

BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/SR/PP/2019-20/6629/158]

UNDER SECTION 15-I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995 AND UNDER SECTION 23-I OF THE SECURITIES CONTRACTS (REGULATION) ACT, 1956 READ WITH RULE 5 OF THE SECURITIES CONTRACTS (REGULATIONS) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 2005

In respect of

Dharmendra Bhojak

Address: Room No-3,
Sahadev Niwas, Turel Pakhadi Road
Zakaria Road, Malad (West)
Mumbai-400064
(PAN: AFAPB7100D)

In the matter of Incap Financial Services Limited

FACTS OF THE CASE IN BRIEF

1. Securities and Exchange Board of India (**SEBI**) had received a complaint from India Infoline Limited wherein it was alleged that an individual (Prem Agarwal) had circulated a message through short message service (**SMS**) regarding trading in the scrip of Incap Financial Services Limited (**Incap / the Company**) on January 11, 2011, stating: "BSE call buy INCFS (530887) at CMP TRGT 35/50 within a week news (splited), going to declare dividend within week so hurry up don't miss profit www.indiainfoline.com".

2. On the basis of the aforementioned complaint, a department of SEBI (**OD**) undertook an investigation in the matter for the period from December 1, 2010 to February 23, 2011 (**Investigation period / IP**) to ascertain whether there was any violation of the provisions of Securities and Exchange Board of India Act, 1992 (**SEBI Act**), Securities Contracts (Regulation) Act, 1956 (**SCRA**), the SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 (**PFUTP Regulations**), the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations 1997 (**Takeover Regulations**) and the SEBI (Prohibition of Insider Trading) Regulations, 1992 (**Insider Trading Regulations**). The shares of Incap were listed at BSE Limited (**BSE**), during IP.
3. OD observed certain non-compliances with regard to SEBI Act, SCRA, PFUTP Regulations, Takeover Regulations and Insider Trading Regulations 1992. OD initiated adjudication proceedings against the Noticee to inquire into and adjudge under sections 15A(b), 15H & 15HA of SEBI Act and section 23H of SCRA, the alleged violations of provisions of regulations 7(1) & 7(1A) and regulations 10 & 11(1) of SAST Regulations, 1997, regulation 13(1) & 13(3) of PIT Regulation, section 12A(a), (b), (c) of SEBI Act r/w regulation 3(a), (b), (c) & (d) and regulation 4(1), 4(2)(a) & (g) of PFUTP Regulations, 2003 and section 16 of SCRA r/w SEBI Notification G.S.R.219(E) dated March 2, 2000, sections 13 & 18 of SCRA r/w section 2(i) of SCRA.

APPOINTMENT OF ADJUDICATING OFFICER

4. SEBI appointed Shri Nagendraa Parakh as the Adjudicating Officer (**AO**) and his appointment was communicated vide communique April 27, 2016. Subsequently, Ms. Sangeeta Rathod (undersigned) was appointed an AO in this matter. The appointment of undersigned as AO was communicated vide communique dated July 10, 2017 under

section 15-I of the SEBI Act read with (r/w) rule 3 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as **AO Rules, 1995**) and section 23-I of SCRA r/w rule 3 of Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005 (hereinafter referred to as **AO Rules, 2005**) to inquire into and adjudge under the alleged violations of regulation 7(1) & 7(1A) and regulation 10 & 11(1) of SAST Regulations, regulation 13(1) & 13(3) of PIT Regulations, sections 12A(a), (b), (c) of SEBI Act r/w regulation 3(a), (b), (c) & (d) and 4(1), 4(2)(a) & (g) of PFUTP Regulations and section 16 of SCRA r/w SEBI Notification G.S.R.219(E) dated March 2, 2000, sections 13 & 18 of SCRA r/w section 2(i) of SCRA by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

5. Show cause notice EAD/AO-NP/VVK/14000/6/2016 dated May 13, 2016 (hereinafter referred to as **SCN**) was issued by previous AO to the Noticee under rule 4 of the AO Rules, 1995 and rule 4 of AO Rules, 2005 to show cause as to why an inquiry should not be held against him and why penalty under sections 15A(b), 15H & 15HA of SEBI Act and section 23H of SCRA be not imposed on him for the violations alleged and specified in the said SCN.
6. Details of the violations alleged in the SCN are given as follows:

<i>Alleged violation of provisions of law</i>	<i>Charging Sections under Act</i>
<i>Regulation 7(1) & 7(1A) of SEBI SAST regulations, 1997</i>	<i>Sec.15A(b) of SEBI Act, 1992</i>
<i>Regulation 10 & 11(1) of SEBI SAST Regulations, 1997</i>	<i>Sec.15H of SEBI Act, 1992</i>
<i>Section 12A(a), (b), (c) of SEBI Act r/w Regulation 3(a), (b), (c) & (d) and Reg. 4(1), 4(2)(a) & (g) of SEBI (PFUTP) Regulations, 2003</i>	<i>Sec.15HA of SEBI Act, 1992</i>
<i>Section 16 of SCR Act, 1956 read with SEBI Notification G.S.R.219(E) dated March 2, 2000, Section 13 and Section 18 of SCR Act, 1956 read with Section 2(i) of SCR Act, 1956</i>	<i>Sec.23H of SCR Act, 1956</i>

- a. *It is alleged that Noticee has lent his name to Arvind babulal Goyal, Executive Director & Compliance Officer of Incap and all the trading in Noticee's account was done by him only, therefore, acted in concert with each other i.e person acting-in-concert (PAC). Further, Noticee has triggered open offer obligations on 30th September, 2010 under Regulation 10 and on 16th October, 2010 under Regulation 11(1) of the SEBI SAST Regulations. It is alleged that the combined shareholding of Abhay Javlekar, Arvind Babulal Goyal and Noticee being PACs, crossed 15% of issued capital of Incap on 30th September, 2010 and further 5% twice, once on 16th October, 2010 and once along with Pooja Goyal and Ramesh Dwarkades Daga on 6th December, 2010, of shares of Incap, which allegedly attracted the provision of regulation 10 & 11(1) of the SAST Regulations, 1997, however, no open offer was given under the SAST Regulations, 1997. Therefore, Noticee being PAC, have failed to comply with the provisions of regulations 10 & 11(1) of the SAST Regulations, 1997. Further, it is alleged that Noticee has failed to make disclosure for change in shareholding as PAC as required under regulation 7(1) & 7(1A) of SAST Regulations, 1997. It is also alleged that Noticee has failed to file disclosures with the company under regulation 13(1) and 13(3) of SEBI PIT Regulations, 1992 for change in shareholding.*
- b. *It is also alleged that Noticee has indulged in unfair trade practice by executing self-trades without the intention of change of ownership of such security and creation of artificial volume by synchronised self and reversal trades., thereby prima facie, acted in violation of section 12A(a), (b),(c) of SEBI Act r/w Regulation 3(a), (b), (c) & (d) and Regulation 4(1), 4(2)(a) & (g) of PFUTP Regulations, 2003.*
- c. *It is also alleged that Noticee has acquired 350000 shares in off market which was not in conformity with the provisions of Section 2(i) of SCR Act, 1956, therefore, prima facie, acted in violation of Section 16 of SCR Act, 1956 read with SEBI Notification G.S.R. 219 (E) dated March 2, 2000 and Section 13 and 18 of SCR Act read with Section 2(i) of SCR Act, 1956.*

7. The SCN was sent to the Noticee through the speed post acknowledgment due. Proof / Acknowledgment of service of the SCN upon the Noticee is available on record. Noticee vide his undated letter bearing the stamp of inward receipt on June 02, 2016, filed its reply, given in brief as under-

- (i) *I was in search of job few years aback Mr Abhay Javlekar one of my friend, introduced me to Mr Arvind babulal Goyal. After that Mr Arvind Babulal Goyal hired me as a peon in his office at Goregaon west, on a salary of rs.8000/- pm. After few days he insisted me to open a Demat account with my name, which will be operated by him for some work or else he won't allow me to work with him in future, also he offered me to give some more money on behalf of the account so I dint have any other option other than accepting his offer.*
- (ii) *After that I continued my job with him for few years, he also continued with me at a salary of 8000/- pm, but on asking regarding the accounts, he said he will give the*

money together instead of giving every month, I again have no option other than to trust him. I asked him many times but the reply was the same, then after few years I myself left the job because I was not satisfied. I told him to close the accounts but he ignored me. Then I also went to Arihant Capitals at vile parle to close my account , but Mr Nimesh didn't accepted my application of closing account, he instead called Mr. Arvind , thereafter Arvind started blackmailing me . Then after I had never worked for him, but after this warm notice I realised that Arvind Goyal has misused my accounts and even my signatures which he can do easily as I am uneducated.

I don't know anything about the matter written in your notice. I am totally unaware of the transactions made in my account because the account were wholly operated by Mr. Arvind Goyal against my wish. I hereby want to tell you that I did all this as I am uneducated & was not having any job, Mr Arvind Goyal has misused me and my accounts.

8. Previous AO vide hearing notice dated October 18, 2016 sent by SPAD, gave an opportunity of personal hearing to the Noticee scheduled on November 08, 2016. Noticee attended the hearing scheduled on November 08, 2016. Noticee reiterated the submissions made in said reply bearing receipt date of June 02, 2016.
9. Subsequent to the appointment of the undersigned as AO, the Noticee was informed about the change of AO vide letter dated November 20, 2017 and an opportunity of hearing before the undersigned was granted on December 12, 2017. Noticee attended the hearing on the specified date and requested for time to submit the documents / evidences and additional submissions if any by January 03, 2018. Hearing Minutes are on record. Noticee vide his undated letter bearing inward receipt date as January 01, 2018 *interalia* stated that “Mr Arvind Babulal Goyal had taken in written from me, on a stamp paper along with Notary, that all my Demat accounts and Bank accounts were opened through Mr. Abhay Javelekar and I agree for my statement, but all the operations of such accounts like RTGS, signing of cheques etc. on my behalf was done by Mr. Arvind Goyal”. Further, vide letter dated December 19, 2019, Noticee was granted an opportunity to file additional submissions (if any) in 15 days from receipt of the said letter.

Acknowledgment of delivery of the letter dated December 19, 2019 is on record. Noticee has neither reverted back nor filed any additional submissions.

10. After taking into account, the allegations levelled in the SCN, replies received and other material available on record, I hereby proceed to decide the case on merit.

CONSIDERATION OF ISSUES, EVIDENCES AND FINDINGS

11. I have carefully perused the charges levelled against the Noticee in the SCN and the material available on record. In the instant matter, the following issues arise for consideration and determination:-

- a. **Whether the Noticee has violated the provisions of regulation 7(1) & 7(1A) and regulation 10 & 11(1) of SAST Regulations, regulation 13(1) & 13(3) of PIT Regulation, section 12A(a), (b), (c) of SEBI Act r/w regulation 3(a), (b), (c) & (d) and 4(1), 4(2)(a) & (g) of PFUTP Regulations and section 16 of SCRA r/w SEBI Notification G.S.R.219(E) dated March 2, 2000, sections 13 & 18 of SCRA r/w section 2(i) of SCRA?**
- b. **Do the violations, if any, on the part of the Noticee attract monetary penalty under sections 15A(b), 15H & 15HA of SEBI Act and section 23H of SCRA for the alleged violations by the Noticee?**
- c. **If yes, then what would be the monetary penalty that can be imposed upon the Noticee, taking into consideration the factors mentioned in section 15J of the SEBI Act r/w rule 5(2) of the AO Rules, 1995 and section 23J of the SCRA r/w rule 5(2) of the AO Rules, 2005?**

12. Before proceeding further, I would like to refer to the relevant provisions:-

SAST Regulations

Disclosures of Shareholding and Control in a Listed Company

Acquisition of 5% and more shares of a company

7.(1) Any acquirer, who acquires shares or voting rights which (taken together with shares or voting rights, if any, held by him) would entitle him to more than five per cent or ten per cent or fourteen percent or fifty four per cent or seventy four per cent shares or voting rights in a company, in any manner whatsoever, shall disclose at every stage

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the aggregate of his shareholding or voting rights in that company to the company and to the stock exchanges where shares of the target company are listed.

(1A) Any acquirer who has acquired shares or voting rights of a company under sub-regulation (1) of regulation 11, shall disclose purchase or sale aggregating two percent or more of the share capital of the target company to the target company, and the stock exchanges where shares of the target company are listed within two days of such purchase or sale along with the aggregate shareholding after such acquisition or sale.

Acquisition of fifteen or more of the shares or voting rights of any company.

10. No acquirer shall acquire shares or voting rights which (taken together with shares or voting rights, if any, held by him or by persons acting in concert with him), entitle such acquirer to exercise fifteen percent or more of the voting rights in a company, unless such acquirer makes a public announcement to acquire shares of such company in accordance with the Regulations.

Consolidation of holdings

11. (1) No acquirer who, together with persons acting in concert with him, has acquired, in accordance with the provisions of law, 15 per cent or more but less than fifty five per cent. (55%)] of the shares or voting rights in a company, shall acquire, either by himself or through or with persons acting in concert with him, additional shares or voting rights entitling him to exercise more than 5% of the voting rights, in any financial year ending on 31st March, unless such acquirer makes a public announcement to acquire shares in accordance with the Regulations.

(2) No acquirer, who together with persons acting in concert with him holds, fifty five per cent. (55%) or more but less than seventy five per cent. (75%) of the of the shares or voting rights in a target company, shall acquire either by himself or through persons acting in concert with him any additional shares or voting rights therein, unless he makes a public announcement to acquire shares in accordance with these Regulations:

Provided that in a case where the target company had obtained listing of its shares by making an offer of at least ten per cent. (10%) of issue size to the public in terms of clause (b) of sub-rule (2) of rule 19 of the Securities Contracts (Regulation) Rules, 1957, or in terms of any relaxation granted from strict enforcement of the said rule, this sub-regulation shall apply as if for the words and figures 'seventy five per cent. (75%)', the words and figures 'ninety per cent. (90%)' were substituted.

(2A) Where an acquirer who (together with persons acting in concert with him) holds fifty five per cent. (55%) or more but less than seventy five per cent. (75%) of the shares or voting rights in a target company, is desirous of consolidating his holding while ensuring that the public shareholding in the target company does not fall below the minimum level permitted by the Listing Agreement, he may do so only by making a public announcement in accordance with these regulations:

Provided that in a case where the target company had obtained listing of its shares by making an offer of at least ten per cent. (10%) of issue size to the public in terms of clause (b) of sub-rule (2) of rule 19 of the Securities Contracts (Regulation) Rules, 1957, or in terms of any relaxation granted from strict enforcement of the said rule, this sub-regulation shall apply as if for the words and figures 'seventy five per cent. (75%)', the words and figures 'ninety per cent. (90%)' were substituted.

(3) Notwithstanding anything contained in Regulations 10, 11 and 12, in case of disinvestment of a Public Sector Undertaking, an acquirer who together with persons acting in concert with him, has made a public announcement, shall not be required to make another public announcement at the subsequent stage of further acquisition of shares or voting rights or control of the Public Sector Undertaking provided:-

(i) both the acquirer and the seller are the same at all the stages of acquisition, and

(ii) disclosures regarding all the stages of acquisition, if any, are made in the letter of offer issued in terms of Regulation 18 and in the first public announcement.]

Explanation:- For the purposes of Regulation 10 and Regulation 11, acquisition shall mean and include,-

(a) direct acquisition in a listed company to which the Regulations apply;

(b) indirect acquisition by virtue of acquisition of companies, whether listed or unlisted, whether in India or abroad.

PIT Regulations

Disclosure of interest or holding in listed companies by certain persons – Initial Disclosure

13. (1) Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company in Form A, the number of shares or voting rights held by such person, on becoming such holder, within 2 working days of :—

(a) the receipt of intimation of allotment of shares; or

(b) the acquisition of shares or voting rights, as the case may be.

Continual disclosure

(3) Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company in Form C the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below 5%, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this sub-regulation; and such change exceeds 2% of total shareholding or voting rights in the company.

SEBI Act

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

12A. No person shall directly or indirectly—

(a) use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;

(b) employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;

(c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;

PFUTP Regulations

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

(a) buy, sell or otherwise deal in securities in a fraudulent manner;

(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;

(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;

(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made there under.

4. Prohibition of manipulative, fraudulent and unfair trade practices

(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:—

(a) indulging in an act which creates false or misleading appearance of trading in the securities market;

(g) entering into a transaction in securities without intention of performing it or without intention of change of ownership of such security;

SCRA

Definitions.

2. In this Act, unless the context otherwise requires-

(i) “spot delivery contract” means a contract which provides for,—

(a) actual delivery of securities and the payment of a price therefore either on the same day as the date of the contract or on the next day, the actual period taken for the despatch of the securities or the remittance of money therefore through the post being excluded from the computation of the period aforesaid if the parties to the contract do not reside in the same town or locality;

(b) transfer of the securities by the depository from the account of a beneficial owner to the account of another beneficial owner when such securities are dealt with by a depository;

Contracts in notified areas illegal in certain circumstances.

13. If the Central Government is satisfied, having regard to the nature or the volume of transactions in securities in any State or States or area that it is necessary so to do, it may, by notification in the Official Gazette, declared this section to apply to such State or States or area, and thereupon every contract in such State or States or area which is entered into after the date of the notification otherwise than between the members of a recognised stock exchange or recognised stock exchanges in such State or States or area or through or with such member shall be illegal:

Provided that any contract entered into between members of two or more recognized stock exchanges in such State or States or area, shall—

(i) be subject to such terms and conditions as may be stipulated by the respective stock exchanges with prior approval of Securities and Exchange Board of India;

(ii) require prior permission from the respective stock exchanges if so stipulated by the stock exchanges with prior approval of Securities and Exchange Board of India.

Power to prohibit contracts in certain cases.

16. (1) If the Central Government is of opinion that it is necessary to prevent undesirable speculation in specified securities in any State or area, it may, by notification in the Official Gazette, declare that no person in the State or area specified in the notification shall, save with the permission of the Central Government, enter into any contract for the

sale or purchase of any security specified in the notification except to the extent and in the manner, if any, specified therein.

(2) All contracts in contravention of the provisions of sub-section (1) entered into after the date of notification issued thereunder shall be illegal.

Exclusion of spot delivery contracts from sections 13, 14, 15 and 17.

18. (1) Nothing contained in sections 13, 14, 15 and 17 shall apply to spot delivery contracts.

(2) Notwithstanding anything contained in sub-section (1), if the Central Government is of opinion that in the interest of the trade or in the public interest it is expedient to regulate and control the business of dealing in spot delivery contracts also in any State or area (whether section 13 has been declared to apply to that State or area or not), it may, by notification in the Official Gazette, declare that the provisions of section 17 shall also apply to such State or area in respect of spot delivery contracts generally or in respect of spot delivery contracts for the sale or purchase of such securities as may be specified in the notification, and may also specify the manner in which, and the extent to which, the provisions of that section shall so apply.

13. On perusal of the material available on record and giving regard to the facts and circumstances of the case, I hereby record my findings as under.

Issue a: Whether the Noticee has violated the provisions of regulation 7(1) & 7(1A) and regulation 10 & 11(1) of SAST Regulations, regulation 13(1) & 13(3) of PIT Regulations, sections 12A(a), (b), (c) of SEBI Act r/w regulation 3(a), (b), (c) & (d) and 4(1), 4(2)(a) & (g) of PFUTP Regulations, 2003 and section 16 of SCRA r/w SEBI Notification G.S.R.219(E) dated March 2, 2000, sections 13 & 18 of SCRA r/w section 2(i) of SCRA?

- a. I find that the allegation against the Noticee is that he had lent his name to Arvind Babulal Goyal, Executive Director and Compliance Officer of Incap and Noticee's account was operated by Arvind Babulal Goyal. Also it was alleged that Noticee was person acting-in-concert (PAC) with others including Arvind Babulal Goyal. Thus, Noticee being PAC allegedly triggered open offer obligations on September 30th, 2010 under regulation 10 of SAST Regulations and on October 16th, 2010 & December 06th 2010 under regulation 11(1) of the SAST Regulations, however, no open offer was made under the SAST

Regulations. Therefore, Noticee being PAC, have failed to comply with the provisions of regulations 10 and 11(1) of the SAST Regulations.

As per regulation 2(1)(e) of the SAST Regulations , 'persons acting in concert' inter alia comprises :

(1) "persons who, for a common objective or purpose of substantial acquisition of shares or voting rights or gaining control over the target company, pursuant to an agreement or understanding (formal or informal), directly or indirectly co-operate by acquiring or agreeing to acquire shares or voting rights in the target company or control over the target company."

(2) Without prejudice to the generality of this definition, the following persons will be deemed to be persons acting in concert with other persons in the same category, unless the contrary is established...

I note that there is no evidence on record to demonstrate that Noticee had shared a common objective or purpose (with other persons/entities named in the IR) of substantial acquisition of shares or voting rights or gaining control over the Target Company i.e. Incap or in other words, was 'persons acting in concert' under Regulation 2(1)(e) of the Takeover Regulations 1997. Upon consideration of the aforementioned, I am inclined to conclude with regards to the alleged violation of SAST Regulations that the allegation as contained in the SCN that Noticee had violated the provisions of regulations 10 and 11(1) of the SAST Regulations, does not stand established.

- b. Further, it is alleged that Noticee has failed to make disclosure for change in shareholding as PAC as required under regulation 7(1) and 7(1A) of SAST Regulations. In this regard, para a above, this charge does not stand established as the allegation regarding the Noticee being the PAC is not established.
- c. With regards to regulation 13(1) and 13(3) of PIT Regulations for initial and continual disclosures for change in shareholding or voting rights. I observe from the material available on record that the Noticee had acquired 9.18% shares of Incap on September 30, 2010 and subsequently on December 10, 2010 his shareholding changes to 3.21%.

On one hand, Noticee has not submitted any evidentiary proof of having made the disclosure, on the other hand OD has not substantiated its allegation with help of any evidentiary proof regarding non-disclosure of the alleged transactions. Therefore, considering the above facts, I am of the view that the allegations of failure on the part of the Noticee to make disclosures to BSE under regulation 13(1) and 13(3) of PIT Regulation, levelled in SCN does not get established.

- d. SCN also mentions that Noticee is alleged to have indulged in self trades and thereby, created artificial volume in the scrip of Incap in violation of the provisions of sections 12A(a), (b), (c) of SEBI Act r/w regulations 3(a), (b), (c) & (d) and 4(1), 4(2) (a) & (g) of PFUTP Regulations. Upon perusal of documents available on record I find that the Noticee has executed 20 self-trades involving a total quantity of 31,800 shares (0.62% of the market volume) on BSE in the scrip of Incap during the investigation period. It is a matter of record now, that SEBI has come out with a policy on issue of self-trades dated May 16, 2017 which states that intention is a sine qua non for establishing manipulation in case of self-trades and accidental/unintentional self-trades are not covered under Regulations 4(2)(a), 4(2)(b) and 4(2)(g) of SEBI (PFUTP) Regulations, 2003 which are the specific legal provisions applicable to self-trades. I note that volume transacted in self-trades is a factor to analyze the manipulative intention of a person as per the SEBI policy dated May 16, 2017 on the issue of self-trades. If the self-trades of the Noticee is considered in that background then it would not be appropriate to hold that there was any manipulative intent on the part of the Noticee to engage in intentional self-trades as the percentage of self-traded quantity of the Noticee to that of the market trade volume on BSE is 0.62% only. Volume of self-trades (i.e. 0.62%) of the Noticee in the scrip of Incap is small as compared to the total trading in the said scrip during trading in the said scrip during the investigation period. I am

inclined to conclude that allegation of violations of provisions of regulations 3(a), (b), (c) & (d) and 4(1), 4(2) (a) & (g) of PFUTP Regulations does not stand established.

- e. Further, it is alleged that Noticee has acquired 3,50,000 shares in off market from Mukesh Pabari and Pratik Soni. I note that Noticee vide his letter dated July 21, 2015 stated that the payment was made in cash for the shares mentioned in SEBI letter dated July 10, 2015. However, Noticee has failed to submit the documentary proof of the payment made or receipt of consideration by counterparty. Thus, Noticee has violated the provisions of section 16 of SCRA r/w SEBI Notification G.S.R.219(E) dated March 2, 2000, sections 13 & 18 of SCRA r/w section 2(i) of SCRA.
- f. Additionally I would like to draw reference to SEBI order no. WTM/GM/EFD/42/2019-20 dated October 23, 2019 for the transactions made by Dharmendra Bhojak in its account in the scrip of Incap under sections 11(1), 11(4) and 11B of the SEBI Act, 1992 r/w regulation 11 of PFUTP Regulations, 2003 & regulation 44 of the SAST Regulations, 1997 r/w regulation 32 of SEBI (Substantial Acquisition of Shares and Takeovers), 2011, interalia observed that-

“...4.4 I note that vide his submissions, Arvind Goyal had requested for cross-examination of Noticees no. 3 and 5 although such a specific request was not raised during the personal hearing before me. However, having regard to the fact that Arvind Goyal did not get an opportunity to cross examine Noticees no. 3 and 5, I am inclined to not place reliance on the following submissions reproduced in the SCN, which were stated to have been made by Noticees no. 3 and 5....”

....4.6 Further, although Arvind Goyal has denied the statements given by Dharmendra Bhojak and Ramesh Daga and had also sought their cross-examination to the extent that he had not operated their trading accounts, the KYC documents read with the admission by Arvind Goyal of knowing such individuals clearly establishes the connections between them. However, in the absence of any corroborative evidence and in light of the observations at paragraph 4.4, I am of the view that the allegation as levelled in the SCN against Arvind Goyal of having used/operated the trading accounts of Noticees no. 3 and 5, does not stand established....”

....4.25 However, as regards the allegations levelled against Noticees no. 3 and 5, I am of the considered view that in the facts of the present proceedings (see paragraph 4.4 and 4.6), sufficient evidence has not been adduced in the Investigation Report or SCN

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to demonstrate that they had collectively shared with Noticees no. 1, 2 and 4, a common objective or purpose of substantial acquisition of shares or voting rights or gaining control over the Target Company i.e. Incap or in other words, were 'persons acting in concert' under Regulation 2(1)(e) of the Takeover Regulations 1997. Upon a consideration of the aforementioned, I am inclined to drop the allegation as contained in the SCN that Noticees no. 3 and 5 had violated the provisions of Regulation 10 and 11(1) of the Takeover Regulations 1997, without any adverse inference...."

- g. In view of all of the above paras, as regards various allegations against Noticee levelled in the SCN, only allegation regarding SCRA gets established.

14. **Issue b: Do the violations, if any, on the part of the Noticee attract any monetary penalty under sections 15A(b), 15H & 15HA of SEBI Act and section 23H of SCRA for the alleged violations by the Noticee?**

Therefore, after taking into account the aforesaid entire facts / circumstance of the case, and material available on record, I am of the view that the penalty under sections 15A(b), 15H and 15HA of SEBI Act is not warranted. However, failure on the part of the Noticee to make payment for the shares received through off market transfers attracts imposition of monetary penalty under section 23H of SCRA which is reproduced below:

SCRA

Penalty for contravention where no separate penalty has been provided.

23H. *Whoever fails to comply with any provision of this Act, the rules or articles or bye-laws or the regulations of the recognised stock exchange or directions issued by the Securities and Exchange Board of India for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.*

15. **Issue c - What would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors mentioned in section 23J of the SCRA r/w rule 5(2) of the AO Rules, 2005?**

While determining the quantum of penalty under section 23J of SCRA it is important to consider the factors stipulated in the said sections which reads as under:-

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

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

- i. I observe, that the material available on record, does not quantify any disproportionate gain or unfair advantage, if any, made by the Noticee and the loss, if any, suffered by the investors due to such failure on the part of the Noticee. Further, material available on record does not show that the said failure is repetitive.
- ii. The object of the purpose with which the SCRA has been enacted, one can see that its object is to regulate the securities market and check unfair trade practices. Its object is also to promote fairness and efficiency in all dealings relating to the capital market so that confidence of the persons having dealings with shares etc. is enhanced. One of the most important objects is to protect the interest of the investors.
- iii. Therefore taking into consideration the facts/circumstance of the case and the above case laws, I am of the view that the Noticee is liable for a monetary penalty of Rs. 3,50,000/- (Rupees Three Lakh Fifty Thousand only) for its failure to make payment of a price under the aforesaid provisions of SCRA.

ORDER

- 16. In exercise of the powers conferred under section 23-I of the SCRA and rule 5 of the AO Rules 2005, I hereby impose a penalty of Rs. 3,50,000/-(Rupees Three Lakh Fifty Thousand only) under section 23H of SCRA. I am of the view that the said penalty is commensurate with the defaults committed by the Noticee.

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

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

18. The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to the Enforcement Department – Division of Regulatory Action – II of SEBI. The Noticee shall provide the following details while forwarding DD/ payment information:

- Name and PAN of the entity (Noticee)
- Name of the case / matter
- Purpose of Payment – Payment of penalty under AO proceedings
- Bank Name and Account Number
- Transaction Number

19. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

20. Copies of this Adjudication Order are being sent to the Noticee and also to SEBI in terms of rule 6 of AO Rules 2005.

Date: January 29, 2020

SANGEETA RATHOD

Place: Mumbai

ADJUDICATING OFFICER