

**BEFORE THE ADJUDICATING OFFICER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**

**[ADJUDICATION ORDER: Order/MC/VS/2019-20/4346]**

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In respect of -

**Ashok Vishandas Motiani**

[PAN: ABCPM8237G]

having address at House No. 552, Lane 23, Satyagrah Chawani Co-op Society, Ahmedabad – 380015

In the matter of *Freshtrop Fruits Ltd.*

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**BACKGROUND**

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”) conducted an investigation into the trading activity in the scrip of Freshtrop Fruits Ltd. (“**FFL**” or “**the company**”) between January 1, 2015 and February 10, 2015 (“**the investigation period**” or “**IP**”), which revealed that the price of the scrip of FFL decreased from a closing price of Rs. 159.30 on February 6, 2015 to Rs. 143.40 on February 9, 2015, after the company announced its Quarterly Financial Results for the period ended December 31, 2014 on the Bombay Stock Exchange (“**BSE**”).
2. Investigation revealed that Shri Ashok Motiani (“**the Noticee**”), who was the Chairman and Managing Director (“**CMD**”) of FFL, as well as a promoter and shareholder of the company during the investigation period, sold 72741 shares of FFL before publication of quarterly financial results on February 9, 2015. As CMD of FFL, the Noticee was alleged to be an “insider” who sold shares of FFL while in possession of Unpublished Price Sensitive Information (“**UPSI**”) in contravention of provisions of the SEBI Act, 1992 (“**the SEBI Act**”), SEBI (Prohibition of Insider Trading) Regulations 1992 (“**PIT Regulations**”) and the SEBI (Prohibition of Insider Trading Regulations), 2015 (“**PIT Regulations 2015**”).

### **APPOINTMENT OF ADJUDICATING OFFICER**

3. SEBI initiated adjudication proceedings and appointed the undersigned as Adjudicating Officer (hereinafter referred to as “**AO**”) under section 15-I of the SEBI Act read with rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter be referred to as the “**Adjudication Rules**”) vide order dated September 21, 2018 to inquire into, and adjudge under Section 15G and Section 15 HB of the SEBI Act, the alleged violations of the provisions of – (A) Section 12A (d) and (e) of the SEBI Act and regulations 3 (i) and 4 of the PIT Regulations read with regulation 12 of the PIT Regulations 2015; and (B) Regulation 12 (1) read with regulation 12 (3) of the PIT Regulations and clause 3.3.3 (a) and (d) read with Clause 6.3 of the Model Code of Conduct for Prevention of Insider Trading for Listed Companies in Schedule I Part A of the PIT Regulations read with Regulation 12 of the PIT Regulations 2015.
4. The appointment of the AO was communicated vide order dated September 27, 2018.

### **SHOW CAUSE NOTICE, REPLY AND HEARING**

5. Show Cause Notice No. EAD5/MC/VS/34789/1/2018 dated December 21, 2018 (hereinafter referred to as “**SCN**”), was issued to the Noticee in terms of Rule 4 (1) of the Adjudication Rules, to show cause as to why an inquiry should not be held and penalty not be imposed against the Noticee in terms of Section 15G and 15HB of the SEBI Act, for alleged violations of –
  - (a) Section 12A (d) and (e) of the SEBI Act read with regulations 3 (i) and 4 of the PIT Regulations and regulation 12 of the PIT Regulations 2015
  - (b) Regulation 12 (1) read with regulation 12 (3) of the PIT Regulations and clause 3.3.3 (a) and (d) read with clause 6.3 of the Model Code of Conduct for Prevention of Insider Trading for Listed Companies in Schedule I Part A of the PIT Regulations read with regulation 12 of the PIT Regulations 2015.
6. The allegations levelled against the Noticee in the SCN are summarized as follows:-
  - (a) As CMD of FFL during the investigation period, the Noticee was reasonably expected to have had broad knowledge of the trends of quarterly sales of FFL. Therefore, at the relevant time during the investigation period, the Noticee was a “connected person” and an “insider” in terms of regulation 2 (c) and (e), respectively, of the PIT Regulations.

- (b) The Noticee sold 72741 shares of FFL, before the price of the scrip of FFL fell on account of the negative impact of publication of quarterly financial results on February 9, 2015. By selling shares of FFL on February 2 and 3, 2015 in a weighted average price range of Rs. 178.40 - Rs. 181.29, the Noticee allegedly avoided losses of Rs. 26.69 lakhs which the Noticee would have incurred on selling the same number of shares once the information related to the company's quarterly financial results became public on February 9, 2015 and the scrip price of FFL fell. Since the UPSI became public on February 9, 2015 at 07:58 a.m. on the BSE, the closing price as on February 9, 2015 i.e. Rs.143.40 was considered for calculation of unlawful loss avoided.
- (c) The computation of this loss allegedly avoided by the Noticee has been carried out on the basis of the following:-

Entity Name	No. of shares sold in BSE (A)	Wt. Avg. Sell Price in BSE (in Rs.) (B) = (D/A)	Closing Price on 09/02/2015 (in Rs.) (C)	Total Sell Value (in Rs.) (As per Tradelog obtained from BSE) (D)	Value of Shares as on 09/02/2015 (in Rs.) (E = AxC)	Unlawful loss avoided (in Rs.) (F=D-E)
Ashok Motiani	72741	180.10	143.40	1,31,00,453.40	1,04,31,059.40	26,69,394

- (d) The Noticee had traded in 3 scrips including that of FFL between July 1 to December 31, 2014 (before the Investigation Period) for a Gross Value of Rs. 41,89,513.70. Out of this Rs. 41,88,274.00 i.e. 99.97% of the Gross Value of the Noticee's trades was on account of trading in the scrip of FFL. Hence, the Noticee's trading in other scrips was negligible. The Noticee had not traded in any other scrips during the investigation period. No trades across the market were carried out by the Noticee after the investigation period. Further, the Noticee did not sell any shares of FFL between January 1, 2012 to December 8, 2014, and did not trade in the said scrip between February 4, 2015 and August 31, 2015.
- (e) The Noticee's letter dated April 20, 2017 to SEBI, *inter alia*, mentioned that he was provided with information on sales and party-wise debtors on a daily basis for the Fresh Fruits Business and on a weekly basis for the Food Processing Business. The Income Statement of a company consists of Revenues, Expenses and Profit/Loss over a specified period of time, and Revenues are an integral part of Financial Results. The aggregate sales and debtors' data reveal the amount of

revenue earned during the quarter as well as information about Quarter-on-Quarter change in revenue. Consequently, sales and debtors' realizations are major drivers of financial results. Therefore, like actual financial results of a company, aggregate sales and debtors' data is likely to materially affect the price of shares of the company on being published. Regulation 2 (ha) of the PIT Regulations states that *“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.* In view of the foregoing, sales and debtors' data (related to Quarterly Financial Results for Quarter Ended December 31, 2014) which came into existence on January 5, 2015, viz. the first Monday after Quarter Ended December 31, 2014, is considered as “price sensitive information” in terms of regulation 2 (ha) of the PIT Regulations.

- (f) Before the announcement of quarterly financial results on BSE on February 9, 2015, the abovesaid information on sales and debtors data amounted to UPSI in terms of regulation 2 (ha) read with regulation 2 (k) of the PIT Regulations.
- (g) The Noticee came into possession of UPSI related to Quarterly Financial Results on January 5, 2015, and was in possession of UPSI related to the company on February 2 and 3, 2015, when the Noticee sold shares of FFL. It is thus alleged that since the Noticee was aware of the company's poor financial performance during the Quarter Ended December 31, 2014, he entered into the aforementioned sell transactions with an intention to avoid losses.
- (h) Further, during the course of investigation, FFL's Company Secretary, Mr. Jignesh Gandhi vide e-mail dated November 17, 2017 submitted a copy of the Noticee's "Application for Pre-clearance of trades in Securities" dated January 27, 2015 to FFL in terms of the 'Code of Conduct for Prevention of Insider Trading', containing a proposal to sell an estimated 1,00,000 shares stated to be pre-IPO holding.
- (i) In the said application the Noticee, *inter alia*, gave an undertaking that upto the time of signing the undertaking, he did not have access to UPSI. The Noticee also stated that he was in need of funds in connection with scheduled marriage of his daughter. Further, the Noticee obtained waiver for the holding period requirement of 6 months as he had purchased shares in July 2014. The details of the pre-clearance obtained from FFL for sale of shares proposed at the time by the Noticee were as follows:-

Date of Application for Pre-Clearance	No. of Securities held (as on date of application)	Estimated No. of securities to be dealt	Date of acquisition of shares being sold	Pre-Clearance Validity	Dates of sale of shares	No. of shares sold on market
27/01/2015	15,92,904	1,00,000	Pre-IPO Holding	04/02/2015	02/02/2015 and 03/02/2015	72,741

- (j) Contrary to the aforementioned undertaking given to FFL in the application dated January 27, 2015, the Noticee did in fact have access to price-sensitive information at the time of signing the undertaking. Further, examination of the Noticee's bank statements revealed that funds received from sale of shares of FFL during the investigation period were transferred to FFL and subsequently to various Logistics/Packaging companies. Thus, in submitting a false undertaking to FFL, the Noticee is alleged to have violated clauses 3.3.3 (a) and (d) read with clause 6.3 of the Model Code of Conduct for Prevention of Insider Trading for Listed Companies in Schedule I Part A of the PIT Regulations read with regulation 12 of the PIT Regulations 2015.

7. In view of the above, it was alleged that the Noticee had violated provisions of -

- (a) Section 12A (d) and (e) of the SEBI Act, 1992, read with regulations 3 (i) and 4 of the PIT Regulations and regulation 12 of the PIT Regulations 2015.
- (b) regulation 12 (1) read with regulation 12 (3) of the PIT Regulations and clause 3.3.3 (a) and (d) read with clause 6.3 of the Model Code of Conduct for Prevention of Insider Trading for Listed Companies in Schedule I Part A of the PIT Regulations read with regulation 12 of the PIT Regulations 2015.

8. A time period of 14 days was granted to the Noticee to present its reply to the SCN.

9. Vide letter dated January 31, 2019 the Noticee submitted its reply to the SCN, and also sought a copy of the investigation report and documents relied on for issuance of the SCN. The Noticee also sought a personal hearing to present its submissions. The Noticee's submissions in its reply dated January 31, 2019 are summarised below:-

- (a) The SCN did not correctly appreciate the seasonal nature of the business of FFL
- (b) There was no UPSI in the Noticee's possession during the investigation period

- (c) the Company announced its quarterly financial results for the quarter ended on 31st December, 2014 on the BSE on 7th February, 2015 immediately after conclusion of the Board meeting held on 7th February, 2015
- (d) The price volume action on the Stock exchange is due to combined effect of various factors. It is wrong to attribute price volume action due to one sole factor. Assuming without admitting, that the price of the scrip of FFL fell due to so called poor quarterly result on 9th February, 2015, then as per price volume data available on the website of BSE in respect of period from 1st February, 2015 to 28th February, 2015, the scrip of FFL registered high price of 195.8 (with volume of 143112 equity shares on 20th February, 2015). Thus, the price of the scrip recovered from low of Rs. 143.40 as registered on 9th February, 2015 to a high of Rs.195.8 on 20th February, 2015 i.e. within a short span of 8-9 trading sessions.
- (e) There has not been any noticeable change in the trends of quarterly sales of FFL for the quarter ended on 31st December, 2014 as compared to the quarterly sales of FFL for the quarter ended on 31st December, 2013
- (f) The fact that the Noticee was the Chairman and Managing Director of FFL at the relevant time during the investigation period is not sufficient to impose liability for insider trading upon the Noticee
- (g) The Noticee sold 72741 equity shares of FFL after following the due process for sale of equity shares by connected person i.e. after obtaining pre-clearance for sale of such shares, at the time when the trading window was not closed and in the absence of possession of any unpublished price sensitive information. Moreover, immediately after such sale of shares, Noticee gave due disclosures as required under the applicable PIT Regulations including filing of Form D with the Company and BSE under Regulation 13(4)/(4A) of the SEBI-PIT Regulations, 1992. Hence, the Noticee sold the equity shares in a transparent manner and after following the due process.
- (h) Market price of shares keeps on changing from time to time based on variety of different factors. If the assumption sought to be relied upon in the SCN is accepted, all connected person can be held accountable for so called notional loss as a result of sale of shares and subsequent reduction in the market price of the scrip after sale.
- (i) Creation of UPSI with respect to financial results of FFL for the quarter ended on 31st December, 2014 should be 5th February, 2015 and not 5th January, 2015 as

alleged. Draft financial results for the quarter ended on 31st December, 2014 were placed for perusal and comments of Noticee only on 5th February, 2015 by the Accounts department in consultation with CFO. Hence, the investigation period should be divided into three categories viz. i) period Before creation of UPSI (i.e. from 1st January, 2015 to 4th February, 2015), ii) from creation of UPSI To UPSI becoming public (i.e. from 5th February, 2015 to 8th February, 2015) and iii) Post UPSI becoming public (i.e. from 9th February, 2015 to 10th February, 2015).

- (j) Information on some of the parameters (viz. sales and party wise debtors) were made available to Noticee on piecemeal basis and not on consolidated/cumulative basis. The SCN has failed to take note that the Noticee was not having information about expenses and profit (loss) of the Company on periodical basis.
- (k) The aggregate sales and debtors data for the entire quarter (from 1st October, 2014 to 31st December, 2014) was in line with the aggregate sales and debtors data for the period from 1st October, 2013 to 31st December, 2013. Thus, there was no material variation in the aggregate sales and debtor level of FFL resulting into generation of any UPSI (as alleged or otherwise) during/in respect of the period from 1st October, 2014 to 31st December, 2014.
- (l) M/s Freshtrop Fruits Limited have two business segments viz. Fresh Fruit export business, which is a seasonal business and constitutes over 70% of the turnover and over 90% of the profit and the Food processing business which constitutes for the remaining business. The Fresh Fruit export business consists of mainly grapes and the season (crop production) starts in February and ends in April. The consignments have a transit period of approximately 4 weeks and the sales take place during the months of March and April. The period which impacts the financial performance of the company are Q 4 and Q 1. Thus, Q 2 and Q 3 are insignificant (Q 2 was always better than Q3). Noticee requested to take into account the contribution of Q 2 and Q 3 for the three years prior to the relevant period, on the overall performance of the Company. Noticee submitted that no significant or material event took place during the period under investigation. The total revenue for the period from 1st October, 2014 to 31st December, 2014 were little higher than the corresponding quarter of the previous year and the profit was similar to the corresponding quarters of the previous years.

Amount (Rs. in Million)

Description	Quarter ended					
	31-12-2012	31-12-2013	31-12-2014	30-09-2012	30-09-2013	30-09-2014
Net Sales	63.89	59.16	61.43	71.49	72.59	102.29
Other Income	1.57	3.51	2.96	1.5	3.32	1.38
Total Income	65.46	62.67	64.39	72.99	75.91	103.67
Profit After Tax	-7.62	-11.51	-7.91	-0.5	-2.57	2.98

- (m) Noticee reiterated that due to seasonal nature of business of FFL, the financial results of the Company must be compared with the financial results of the corresponding quarter of the previous year and cannot be compared with the financial result of the previous quarters of the same year.
- (n) The SCN has not taken into account the comparable quarterly financial performance of the Company for the period from June, 2012 to March, 2015 which was provided by letter dated 20th April, 2017.
- (o) There is historical evidence that the financial performance of the Company for the quarter ended on 31st December has been worst every year. The SCN has failed to take this aspect into account while drawing conclusions about the PSI/UPSI and dealing in the scrip of FFL by Noticee during IP.
- (p) There was no price sensitive information available to the Noticee as alleged or otherwise at the time of making application dated 27<sup>th</sup> January, 2015 for pre clearance of trade to FFL. Therefore, the Noticee had given correct and accurate undertaking to FFL with respect to price sensitive information upto the time of signing the undertaking forming part of the application of the Noticee to FFL for pre clearance of trade with respect to sale of shares.
- (q) The Noticee has been maintaining a running/current account (in the nature of unsecured current deposit account) with FFL and there used to be frequent movement of funds from/to such running/current account by the Noticee based on his need/availability of funds. This was helping the Noticee to earn some interest from FFL and at the same was enabling FFL to reduce its cost of borrowing. This



was also done by the Noticee as a prudent cash flow management technique for self as well as FFL.

- (r) On 15th December, 2014 the marriage ceremony of the Noticee's daughter took place. For this marriage, the Noticee booked Anantha resorts at Udaipur from 13th December, 2014 to 15th December, 2014.
- (s) Based on his social and professional status, the Noticee and his family members also incurred various expenses for purchase of clothing, jewellery etc. Moreover, expenses were also incurred for travelling of self, family members and other relatives and friends for the wedding destination, as well as for the events/entertainments/ceremonies planned for that occasion. The expenses were incurred for the period from September, 2014 to March, 2015 by the Noticee through Bank accounts, withdrawals of the self and other family members as well as by making use from time to time of the running/current account maintained with FFL.

10. In response to the Noticee's request for relevant documents and personal hearing, a letter dated February 28, 2019 enclosing relevant extracts of the Investigation Report was sent to the Noticee, alongwith intimation of opportunity for personal hearing on March 19, 2019 at 3:00 p.m.

11. Subsequently, vide letter dated March 13, 2019 the Noticee made the following additional submissions:-

- (a) The fresh fruit export business consisting of grapes starts in February and ends in April, with Q1 and Q4 impacting financial performance, and no sales of fresh fruit between Q2 and Q3. Consequently, no sales data was being received by Noticee during the period from 1st October, 2014 to 31st December, 2014.
- (b) Trading window closure period was from 4th February, 2015 to 9th February, 2015 in respect of approval of the financial results for the quarter ended on 31st December, 2014 by FFL. The sale of scrip of Freshtrop Fruits Limited (FFL) undertaken by Noticee on 2nd February, 2015 and 3rd February, 2015, were without any UPSI in his possession. Moreover, the same was undertaken at the time when trading window was not closed.
- (c) The Noticee sold the shares of FFL as he had to arrange/replenish funds in connection with payments made/to be made to various agencies which were engaged in the marriage of his daughter. Bank statement in respect of Bank account

No. 297010100066149 maintained by the Noticee with Axis Bank for the period from 1st September, 2014 to 30th June, 2015 as also details of payments made to various agencies in connection with the marriage of the Noticee's daughter were provided.

- (d) The sale of shares of FFL by Noticee on 2<sup>nd</sup> February, 2015 and 3<sup>rd</sup> February, 2015 was beyond 6 months from the last purchase transaction done by the Noticee in the scrip of FFL. Hence, the restriction of contra trade/minimum holding period, as laid down in the Code of conduct for prevention of insider trading in securities of FFL, was not applicable at the time of sale in the scrip of FFL on 2<sup>nd</sup> February, 2015 and 3<sup>rd</sup> February, 2015 by the Noticee.

12. The Noticee, alongwith Shri Manoj R. Hurkat, Practising Company Secretary, attended the hearing on March 19, 2019, and made submissions on behalf of the Noticee. The submissions made vide earlier replies were reiterated to state that the Noticee was not in possession of UPSI when he traded in shares of FFL. It was submitted that UPSI arose only on 05.02.2015 (when the trading window was closed) and no aggregate data for sales/revenue was available with the Noticee for Q3 before the impugned insider trades. It was reiterated that sales and profit figures for Q3 of FY 2014-15 was in line with the corresponding quarter figures for previous financial years. It was also stated that the two instances of sale of shares of FFL in December 2014 and February 2015 were to raise funds for daughter's marriage. Copies of the following documents were also handed across –

- (i) Para. 33 of the High Level Committee to Review the SEBI PIT Regulations
- (ii) SAT Order dated 31.01.2012 in Mrs. Chandrakala v. AO, SEBI
- (iii) SAT Order dated 09.05.2008 in Rajiv B. Gandhi v. SEBI

13. Vide letter dated March 22, 2019 the Noticee reiterated that he received the draft financial results of the Company for the year ended on 31st December, 2014 for the first time only on 5th February, 2015 for his perusal and comments before submission to the Statutory Auditors. The Noticee also submitted he had not purchased any equity shares of FFL in FY 2014-15 after the impugned sale of 72741 shares. The Noticee further submitted that the financial results for the quarter ended on 31st December, 2013, i.e. the previous FY 2013-14, were approved by the Board of Directors of Company in the Board Meeting held on 8th February, 2014 and the same got disseminated on the Stock Exchange on 10th February, 2014, which

had also caused the scrip price of FFL to decline by 5% on date of dissemination of the results on the BSE.

14. In the light of the allegations contained in the SCN, the Noticee's submissions made vide letters dated January 31, 2019, March 13, 2019 and March 22, 2019, the submissions made during the hearing conducted on March 19, 2019 and relevant material available on record, I hereby proceed to decide the case on merits.

### **CONSIDERATION OF ISSUES AND FINDINGS**

15. The issues arising for consideration in the instant proceedings before me are:-

- I. Whether the Noticee has violated provisions of -
  - a) Section 12A (d) and (e) of the SEBI Act, 1992, read with regulations 3 (i) and 4 of the PIT Regulations and regulation 12 of the PIT Regulations 2015
  - b) Regulation 12 (1) read with regulation 12 (3) of the PIT Regulations and clause 3.3.3 (a) and (d) read with clause 6.3 of the Model Code of Conduct for Prevention of Insider Trading for Listed Companies in Schedule I Part A of the PIT Regulations read with regulation 12 of the PIT Regulations 2015
- II. If yes, whether the Noticee is liable for imposition of monetary penalty under Section 15 G and 15 HB of the SEBI Act?
- III. If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in section 15 J of the SEBI Act read with rule 5 (2) of the Adjudication Rules?

#### **ISSUE I. Whether the Noticee violated provisions of –**

- a) **Section 12A (d) and (e) of the SEBI Act, 1992, read with regulations 3 (i) and 4 of the PIT Regulations and regulation 12 of the PIT Regulations 2015?**

16. The relevant legal provisions are reproduced below for reference:-

#### **SEBI Act, 1992**

*“12A. No person shall directly or indirectly –*

*(d) engage in insider trading;*

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

### **SEBI (Prohibition of Insider Trading) 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;*

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

17. The term “insider” has been defined in regulations 2 (e) read with regulation 2 (c) of the PIT Regulations which state:-

Regulation 2 (e) of the PIT Regulations -

“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.’*

In terms of regulation 2 (c) (i) a connected person means any person who -

*“(i) is a director, as defined in clause (13) of section 2 of the Companies Act, 1956 (1 of 1956), of a company, or is deemed to be a director of that company by virtue of sub-clause (10) of section 307 of that Act or...”*

18. The Noticee has not contested that at the relevant time during the investigation period, the Noticee, being the CMD of the company, was an “insider” and a “connected person” in terms of regulation 2 (c) and (e), respectively, of the PIT Regulations. The issue requiring determination is whether the Noticee was in possession of unpublished price sensitive information when he sold shares of FFL on February 2<sup>nd</sup> and 3<sup>rd</sup>, 2015.

19. Regulation 2 (ha) of the PIT Regulations defines “price sensitive information” to mean “*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;”*

20. Further, Regulation 2 (k) defines “unpublished” to mean “*information which is not published by the company or its agents and is not specific in nature.*”

*Explanation.—Speculative reports in print or electronic media shall not be considered as published information.”*

21. The SCN has alleged that the Noticee was provided with information on sales and party-wise debtors on a daily basis for the Fresh Fruits Business and on a weekly basis for the Food Processing Business, and that this enabled the Noticee to know before publication of quarterly financial results for the Third Quarter (“Q3”) of FY 2014-15, that the said results would reflect losses made by FFL during Q3.
22. The above-mentioned allegation made in the SCN is based on the Noticee’s own statement, made during the course of investigation, in his letter dated April 20, 2017 wherein he mentioned that he was provided with “*information on sales and party-wise debtors positions on a daily basis*” for the Fresh Fruits Business, and information on “*sales and sales outstanding (debtors position) on a weekly basis for the Food Processing Business*”.
23. The Noticee in its replies has denied that any aggregate data about the fresh fruits business for Q3 of FY 2014-15 was available with him on the date (viz. January 27, 2015) when he gave the undertaking to FFL regarding possession of unpublished price sensitive information,

or when he sold shares of FFL on February 2<sup>nd</sup> and 3<sup>rd</sup>, 2019. The Noticee has asserted that no sales of grapes between Q2 and Q3 took place in any financial year including 2014-15, and that consequently no sales data was being received by the Noticee during the period from 1st October, 2014 to 31st December, 2014.

24. The Noticee has also reiterated that data was provided to the Noticee on a piecemeal basis, and that there was no material difference between aggregate sales and debtor data for October 1, 2013-December 31, 2013 and the data for the corresponding period for FY 2014-15. This is corroborated by the sample data annexed to the Noticee's letter dated April 20, 2017 wherein the data for the period of January and February alone is available. Thus, the sample data reflects figures for Q4, and not for the relevant period viz. Q3. This lends credence to the Noticee's contention that no such aggregate data was available with the Noticee for Q3, owing to the seasonal nature of the Fresh Fruit Business. Formats for aggregate of sales and debtor data which was actually accessible to the Noticee during Q3 are not available in the material on record. A perusal of the sample of information (viz. Annexure 2A of the Noticee's letter dated April 20, 2017) provided to the Noticee in respect of the Fresh Fruits business shows that the said information contains figures (starting with Entry No. 15) recording invoice numbers, party names, container numbers, dates of arrival and departure and invoice value for fresh fruit being transported, at a frequency of around eight-nine times in a month, for the period between January 10, 2015 and February 10, 2015, for the Nasik and Sangli packing houses of FFL. Annexure 2B to the said letter reflects "season advance" including invoice value, dispatch details, as well as realisation details, with respect to particular invoice numbers.
25. It is noted that the information contained in the sample data does not contain figures showing dues to or from the company, or the total sales of the company, and does not contain enough data to draw conclusions about revenue or sales trends for the company, or to show that the company had performed poorly in the previous quarter, in a consolidated manner. Thus, it is difficult to conclude from the findings of investigation that the data provided by the Noticee through Annexures to his letter dated April 20, 2017 constituted aggregate sales/debtor figures which indicated the company's revenue or performance for Q3 of FY 2014-15.
26. The Noticee has stated in his replies that even if he took note of aggregate sales and debtor data for the fresh fruit business for the third Quarter of 2014-15, the performance for the said

quarter was no different from the performance for the corresponding quarter in the previous financial year. This has also been supported by tabular details submitted by the Noticee in his reply dated January 31, 2019 which show that Profit After Tax figures were negative for Q3 in FY 2012-13, FY 2013-14 and 2014-15.

27. Further, the Noticee has submitted that due to the seasonal nature of fresh fruit production and sales, there was no sale or fresh fruit between Q2 and Q3, and that therefore no sales data was created for the said period. As per the Noticee, UPSI arose only on February 5, 2015 when the Quarterly Financial Results were made available to the Noticee before being submitted to the Statutory Auditor.
28. In view of the Noticee's submissions, and the sample reports of weekly or daily sales/debtor details for the period January 10, 2015 and February 10, 2015, it is seen that there is no material on record showing that the actual reports or data of weekly or daily sales/ debtor details for the Q3 ending December 2014 were made available to the Noticee before the declaration of Quarterly Financial Results for the Quarter ended December 31, 2014. In the absence of the actual reports or data supposed to have been received by the Noticee during December 2014 and upto January 05, 2015 allegedly enabling the Noticee to conclude that Q3 for FY 2014-15 entailed significant or unusual losses, it cannot be said that the Noticee as CMD of the company was in possession of UPSI likely to materially affect the price of the securities of FFL at the time when he sold 72741 shares of FFL.
29. Regarding the fall in revenue in Q3 of FY 2014-15, I note that the losses incurred in Q3 and Q4 of FY 2014-15 have been on account of the seasonal nature of the fresh fruit business, which was well-known information. The said losses due to the off-season for grape cultivation were consistently reflected in the corresponding revenue and profit figures in the quarterly financial results for FY 2012-13 and 2013-14 as well. Thus, this was predictable information and common knowledge, which was likely to have been factored in by investors. While noting that there is nothing on record to show reports or data for sales in Q3 which were made available to the Noticee, I note that the quarterly sales information which became public in February 2015 followed the regular pattern of fall in sales and negative Profits After Tax during corresponding quarters for previous financial years. Thus the fall in revenue, or losses incurred by FFL in the ordinary course of business on account of the seasonal nature of sale

of fresh fruits, cannot be considered to be price sensitive information in terms of Regulation 2(ha).

30. In this regard, I take note of the Noticee's submission that the scrip price of FFL recovered from a low of Rs. 143.40 as registered on 9th February, 2015 (when the Q3 results were published) to a high of Rs.195.8 on 20th February, 2015 i.e. within a short span of 8-9 trading sessions. Thus, owing to quick recovery of scrip-price of FFL post publication of Q3 results, no significant long-term losses are seen to have been avoided by the Noticee. The Noticee did not sell any more shares of FFL after the prices increased, even though the Noticee had obtained pre-clearance for sale of 100000 shares of FFL in terms of the PIT Regulations. These facts also suggest that the sale of shares of FFL by the Noticee was motivated by specific financial requirements and not an intent to profit from any UPSI which was allegedly in the Noticee's possession at the time of the impugned trades.
31. In view of the above, I note that the material on record does not indicate that any consolidated sales and debtor data was provided to the Noticee pertaining to Q3 of FY 2014-15. Therefore, the Noticee was not in possession of UPSI in terms of Regulation 2 (ha) of the PIT Regulations.
32. It is also relevant to note that in terms of the Model Code of Conduct for Prevention of Insider Trading for Listed Companies in Schedule I, Part A, Clause 3.2 of the PIT Regulations, trading in the company's securities by directors/officers/designated employees of a company can take place during a trading window specified by the company.
33. In the facts of the instant case, the trading window was open when the impugned trades of the Noticee took place on February 2<sup>nd</sup> and 3<sup>rd</sup>, 2015. The trading window was closed from February 4<sup>th</sup>, 2015 to February 9<sup>th</sup>, 2015 prior to publication of the financial results for the quarter ended on 31st December, 2014 by FFL.
34. As it is established that the Noticee was not in possession of UPSI while carrying out the impugned sale of shares, and sale of shares was executed at a time when the trading window for FFL was open, after obtaining Pre-Clearance of the trades in terms of the PIT Regulations, I find that the allegation that the Noticee contravened Section 12A (d) and (e) of the SEBI Act, 1992, read with regulations 3 (i) and 4 of the SEBI (Prohibition of Insider Trading) Regulations



1992 and Regulation 12 of the SEBI (Prohibition of Insider Trading Regulations), 2015, does not stand established.

**b) Regulation 12 (1) read with regulation 12 (3) of the PIT Regulations and clause 3.3.3 (a) and (d) read with clause 6.3 of the Model Code of Conduct for Prevention of Insider Trading for Listed Companies in Schedule I Part A of the PIT Regulations read with regulation 12 of the PIT Regulations 2015?**

35. The Noticee gave a declaration while seeking pre-clearance that he was not in possession of UPSI. As brought out in preceding paragraphs, I find that that the Noticee was not in possession of UPSI related to financial results or performance of the company at the time of giving the aforesaid declaration. Hence, it cannot be held that the Noticee submitted a false undertaking to the company regarding non-possession of UPSI.
36. With respect to the Noticee's pre-clearance application and undertaking dated January 27, 2015, it has also been alleged that the Noticee falsely stated in the undertaking that he had to "*arrange funds in connection with payments to various agencies which were engaged in the marriage of my daughter*", whereas observations from his bank account statements for the relevant period during investigation show that funds received from sale of shares of FFL during the investigation period were transferred to FFL and subsequently to various Logistics/Packaging companies. On perusal of the Noticee's reply dated March 13, 2019 it is seen that the Noticee has specified entries in his bank statement of accounts between 22.09.2014 and 27.03.2015 involving cheque-payments adding up to Rs. 1,31,50,000/- which have been attributed to marriage-related expenses as stated in the undertaking. The amounts paid out to the company (for instance, a sum of Rs. 1,25,00,000/- on 07.02.2015) have not been claimed to be marriage-related by the Noticee. In the light of the material on record, there appears to be no ground to suspect that the expenses were not related to marriage. The value of shares of FFL sold was around Rs.1.31 crore, and marriage expenses equivalent to the same amount have been explained by the Noticee. Thus, it cannot be held that the Noticee gave a false declaration regarding funds needed in connection with arrangements for the marriage of his daughter.

37. In view of the aforementioned, I find that the allegation regarding contravention of Regulation 12 (1) read with regulation 12 (3) of the PIT Regulations and clause 3.3.3 (a) and (d) read with clause 6.3 of the Model Code of Conduct for Prevention of Insider Trading for Listed Companies in Schedule I Part A of the PIT Regulations read with regulation 12 of the PIT Regulations 2015, does not stand established.

## **ORDER**

38. After taking into consideration all the facts and circumstances of the case, in exercise of powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, I find that the allegations of violation of the PIT Regulations by the Noticee, do not stand established. Therefore, imposition of penalty under Section 15G and Section 15 HB of the SEBI Act is not warranted. The SCN is disposed of accordingly.
39. Copies of this Adjudication Order are being sent to the Noticee and also to SEBI in terms of Rule 6 of the Adjudication Rules.

**Date: September 6, 2019**

**Place: Mumbai**

**Maninder Cheema**

**(Adjudicating Officer)**