$ value increases its profits) have stated that notional rise in the profit of the company in the June 2012 was owing to change in US\$ rates vis-a-vis Indian Rupee. I have cross checked this fact with the publically available information and found that the US\$ rate as on March 31, 2012 was ₹ 50.955 whereas it had become ₹ 56.31 on June 30, 2012. Therefore I am inclined to accept the fact that the rise in the profit of the company during quarter ended June 2012 was owing to change in US\$ rate vis-a-vis Indian

Rupee. Therefore in the light of the above facts, I am of the opinion that there was no reasons for the insiders to act upon this information and deal during window closure period. The above table shows that profit of the company for preceding and succeeding quarter of June 2012 was range bound and in downward trajectory. Even for assumption if I believe that Noticees had acted based on UPSI that company is going declare better results, in that scenario a person of normal prudence would have accumulated more shares by buying before UPSI become public and would have made gains arisen due to rise in the price of the stock once UPSI become public. In the instant matter, I noticed that Noticee 1 had not purchased any share on the contrary he had sold shares 54,584 shares during August 06-07, 2012. Noticee -2 had sold 1, 54,392 shares and she had also purchased 20,433 shares during August 03, 2012 –August 14, 2012. The said trading pattern demonstrate contrarian view on the stock which does not reflect the likely trading pattern of any entity who trades based on UPSI. Also, if unaudited financial results to be perceived negative to the prospects of the company ,then shares sold during the UPSI period was not substantial vis-a-vis shareholding of the Noticees during the relevant period.

Price Movement of the scrip

34. Noticees had argued that the price of shares of TIL was in downward trajectory from very long time and hence they had no reasons to trade during window closure period which could have been advantageous for them. I have perused the price chart available in public domain, which is placed here

Date	Close Price	Change in Price	Date	Close Price	Change in Price
02-Apr-12	11.12		13-Aug-12	4.67	-0.24
03-Apr-12	11.06	-0.06	14-Aug-12	4.44	-0.23
04-Apr-12	11	-0.06	16-Aug-12	4.22	-0.22
09-Apr-12	11.05	0.05	17-Aug-12	4.43	0.21
10-Apr-12	11.07	0.02	21-Aug-12	4.65	0.22
11-Apr-12	11.29	0.22	22-Aug-12	4.88	0.23
12-Apr-12	11.28	-0.01	23-Aug-12	4.64	-0.24
13-Apr-12	11.3	0.02	24-Aug-12	4.41	-0.23

Date	Close Price	Change in Price	Date	Close Price	Change in Price
16-Apr-12	10.78	-0.52	27-Aug-12	4.19	-0.22
17-Apr-12	11.08	0.3	28-Aug-12	4.21	0.02
18-Apr-12	11.15	0.07	29-Aug-12	4.23	0.02
19-Apr-12	11.65	0.5	30-Aug-12	4.15	-0.08
20-Apr-12	11.49	-0.16	31-Aug-12	4.22	0.07
23-Apr-12	11.13	-0.36	03-Sep-12	4.35	0.13
24-Apr-12	11.23	0.1	04-Sep-12	4.49	0.14
25-Apr-12	10.91	-0.32	05-Sep-12	4.52	0.03
26-Apr-12	10.92	0.01	06-Sep-12	4.3	-0.22
27-Apr-12	10.99	0.07	07-Sep-12	4.1	-0.2
28-Apr-12	10.91	-0.08	08-Sep-12	4.5	0.4
30-Apr-12	11.05	0.14	10-Sep-12	4.42	-0.08
02-May-12	11.37	0.32	11-Sep-12	4.42	0
03-May-12	11.05	-0.32	12-Sep-12	4.43	0.01
04-May-12	10.6	-0.45	13-Sep-12	4.6	0.17
07-May-12	10.13	-0.47	14-Sep-12	4.8	0.2
08-May-12	10.56	0.43	17-Sep-12	4.69	-0.11
09-May-12	10.47	-0.09	18-Sep-12	4.79	0.1
10-May-12	10.5	0.03	20-Sep-12	4.79	0
11-May-12	10.41	-0.09	21-Sep-12	4.83	0.04
14-May-12	10.45	0.04	24-Sep-12	4.71	-0.12
15-May-12	10.37	-0.08	25-Sep-12	4.81	0.1
16-May-12	10.3	-0.07	26-Sep-12	4.65	-0.16
17-May-12	10.24	-0.06	27-Sep-12	4.69	0.04
18-May-12	10.19	-0.05	28-Sep-12	4.65	-0.04
21-May-12	10.23	0.04	01-Oct-12	4.6	-0.05
22-May-12	10.22	-0.01	03-Oct-12	4.79	0.19
23-May-12	10.24	0.02	04-Oct-12	4.67	-0.12
24-May-12	10.53	0.29	05-Oct-12	4.58	-0.09
25-May-12	9.96	-0.57	08-Oct-12	4.75	0.17
28-May-12	9.21	-0.75	09-Oct-12	4.75	0
29-May-12	8.99	-0.22	10-Oct-12	4.75	0
30-May-12	8.1	-0.89	11-Oct-12	4.7	-0.05
31-May-12	9.37	1.27	12-Oct-12	4.7	0
01-Jun-12	9.16	-0.21	15-Oct-12	4.65	-0.05
04-Jun-12	8.66	-0.5	16-Oct-12	4.62	-0.03
05-Jun-12	7.78	-0.88	17-Oct-12	4.69	0.07
06-Jun-12	8.03	0.25	18-Oct-12	4.71	0.02
07-Jun-12	8.01	-0.02	19-Oct-12	4.69	-0.02

Date	Close Price	Change in Price	Date	Close Price	Change in Price
08-Jun-12	7.88	-0.13	22-Oct-12	4.52	-0.17
11-Jun-12	7.89	0.01	23-Oct-12	4.68	0.16
12-Jun-12	7.74	-0.15	25-Oct-12	4.55	-0.13
13-Jun-12	7.77	0.03	26-Oct-12	4.58	0.03
14-Jun-12	7.8	0.03	29-Oct-12	4.53	-0.05
15-Jun-12	7.71	-0.09	30-Oct-12	4.5	-0.03
18-Jun-12	7.7	-0.01	31-Oct-12	4.4	-0.1
19-Jun-12	7.8	0.1	01-Nov-12	4.33	-0.07
20-Jun-12	7.65	-0.15	02-Nov-12	4.49	0.16
21-Jun-12	7.64	-0.01	05-Nov-12	4.33	-0.16
22-Jun-12	7.75	0.11	06-Nov-12	4.45	0.12
25-Jun-12	6.37	-1.38	07-Nov-12	4.28	-0.17
26-Jun-12	5.11	-1.26	08-Nov-12	4.4	0.12
27-Jun-12	5.62	0.51	09-Nov-12	4.37	-0.03
28-Jun-12	6.18	0.56	12-Nov-12	4.26	-0.11
29-Jun-12	6.75	0.57	13-Nov-12	4.3	0.04
02-Jul-12	6.47	-0.28	15-Nov-12	4.2	-0.1
03-Jul-12	6.42	-0.05	16-Nov-12	4.17	-0.03
04-Jul-12	6.53	0.11	19-Nov-12	3.95	-0.22
05-Jul-12	6.81	0.28	20-Nov-12	3.95	0
06-Jul-12	6.66	-0.15	21-Nov-12	3.76	-0.19
09-Jul-12	6.5	-0.16	22-Nov-12	3.62	-0.14
10-Jul-12	6.44	-0.06	23-Nov-12	3.65	0.03
11-Jul-12	6.49	0.05	26-Nov-12	3.37	-0.28
12-Jul-12	6.26	-0.23	27-Nov-12	3.61	0.24
13-Jul-12	5.95	-0.31	29-Nov-12	3.65	0.04
16-Jul-12	5.73	-0.22	30-Nov-12	3.63	-0.02
17-Jul-12	5.52	-0.21	03-Dec-12	3.62	-0.01
18-Jul-12	5.76	0.24	04-Dec-12	3.55	-0.07
19-Jul-12	6.04	0.28	05-Dec-12	3.6	0.05
20-Jul-12	6.34	0.3	06-Dec-12	3.7	0.1
23-Jul-12	6.57	0.23	07-Dec-12	3.71	0.01
24-Jul-12	6.84	0.27	10-Dec-12	3.49	-0.22
25-Jul-12	6.85	0.01	11-Dec-12	4.03	0.54
26-Jul-12	6.89	0.04	12-Dec-12	3.96	-0.07
27-Jul-12	6.75	-0.14	13-Dec-12	4.66	0.7
30-Jul-12	6.64	-0.11	14-Dec-12	4.37	-0.29
31-Jul-12	6.57	-0.07	17-Dec-12	4.41	0.04
01-Aug-12	6.5	-0.07	18-Dec-12	4.33	-0.08

Date	Close Price	Change in Price	Date	Close Price	Change in Price
02-Aug-12	6.64	0.14	19-Dec-12	3.96	-0.37
03-Aug-12	6.31	-0.33	20-Dec-12	3.98	0.02
06-Aug-12	6	-0.31	21-Dec-12	3.87	-0.11
07-Aug-12	5.71	-0.29	24-Dec-12	3.96	0.09
08-Aug-12	5.43	-0.28	26-Dec-12	3.99	0.03
09-Aug-12	5.16	-0.27	27-Dec-12	3.99	0
10-Aug-12	4.91	-0.25	28-Dec-12	3.88	-0.11
			31-Dec-12	3.89	0.01

35. I note that price of TIL shares were actually in downward trajectory as can be seen from the above table and it was continuously falling down, be it much before UPSI period or much after UPSI period also. The aforesaid price chart compels me to be in agreement with the statement of the Noticees that dealing in the shares of the company during UPSI period has nothing to do with the anticipation of price fall or rise. As noted above, Noticees had dealt in the shares of the company several time prior and subsequent to the alleged transactions as well.

36. To summarize, I am of the considered view that the unaudited financial results for the quarter ending June 2012, which were finalized by the company by August 10, 2012 was price sensitive information within the meaning of regulation 2(ha) of the Regulations and was unpublished till the collated and finalized accounts were placed before the Audit Committee on August 14, 2012. There is nothing on record to substantiate that unaudited financials were circulated to Noticee 1 along with the agenda item circulated on August 3, 2012. However owing to the position of Noticee 1 (being Executive director) he could have become privy to unaudited financial accounts prior to Audit Committee meeting. Since it is concluded that noticee-1 who could have access to UPSI himself had not traded based on UPSI and therefore trading of his spouse (without having access to UPSI) based on UPSI is ruled out .

37. After perusing the trading of Noticee 1 in the scrip, I am of the opinion that he has been trading in the scrip of TIL otherwise also along with other scrips and there were several transactions in the scrip prior and post UPSI period. I am inclined to accept the argument of the Noticees that had they acted based on UPSI then they would have dealt in substantial quantity as they were holding over around 23 lakhs shares of TIL during UPSI period. On the other hand, it is more probable that they traded in the normal course of business. If the intention of Noticees had been to capitalize on the UPSI allegedly available with them, the quantum of dealing in shares of TIL would not have been so small. Apparently both the Noticees had been dealing in shares in much higher quantities in the immediate past as well as on later dates.
38. Looking at the totality of the facts and circumstances of the case, it is highly improbable that trading done by Noticees during August 03-12, 2012 was based on UPSI. It is also interesting to note that these Noticees were actively dealing in the scrip and they had dealt in the scrip at varied prices which indicates that price was immaterial for them while dealing in the scrip.
39. Hon'ble SAT in the case of Mrs. Chandrakala vs. The Adjudicating Officer, Securities and Exchange Board of India [Appeal no 209 of 2011 decided on January 31, 2012] where it had held that prohibition contained in regulation 3 of the Regulations apply only when an insider trades or deals in securities on the basis of any unpublished price sensitive information and not otherwise. It means that the trades executed should be motivated by the information in the possession of the insider. If an insider trades or deals in securities of a listed company, it may be presumed that he has traded on the basis of unpublished price sensitive information unless contrary to the same is established. The burden of proving a situation contrary to the presumption mentioned above lies on the insider. If an insider shows that he did not trade on the basis of unpublished price sensitive

information and that he traded on some other basis, he cannot be said to have violated the provisions of regulation 3 of the Regulations.

40. Here, I also refer the judgment of Hon'ble SAT in the matter of Manoj Gaur v/s SEBI wherein it was held that “ having regard to the gravity of charge of insider trading, higher degree of preponderance of probabilities is needed to bring home the charge. It was also held that since Ms Urvarshi Gaur (Spouse of Manoj Gaur) and Sameer Gaur (Brother of Manoj Gaur) was otherwise also regular trader in the market and number of shares sold by them during UPSI period was negligible pursuant to their total holding and there was no evidence of they having access to UPSI, resultantly SAT had set aside the penalty levied by AO in the matter.

41. Since Noticees have demonstrated that trading done during UPSI period was not based on UPSI and it was undertaken for different reasons. I also rely on the aforesaid judgment of Hon'ble SAT and hence conclude that the trades of Noticees were not based on UPSI.

42. Since it is concluded that trading done during August 03-16, 2012 by the Noticees was not based on UPSI of unaudited financial results and hence the allegation of violation of Regulation 3(i) of PIT Regulations does not established

43. Issue V: *Does the violation, if any, on the part of the noticees attract monetary penalty under Section 15 G of the SEBI Act?*

44. **Issue VI:** *If so, what would be the quantum of monetary penalty that can be imposed on the noticees taking into consideration the factors mentioned in Section 15J of the Act?*

Since, allegation against Noticees not established, hence does not require any consideration.

ORDER

45. In view of the above, after considering all the facts and circumstances of the case, the material available on record, the submission made by the Noticees in exercise of the powers conferred upon me under 15-I of the SEBI Act read with Rule 5 of Rules, I hereby dispose of the SCN in the matter.

46. In terms of Rule 6 of the Rules, copy of this order are sent to Noticees and also to the Securities and Exchange Board of India.

Date : July 15, 2019
Place: Mumbai

SAHIL MALIK
ADJUDICATING OFFICER