BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER NO. Order/GR/KG/2020-21/9400]

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

In respect of

Mr. Subhash Chander Kalia (PAN: ACLPK6605L)

In the matter of

Insider Trading in the scrip of YES Bank Limited

BACKGROUND

1. Securities and Exchange Board of India **("SEBI"**) carried out an analysis of the trading activity in the scrip of YES Bank Limited (hereinafter referred to as "the **Company"/YBL**). It was noted that on February 13, 2019 after the market hours, YBL had informed the exchanges viz. National Stock Exchange (**NSE**) and Bombay Stock Exchange (**BSE**) regarding 'Nil Divergence in Asset Classification and Provisioning for position as on March 31, 2018' that '*The Reserve Bank of India (RBI) assesses compliance by Banks with extant prudential norms on income recognition, asset classification and provisioning (IRACP) as part of its supervisory processes'. As part of this process, YES Bank has received the Risk Assessment Report for FY2018. The report observes NIL divergences in the Bank's asset classification and provisioning from the RBI norms'.*

2. Subsequently there was sudden spurt in the share price of YBL on February 14, 2019, from the previous close price of Rs. 169.45 to intra-day high of Rs. 224, i.e., a rise of 32.19%, before closing at Rs. 221.25. The trading volume in the scrip had also seen around 635% (on February 14, 2019), spurt compared to previous day's trading volume on the BSE. Based on these events, SEBI had *suo-motu* initiated the case for the aforesaid events of February 14, 2019 in the scrip of YBL. Accordingly, it was *prima facie* observed that the aforesaid press release made to the stock exchanges, containing the aforesaid announcement made by YBL, might have influenced the price of the YBL and the analysis of SEBI, *prima facie* suggested the possibility of trading by certain entities based on unpublished price sensitive information ("UPSI").

3. As per company's submissions dated February 20, 2019, the aforesaid information pertaining to "*nil divergence*" constituted a UPSI and accordingly, on February 13, 2019, made announcement to stock exchanges after the market hours on the exchange platform titled *'Divergence in Asset Classification and Provisioning for position as on March 31, 2018*' in accordance with the Regulation 30 of SEBI (Listing Obligations & Disclosure Requirements) Regulations, 2015. The contents Regulation 30(1) of SEBI (Listing Obligations & Disclosure Requirements) Regulations, 2015, reads as follows:

> *"30. (1) Every listed entity shall make disclosures of any events or information which, in the opinion of the board of directors of the listed company, is material."*

4. The Preliminary Risk Assessment Report ("PRAR") was received from the Reserve Bank of India ("RBI") on February 5, 2019 by YBL. As per the PRAR, there was '*Nil' divergence in Asset Classification and Provisioning for position as on March 31, 2018'*. Risk Assessment Report (RAR) for FY 2018 confirming the aforesaid fact of non-divergence in asset classification

by YBL was also received on February 13, 2019 vide letter dated February 12, 2019 by YBL from RBI. The said information was disseminated to the stock exchange on February 13, 2019 as it was considered as unpublished price sensitive information ("UPSI"). Thus, as per Regulation 2(1)(n)(vi) of SEBI (PIT) Regulations, 2015, February 05, 2019, has been considered as the date on which the UPSI came into existence. From this it was observed that the period of UPSI ranged from February 05, 2019 to February 13, 2019.

5. Trading details of Promoters/Key Managerial Personnel/Designated Employees of YBL was examined by SEBI for the period September 1, 2018 – February 14, 2019. On an examination of the trading activity in the scrip of YBL for the period February 05, 2019 (starting date of the alleged UPSI period) – February 13, 2019 (date of the alleged UPSI becoming public), hereinafter referred to as the investigation period ("**IP**"), it was observed that Shri Kalia Subhash Chandra ("**Noticee**), who was a Non-Executive non-independent director of YBL and at the relevant point in time, was observed to have purchased 1000 shares of YBL on February 8, 2019, i.e., during the period of UPSI, for an amount of Rs. 1,74,127. He was also a member of Audit Committee of YBL and the Chairman of Risk Monitoring Committee of YBL during the period of UPSI. This act *prima facie* suggested that the Noticee might have traded on the basis of UPSI.

The trading activity of the Noticee during the period of UPSI is as under:

Date	**Buy Qty**	**Weighted Average Buy Price (in Rs.)**	**Sell Qty**
08/02/2019	1000	174.1	-
Total	**1000**		-

6. Investigation further revealed that since, the Noticee was a director of YBL and also a member of its Audit Committee and Risk Monitoring Committee, during the period of UPSI. Therefore, he was a "*connected person*" who is reasonably expected to have access to UPSI in terms of Regulation 2(1)(d)(i) of SEBI (PIT) Reg., 2015 and hence was an insider in terms of the Regulations 2(1)(g)(i) of SEBI (PIT) Reg., 2015. As already mentioned above the Noticee, had traded in the scrip of YBL during the UPSI period. It was alleged that the Noticee, being an "insider" had bought 1000 (one thousand) shares of YBL on February 8, 2019, during the period of the UPSI.

7. It was observed that the Closing Price of the scrip of YBL on the day (i.e. February 14, 2019) after the UPSI was made public was Rs. 221.25/- on NSE. Accordingly, the alleged unlawful notional gains made by the Noticee while trading in the scrip of YBL during the period of UPSI is as under:

Exchange	**Buy Qty**	**Weighted Average Buy Price**	**Sell Qty**	**Unlawful notional Gains made (in Rs.)**
Kalia Subhash Chander				
NSE	1,000	174.1	0	47,150

Note:- Computation of Wrongful gains = (No. of shares bought when in possession of UPSI X Closing Price of the following trading day of UPSI becoming public) – (No. of shares bought when in possession of UPSI X weighted average purchase price)

8. In view of the aforesaid, it was alleged that Noticee, was an insider and had traded in the said scrip while in possession of UPSI. Noticee, was, thus, alleged to have violated Regulation 4(1) of the Securities and Exchange Board of India (Prohibition of Insider

Trading) Regulations, 2015 (hereinafter referred to as "PIT Regulations"), read with section 12A (d) and (e) of the SEBI Act, 1992.

APPOINTMENT OF ADJUDICATING OFFICER

9. The undersigned has been appointed as the Adjudicating Officer(herein referred to as **'AO'**) vide order dated June 25, 2020 and conveyed vide communique dated June 25, 2020 under Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 *(hereinafter referred to as **"SEBI Adjudication Rules"**)* read with Section 15-I of the Securities and Exchange Board of India Act, 1992 *(hereinafter referred to as **"SEBI Act"**)* to inquire into and adjudge under Section 15G of SEBI Act, 1992, the alleged violation of the provisions of Section 12A (d) and (e) of SEBI Act, 1992 read with Regulation 4(1) of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as the **PIT Regulations**) by the Noticee.

SHOW CAUSE NOTICE, REPLY AND HEARING

10. Show Cause Notice dated July 29, 2020 (herein after referred to as "**SCN**") was issued to Noticee under Rule 4 of SEBI Adjudication Rules, to show cause as to why an inquiry should not be held against the Noticee in terms of Rule 4 of the SEBI Adjudication Rules read with section 15I of SEBI Act, 1992 and penalty be not imposed under sections 15G and 15A(b) of SEBI Act, 1992 for the violations specified in the SCN. The copies of the documents relied upon in the SCN were provided to Noticee along with the SCN. The Noticee vide email dated August 3, 2020, responded to the SCN as reproduced herein below:

"I refer to show cause notice no EAD-4/ADJ/GR/KG/OW/12420/1/2020 dated July 29,2020 received by me as an enclosure to your trailing email dated 29th July 2020

At the outset I must state that I have been distressed & shocked to receive the show cause notice as I genuinely believed that SEBI would be fully satisfied with the informations/ clarifications provided by me vide my email dated 27th February 2020 to SEBI investigating officer in response to his email dated 6th February 2020

On prima facie reading of show cause notice, I observe that the show cause notice has been issued to me on basis of certain assumptions/ presumptions.

In order to enable me to reply to Show cause notice, I request you to kindly arrange for submission of following information / documents & records

1) Copy of email dated 4th February 2020 purportedly received from YBL to which reference has been made in the show cause notice vide para no 7

2) Copy of any other material /record/information (other than the enclosures to your show cause notice) relied upon by your good self/ SEBI for issuing the show cause notice

3) Information/ record evidencing that the contents or any part of PRAR/ RAR of RBI for FY 2017-18 received by YBL on 5th February 2019 & 13th February 2019 respectively was communicated to me or brought to my notice by YBL Management by virtue of my position as NON EXECUTIVE NON INDEPENDENT DIRECTOR on board of YBL , Chairman of Risk Monitoring Committee or Member of Audit Committee during the stated UPSI period ie 5th February 2019 to 13th February 2019

4) Copy of approval received from Interim MD & CEO and / or Board of Directors based on which stock exchange intimation/ Press release was issued by YBL Management on 13th February 2019 in compliance of Regulation no 30(1) of SEBI (LODR) Regulations 2015 quoted vide para no 4 of SCN

5) Copy of Notice issued to YBL / action initiated by SEBI against YBL pursuant to receipt of submissions made by YBL Vide letter dated 20th February 2019 referred to as Annexure 1 A to SCN, which eventually led to settlement of case by YBL & its Company Secretary

6) Whether Company Secretary or any other designated official of YBL issued any intimation/ notice in terms of SEBI (PIT) Regulations 2015 to Designated employees/ Directors / Promoters about closure of Trading window during the stated UPSI period ie 05/02/2019 to 13/02/2019 as was always done during UPSI period in terms of SEBI (PIT) Regulations 2015

I shall be grateful to you for providing me with above information / material/ record/ documents at your earliest convenience

On receipt of above documents I shall submit my response to show cause notice served upon me."

11. Vide email dated August 6, 2020, the aforesaid email of the Noticee was responded to as reproduced herein below:

> *"Please refer to your email dated August 3, 2020, in the subject matter.*
>
> *With respect to the point no. 1 in the email dated August 3, 2020 (hereinafter referred to as the "email"), a scanned copy of the email dated 4th February, 2020, is attached. The relevant contents of the said email, i.e., the fact that the Noticee was a Chairman of the Risk Monitoring Committee and a member of the Audit Committee of YBL, has also been admitted by the Noticee at point No. 3 in the said email.*
>
> *With respect to the point no. 2 in the email, it is stated that all documents which are to be relied upon, have been provided to the Noticee.*
>
> *With respect to the point no. 3 in the email, it is clearly stated in the SCN that the Noticee was an "insider" in YBL when he had executed the impugned trades. Therefore it has been alleged that the Noticee had prima facie violated Regulation 4(1) read with Regulation 4(2) of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015.*
>
> *With respect to the point no. 4 in the email, it is stated that the document/ information sought thereat is not being relied upon in the present proceedings.*
>
> *With respect to the point no. 5 in the email, the document/ information sought thereat is unrelated to the present proceedings.*
>
> *With respect to the point no. 6 in the email, it has been mentioned in the SCN that YBL had categorised the information pertaining to "nil divergence" as UPSI and the relevant record in this regard has already been provided with the SCN.*
>
> *The Noticee is again advised to submit its reply to the SCN within the time period stipulated therein."*

12. Thereafter, vide email dated August 7, 2020, the Noticee sought time of fourteen days to file its reply to the SCN. Vide email dated August 11, 2020, the Noticee was granted time till August 20, 2020 to file its reply. The Noticee filed its reply dated August 19, 2020, vide email dated August 20, 2020. The content of the reply is summarised herein below:

1. *Before furnishing my replies to the said SCN, I may state that after I have ceased to be a director on Board of YBL on 05th March 2020, I do not have access to any records of YBL pertaining to period of my directorship. I am furnishing this reply only based on information/ material provided to me along with SCN or any information available in public domain.*

2. *The said SCN incorrectly alleges that I have violated Regulation 4(1) of SEBI (PIT) Regulations, 2015 ("PIT Regulations"), read with section 12 A (d) and (e) of SEBI Act, 1992 ("SEBI Act"). Further, I have been inter alia called upon to show cause as to why a monetary penalty should not be imposed under section 15G (i) of SEBI Act, 1992.*

3. *At the outset and without prejudice to anything stated hereinafter, I deny each and every allegation made in the said SCN, and say that nothing contained therein may be deemed to be admitted by me by reason of non-traverse or otherwise, save and except what is expressly admitted herein. It is submitted that the entire foundation and basis of the allegations in the said SCN is misconceived and untenable. In fact, the said SCN itself does not make out any sustainable case of "insider trading" as is stated herein below in detail. It is completely untrue and denied that I have violated any provisions of the SEBI Act or the PIT Regulations as alleged or otherwise. I reserve the right to make further submissions and/or to modify or add additional submissions in the present reply and/or file a supplemental reply if and when so advised.*

4. *At the further outset, before proceeding to reply to the allegations contained in the SCN, it would be pertinent to give a brief background of my professional career : -*

   a) I am an experienced high ranking professional ex Banker having 38 years of experience of working in India & abroad in various public sector banks with unblemished record. Key positions served by me during my active service are

i) Executive Director of Union Bank of India

ii) Executive Director of Vijaya Bank (Since merged with Bank of Baroda)

iii) General Manager (Wholesale Banking) Bank of Baroda

b) During my stint in Banking Industry, I also had rich corporate governance experience having served on boards of several entities/ subsidiaries of Bank of Baroda/ Union Bank of India both in India & abroad.

c) Post retirement from active service, I have served & continue to serve on Boards of several institutions/ entities in financial service sector & other sectors.

d) I have been also advisor to several institutions & companies besides serving as Advisor to Department of Financial Services, Ministry of Finance, Government of India under aegis of IIFCL.

e) I have also worked on various committees constituted by RBI/ Ministry of Finance / IBA besides having served as an External Member of Empowered Committee of RBI on External Commercial Borrowing (ECB).

5. *I joined the Board of Yes Bank as a Non-Executive Non-Independent Director on 03rd April 2018. During the course of my tenure as Director on the Board, I was inducted Member / Chairman of various committees of the Board including Audit Committee and Risk Monitoring Committee. As a member of Audit committee, my role was mainly restricted to attending and participating in the meetings of the Audit Committee. Further, as Chairman of the Risk Monitoring Committee, besides attending & participating in the meetings, my role was to ensure smooth functioning of meetings and to provide my perspective on agenda items, in case, of any difference of opinion. On 05th March 2020,*

due to supersession of Board by RBI, I ceased to be the Non-Executive Non-Independent Director of Yes Bank.

6. *By virtue of my position as a Non-Executive Non-Independent Director of YBL, I was not at any point of time involved in day-to-day working and / or management of Yes Bank in any manner. I used to receive information from the YBL in the form of Agenda Notes, Draft Minutes, Minutes of meetings of Board / Committees of which I was Chairman / Member. The aforesaid communications were shared with me through e-mail by the management team / company secretary of Yes Bank.*

7. *It is pertinent to note that during the period between 05th February 2019 and 13th February 2019, which is purported to be the period of the alleged UPSI, no meetings of the Board /Audit committee/ other Board Committees were convened or held. The aforesaid fact has also been confirmed by Yes Bank vide their e-mail dated 04th February 2020 addressed to SEBI. Therefore, during the alleged UPSI period I had factually not received any information on the PRAR/ RAR of Yes Bank as stated in the SCN, and was not even aware of the existence of the same till issuance of stock exchange intimation by Yes Bank on 13th February 2019.*

8. *It is relevant to note here that I have been purchasing shares of various listed companies as a part of my investments. In the case of Yes Bank Ltd, I had started purchasing its shares on the stock exchanges well before the impugned trade on 08th February 2019; in fact I am investing in Yes Bank Ltd shares for several years before joining the board of Yes Bank. Since I was not aware of, or privy to the aforesaid PRAR/RAR of Yes Bank, in the usual course of my investments, I had purchased a meagre 1000 shares of Yes Bank on 08th February 2019 purely for long term investment purposes. Most importantly, on the very same day i.e. 08th February 2019, I had also purchased 1000 shares of Union Bank of India, and 100 shares of Reliance Industries Ltd, as a part of my diversified long term investments. In fact, after the aforesaid impugned trade, I have purchased 7000 more shares of*

Yes Bank for investment purpose during my tenure as director of Yes Bank. It is also most pertinent to note that during my entire tenure as Non-Executive Non-Independent Director with Yes Bank, to be extra and doubly cautious with regulatory and other issues, I never sold shares of Yes Bank despite of there being huge losses on the said shares. Even on date I continue to hold 15500 shares of YES Bank as part of my diversified equity portfolio. Consequently, my trading pattern by itself undoubtedly belies all allegations of insider trading. I crave leave to refer and rely upon the relevant contract notes along with my Demat Account statement/ ledger statement showing my shareholdings pattern.

9. *It is also most pertinent to note that YBL management or company secretary has not issued any notice for closure of Trading Window for dealing in securities of Yes Bank in terms of SEBI (PIT) Regulations, 2015 during the alleged UPSI period when I bought 1000 YBL shares on 8th February 2019. This demonstrates that the Bank itself did not view the receipt of PRAR/RAR & information contained therein as UPSI. Had the information constituted as UPSI as stated by the Bank in letter dated 20th February 2019 (Annexure -1A of SCN), the Compliance Officer of the Bank would have closed the Trading Window during alleged UPSI period. It clearly establish that there was no bar whatsoever against me purchasing shares of Yes Bank on the said date when trading window was open and therefore no fault can be found with the impugned trade, much less under the PIT Regulations.*

10. *Without prejudice to the aforesaid, it is submitted that sequence of events by itself also evidences that there could never have been any "insider trading" by me : -*

    i) *The PRAR was received by Yes Bank from the RBI on 5th February, 2019 and RAR was received by Yes Bank from the RBI on 13th February, 2019;*

    ii) *I was not aware of the receipt of the same by Yes Bank till issuance of Stock Exchange intimation by Yes Bank on 13th February, 2019, or of the intention of Yes Bank or any of their employees to publicly release the information contained therein to the stock*

exchanges. In fact, the SCN does not even allege that I was aware of the same. The presumption created by Regulation 4(2) of the PIT Regulations is clearly a rebuttable presumption. I submit that I have discharged the onus on me and adequately rebutted the said presumption in the present Reply;

iii) As stated here to before, there was no embargo against me trading in Yes Bank shares as on the date of impugned Trade ie 08th February, 2019. In the normal course of making investment, I also purchased a mere 1000 shares of Yes Bank on 08th February, 2019 for a non-material purchase consideration of about Rs 1.74 lakhs together with other shares;

iv) The receipt of and dissemination of the RAR information to the stock exchanges on 13th February, 2019 was not communicated to me until after the release of the same when it became known to the public at large. Undoubtedly, the impugned trade dated 08th February, 2019 had no connection whatsoever with the RAR information.

v) Without prejudice to the above, it is submitted that as per subsequent Stock Exchanges intimation dated 15th February, 2019 issued by YBL, Yes Bank has advised that after issuance of Stock Exchanges intimation/ Press Release on 13th February 2019 ,the Bank has received a letter from RBI which states that 'As the RAR Report was marked confidential, it was expected that no part of the Report & information contained therein be divulged except for the information in the form & manner of disclosure prescribed by Regulations Therefore the Press Release (on 13th February) breaches confidentiality & violates regulatory guidelines……..'. Contents of RBI letter as shared by Yes Bank with Stock Exchanges on 15th February 2019 clearly establish that Stock exchange intimation/ press release issued by YBL on 13th February 2019 was in violation of regulatory guidelines as no part of RAR & information contained therein can be divulged except for the information in form &

manner of disclosure prescribed by Regulations (RBI circular dated 18th April 2017 & SEBI's Circular dated 18th July 2017 on the subject matter). In view of the foregoing observations of RBI, it is submitted that the submissions made by Bank in its letter dated 20th February 2019 (Annexure-1A to SCN) that information contained in RAR constituted UPSI & hence disseminated to stock exchanges on 13th February 2019 are untenable & cannot be basis for either existence of alleged UPSI or alleged UPSI period. Annexed hereto and marked as Annexure "A" is a copy of Yes Bank's letter dated 15th February, 2019 addressed to the Stock Exchanges. It is submitted that classifying the said information as UPSI will be ex facie contrary to the RBI's Regulatory Guidelines in as much as the said information (as UPSI) will then compulsorily have to be immediately disclosed to the relevant stock exchanges, which is, in fact, not permissible under the RBI's Regulatory Guidelines.

vi) *In fact, as per information available in the public domain, the compliance officer of Yes Bank, Mr Shivanand Shettigar has faced regulatory action at the instance of SEBI itself for wrongly making the disclosures to the stock exchanges without even obtaining prior approval of MD & CEO of Yes Bank, who was authorized to determine 'materiality' of an event or information in terms of Regulation 30(1) 0f SEBI (LODR) Regulations 2015 before it is disseminated to the stock exchanges, and had not ensured the correctness, authenticity and comprehensiveness of the material information while making the said disclosures to the stock exchanges. Consequently, it appears that it is SEBI's own case in the context of Mr. Shivanand Shettigar and Yes Bank that the RAR information was not supposed to be disclosed to the stock exchanges. That being the case, it is impermissible for the present SCN to take a diametrically opposite position that the same is UPSI – since the consequence would then necessarily be that the same was required to be immediately disclosed to the stock exchanges. It may also be pertinent to*

note that if the said information is held to be UPSI under the PIT Regulations, the same will have drastic consequences and necessarily lead to every listed bank in India which has not been immediately disclosing the said information to the stock exchanges being in violation of the respective listing agreements and the PIT Regulations – which is clearly not the position. In such a scenario, there is no question of the same being treated as UPSI and without prejudice to my contention above that I was not aware of the said information, no question could ever arise of my trading while being allegedly in possession of UPSI. I crave leave to refer to and rely upon settlement orders passed by SEBI in the matter of the said Mr. Shivanand Shettigar when produced.

vii) In addition to the above, in terms of Regulation 2 (n) of SEBI (PIT) Regulations, 2015, the information disclosed by Yes Bank cannot be considered to be UPSI because it was neither negative nor positive information, and the same was only a reinforcement of the information already available. Moreover when YBL is not obligated to disclose such information as per regulations, it cannot become UPSI merely because of disclosure made in violation of regulatory guidelines (Reference disclosure of contents of RBI letter to Stock Exchanges by YBL on 15th February 2019 – Annexure A to my response)

11. I shall now proceed to reply to the said SCN paragraph wise.

a) With reference to paragraph numbering 1 to 3 of the said SCN, I say that the contents thereof are a matter of record. However, it may be reiterated that the disclosure dated 13th February, 2019 was wrongly made by the Compliance Officer of Yes Bank without any approval of Board of Directors / Interim Managing Director & CEO. It is further reiterated that I have not violated any provisions of the SEBI Act or the PIT Regulations, as alleged or otherwise.

b) With reference to paragraph numbering 4 and 5 of the said SCN, I repeat, reiterate and confirm all that is stated hereinabove, and deny everything contrary thereto or inconsistent therewith. It is reiterated that the intimation dated 13th February 2019 by Yes Bank to NSE and BSE was wrong and was made without obtaining any required approval. I was unaware of, and was not privy to any alleged UPSI between 5th February 2019 to13th February 2019. In any event, for all the reasons as aforesaid, it is denied that I was aware of the intervening period between 5th February 2019 to 13th February 2019 being UPSI period as alleged, as I was not in possession of alleged UPSI during the said period & no intimation of closure of trading window was given to me.

c) With reference to paragraph numbering 6, 7 and 8 of the said SCN, I repeat, reiterate and confirm all that is stated hereinabove, and deny everything contrary thereto or inconsistent therewith. I reiterate that I was NON EXECUTIVE NON INDEPENDENT director on Board of Yes Bank as against being merely a NON INDEPENDENT director (as stated in Para 7 of SCN) & was not involved in any manner in day to day working/ Management of the Bank. It is completely untrue and denied that I had access to or was privy to any UPSI, or had made the impugned purchase of shares whilst in possession of alleged UPSI. The meagre purchase of just 1000 shares of Yes Bank for about Rs. 1.74 lakhs belies all such allegations. Further, my aforesaid trading pattern also belies such allegations. I never sold any share of Yes Bank whilst I was a director on Board of Yes Bank. The very fact that shares purchased by me by way of impugned trade dated 08th February, 2019, were never sold to book any profit clearly establish that impugned trade was not motivated by any consideration of Insider trading & as such was not violative of SEBI (PIT) Regulations 2015

d) In the context of impugned trade, it is also most pertinent to note the following judgments: -

i. In the case of Mrs. Chandrakala vs Adjudicating Officer SEBI (SAT Appeal No. 209 of 2011, decided on 31st January, 2012) it was held that the prohibition for trading as contained in the PIT Regulations applies only when the insider has traded on the basis of any unpublished price sensitive information. The trades executed should be motivated by the information in the possession of the insider, which is obviously not the case in the present matter.

ii. The aforesaid principle was also followed in the case of Manoj Gaur vs SEBI (2012 SCC Online SAT 176) and the Hon'ble SAT quashed and set aside the Order of SEBI on the fact that the trading pattern reflected that the trades could not be said to be on the basis of UPSI.

e) With reference to paragraph 9, I repeat, reiterate and confirm all that is stated hereinabove, and deny everything contrary thereto or inconsistent therewith. It is completely untrue and denied that I traded while being in possession of UPSI. The allegation is completely devoid of merit and belied by the aforesaid facts and submissions.

f) It may also be noted that in an Order dated 15th May, 2019 passed by the Hon'ble SAT in Appeal No. 466 of 2016 – Piramal Enterprises Ltd. V/s. SEBI, the Hon'ble SAT has held in para 24 that "… in the absence of any direct or clinching evidence of insider trading, or misuse of UPSI, a reasonable benefit of doubt should be extended to the PEL instead of mechanically imposing a penalty…". It is most respectfully submitted that the said principle directly applies in the present matter too.

g) With reference to paragraph no. 10 of the said SCN, I repeat, reiterate and confirm all that is stated hereinabove, and deny everything contrary thereto or inconsistent therewith. The allegation that I made unlawful notional gain of Rs.47150/- is devoid of any merit. In fact, I never encashed any such purported profit on the impugned trade,

and nor did I sell any YBL shares during my tenure as a Non- Executive Non-Independent Director of Yes Bank.

h) With reference to paragraph No. 11 to 13 of the said SCN, I repeat, reiterate and confirm all that is stated hereinabove, and deny everything contrary thereto or inconsistent therewith. For all of the aforesaid reasons, it is completely untrue and denied that I have violated Section 12 (d) or (e) or any other section of the SEBI Act, 1992, or even Regulation 4 (1) or any other Regulation of the SEBI PIT Regulations, 2015, as incorrectly alleged or otherwise. I say and submit that in the facts and circumstances hereinabove stated, no question arises of initiating any inquiry against me and/or imposing any penalty on me under the provisions of any Act or any of the Regulations.

i) With reference to paragraph No. 14 of the said SCN, I repeat, reiterate and confirm all that is stated hereinabove, and deny everything contrary thereto or inconsistent therewith. I say and submit that in the facts and circumstances hereinabove stated, no question arises of initiating any inquiry against me and/or imposing any penalty on me under the provisions of any Act or any of the Regulations.

13. Thereafter, vide email dated August 28, 2020, the Noticee was provided an opportunity of personal hearing on September 4, 2020. Vide email dated August 31, 2020, the Noticee sought an adjournment and the hearing was rescheduled on September 21, 2020. The Noticee along with his Authorised Representatives ("**AR**"s) appeared on the said date and reiterated his earlier submission made vide letter dated August 19, 2020. The Noticee sought time till September 28, 2020 for filing some additional submissions with supporting documents. Thereafter, vide email dated September 28, 2020, the Noticee reiterated his earlier submissions dated August 19, 2020 (received vide email dated August 20, 2020 and cited in the preceding paragraphs) and provided certain additional documents in support

of his submissions *inter alia* including a copy of the trading statement of the Noticee in the securities of Yes Bank Limited since 2013 and the demat account statement of the Noticee held with Yes Securities for the Financial Years 2018-19 and 2019-20.

CONSIDERATION OF ISSUES AND FINDINGS

14. The issues that arise for consideration in the present case are :

a) Whether Noticees had violated the provisions of Section 12A (d) and (e) of SEBI Act, 1992 read with Regulation 4(1) of the PIT Regulations, 2015?

b) Does the violation, if any, on the part of the Noticee attract monetary penalty under Section 15G of SEBI Act?

c) If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?

FINDINGS

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

Issue I- Whether Noticees had violated the provisions of Section 12A (d) and(e) of SEBI Act, 1992, Regulation 4(1) of thePIT Regulations, 2015?

16. Contents of the said provisions of law is reproduced herein below:

SEBI (PIT) Regulations, 2015

Trading when in possession of unpublished price sensitive information.

4. (1) *No insider shall trade in securities that are listed or proposed to be listed on a stock exchange when in possession of unpublished price sensitive information:*

Provided that the insider may prove his innocence by demonstrating the circumstances including the following : –

(i) the transaction is an off-market inter-se transfer between promoters who were in possession of the same unpublished price sensitive information without being in breach of regulation 3 and both parties had made a conscious and informed trade decision;

(ii) in the case of non-individual insiders: – (a) the individuals who were in possession of such unpublished price sensitive information were different from the individuals taking trading decisions and such decision-making individuals were not in possession of such unpublished price sensitive information when they took the decision to trade; and (b) appropriate and adequate arrangements were in place to ensure that these regulations are not violated and no unpublished price sensitive information was communicated by the individuals possessing the information to the individuals taking trading decisions and there is no evidence of such arrangements having been breached;

(iii) the trades were pursuant to a trading plan set up in accordance with regulation 5.

NOTE: When a person who has traded in securities has been in possession of unpublished price sensitive information, his trades would be presumed to have been motivated by the knowledge and awareness of such information in his possession. The reasons for which he trades or the purposes to which he applies the proceeds of the transactions are not intended to be relevant for determining whether a person has violated the regulation. He traded when in possession of unpublished price sensitive information is what would need to be demonstrated at the outset to bring a charge. Once this is

established, it would be open to the insider to prove his innocence by demonstrating the circumstances mentioned in the proviso, failing which he would have violated the prohibition.

SEBI Act, 1992

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

12A. *No person shall directly or indirectly—*

(a) *******

(b) *******

(c) *******

(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;

17. The aforesaid provisions, among others, prohibits an insider, from dealing in securities of a company listed on any stock exchange when he is in possession of any UPSI and any person who deals in securities in contravention thereof is guilty of insider trading.

18. In the peculiar facts and circumstances in the present case, it must first be settled whether the information in question was indeed an UPSI. In this regard I note that Section 2(1)(n) of the Securities and Exchange Board of India (Prohibition of Insider Trading)

Regulations, 2015 ("PIT Regulations 2015") defines the term "Unpublished price sensitive information" as follows:

> *"'unpublished price sensitive information" means any information, relating to a company or its securities, directly or indirectly, that is not generally available which upon becoming generally available, is likely to materially affect the price of the securities and shall, ordinarily including but not restricted to, information relating to the following: –*
>
> *(i) financial results;*
>
> *(ii) dividends;*
>
> *(iii) change in capital structure;*
>
> *(iv) mergers, de-mergers, acquisitions, delistings, disposals and expansion of business and such other transactions;*
>
> *(v) changes in key managerial personnel; and*
>
> *(vi) material events in accordance with the listing agreement.*
>
> *NOTE: It is intended that information relating to a company or securities, that is not generally available would be unpublished price sensitive information if it is likely to materially affect the price upon coming into the public domain. The types of matters that would ordinarily give rise to unpublished price sensitive information have been listed above to give illustrative guidance of unpublished price sensitive information.*
>
> [emphasis supplied]

19. As already noted in the preceding paragraphs, the PRAR received by YBL from the RBI on February 5, 2019, *inter alia* contained the observation '*Nil' divergence in Asset Classification and Provisioning for position as on March 31, 2018'*. The same observation was reiterated in the RAR of RBI dated February 13, 2019. This observation was considered to be UPSI by YBL and was disseminated to the stock exchanges on February 13, 2019. As already noted,

the said information had significant impact on the price of the shares of YBL subsequent to the announcement.

20. Subsequent to the aforesaid dissemination, RBI vide its communication dated February 15, 2019, *inter alia* stated as follows:

> *"As the RAR Report was marked confidential, it was expected that no part of the Report & information contained therein be divulged except for the information in the form & manner of disclosure prescribed by Regulations Therefore the Press Release (on 13th February) breaches confidentiality & violates regulatory guidelines."*

21. From the definition of UPSI as already reproduced in the preceding paragraphs, I note that one key aspect for an information to be UPSI is that *which upon becoming generally available, is likely to materially affect the price of the securities*. Therefore, it is understood that for an information to be categorized as 'UPSI', it is necessary that it must reasonably be expected to reach the public domain so as to have an impact on the price of the securities. In order to understand the legislative intent in this regard, I note that the 'Report of the High Level Committee to Review the SEBI (Prohibition of Insider Trading) Regulations, 1992' headed by (Retd. Justice) Mr. N.K. Sodhi (hereinafter referred to as "**Sodhi Committee**") (available in public domain) based on whose recommendations the PIT Regulations, 2015 was enacted, has observed that *"UPSI is essentially information that is not generally available which on becoming generally available, would materially affect the price of securities to which it relates."* Therefore, an information by merely being price sensitive cannot be considered to be UPSI unless it is reasonably foreseeable/ predictable to reach the public. In this regard, I note that the Sodhi Committee had observed the following at paragraph no. 31 of its aforesaid report: "*It would be important to ensure that regardless of whether the*

information in question is price-sensitive, no piece of information should mandatorily be regarded as —UPSI". [emphasis supplied]

22. In the light of what has been observed immediately above, it needs to be seen whether the information in question in the present case was supposed to be disclosed to the public so as to have an impact on the price of the securities.

23. I note that Circular dated April 18, 2017 (bearing No. RBI/2016-17/283 DBR.BP.BC.No.63/21.04.018/2016-17) of the RBI created the obligation for reporting of the divergences from the IRACP norms by the banks. In this regard, the relevant part of the said Circular is reproduced herein below:

> *"3. In order to ensure greater transparency and promote better discipline with respect to compliance with IRACP norms, it has been decided that banks shall make suitable disclosures as per Annex, wherever either (a) the additional provisioning requirements assessed by RBI exceed 15 percent of the published net profits after tax for the reference period or (b) the additional Gross NPAs identified by RBI exceed 15 percent of the published incremental Gross NPAs for the reference period, or both.*
>
> *4. The disclosures, as above, shall be made in the Notes to Accounts in the ensuing Annual Financial Statements published immediately following communication of such divergence by RBI to the bank.*
>
> *5. The disclosures in the Notes to Accounts to the Annual Financial Statements may be included under the sub-head Asset Quality (Non-Performing Assets) as referred to in paragraph 3.4 of Master Circular - Disclosure in Financial Statements - Notes to Accounts Ref. DBR.BP.BC No.23 /21.04.018/2015-16 dated July 1, 2015."*

24. Subsequent to the issuing of the aforesaid Circular of the RBI, SEBI issued its Circular dated July 18, 2017 (bearing no. CIR/CFD/CMD/80/2017). The relevant parts of the said Circular are reproduced herein below:

"*1. Reserve Bank of India (RBI), vide its Notification No. RBI/2016-17/283; DBR.BP.BC.No.63/21.04.018/2016-17 dated April 18, 2017, requires disclosures by banks in a prescribed format in certain cases of divergence in the asset classification and provisioning. The Notification requires the disclosures to be made in the Notes to Accounts in the ensuing Annual Financial Statements published immediately following communication of such divergence by RBI to the bank.*

2. Accordingly, all banks which have listed specified securities shall comply with the following:

a) The banks shall disclose to the stock exchanges divergences in the asset classification and provisioning wherever:

(i) the additional provisioning requirements assessed by RBI exceed 15 percent of the published net profits after tax for the reference period; and/or

(ii) the additional Gross NPAs identified by RBI exceed 15 percent of the published incremental Gross NPAs for the reference period.

b) The disclosures shall be made in the format specified in the Annex to the aforesaid RBI's notification. This format is also placed as Annexure to this circular for reference.

c) The disclosures shall be placed as an Annexure to the annual financial results filed with the stock exchanges in accordance with clause (d) of sub-regulation (3) of Regulation 33 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015. Such disclosures shall be made along with the annual financial results filed immediately following communication of such divergence by RBI to the bank."

25. On a perusal of the Circulars of RBI and SEBI cited above, I observe that the Circulars have clearly stated: (a) the information which is needed to be disclosed, (b)the time when to disclose such information and (c) the format in which such information needs to be disclosed. The information which is needed to be disclosed is stated at paragraph no. 3 of the Circular of the RBI, reproduced above. Such information needs to be disclosed only when either or all of the events mentioned at paragraph no. 3 (a) and (b) of the RBI Circular (contained as it is at paragraphs no. 2(i) and (ii) of the SEBI Circular) has occurred, in the format prescribed in the annexure to the RBI Circular, to be filed with the stock exchanges as a part of the 'Notes to Accounts' in the Annual Financial Statements of the said bank. Thus, on a plain reading of the aforesaid Circulars, there remains no doubt either about the substantive content of the disclosure to be made under the said Circulars or the format and the time of making the said disclosures. Therefore, the question which needs to be answered now is whether the information in question was required to be disclosed by YBL at all, in order to ascertain if the said information was UPSI.

26. As already noted above, the information in question in the present case is the PRAR and RAR received from the RBI on *"Divergence in Asset Classification and Provisioning for position as on March 31, 2018" inter alia* stating that Reserve Bank of India ('RBI') assesses compliance by Banks with extant prudential norms on Income Recognition, Asset Classification and

Provision (IRACP) as part of its supervisory processes. As a part of this process, YBL has received the Risk Assessment Report ('RAR') for FY 2018. The report observes "NIL" divergences in the YBL's assets classification and provisioning from the RBI norms.

27. The RBI had observed "*Nil divergence*" from the norms of asset classification and provisioning, with respect to the aforesaid period of functioning of YBL. Therefore, the said observation does not meet either of the two criteria laid down under paragraph 3 of the RBI Circular/ paragraph no. 2 of the SEBI Circular. For the said reason, I observe that the information was not required to be disclosed. Further, I observe that such disclosure was not made in the prescribed format (as laid down in the annexure to the RBI Circular) and also was not published as a part of the 'Notes to Accounts' in its Annual Financial Statements, but was disclosed much prior to the filing of the Annual Financial Statement. Thus, I observe that the disclosure of the said information by YBL in the instant case violated both the substantive content as well as the procedural stipulations of the said Circulars of RBI and SEBI. I also note that YBL itself had made another corporate announcement on February 15, 2019, disseminating therewith RBI's letter dated February 15, 2019, which, *inter alia*, states that: -

> *"As the RAR report was marked "confidential", it was expected that no part of the report and information contained therein be divulged except for the information in the form and manner of disclosure prescribed by Regulations. Therefore, the Press Release breaches confidentiality and violates regulatory guidelines. Moreover, NIL divergence is not an achievement to be published and is only compliance with the extant IRACP norms. The RAR also identifies several other lapses and regulatory breaches in various areas of the Bank's functioning and the disclosure of just one part of the RAR is viewed by RBI as a deliberate attempt to mislead the public. Further, issuance of the said press release been viewed seriously by RBI and could entail further regulatory actions".*

28. From the reply of YBL dated July 22, 2019 (at paragraphs no, 2-7 in response to 'Query 1' and the response to 'Query 2'), I note that the PRAR was received by YBL on February 5, 2019 and selected contents thereof was shared with certain officials of the company whose names have also been provided. Thereafter, on February 7, 2019, PRAR was discussed between 5 officials of YBL. The name of the Noticee is not mentioned in the list of the persons to whom the contents of PRAR was disseminated on February 6, 2019, nor was he a part of the meeting held on February 7, 2019. Subsequently the key aspects of the PRAR were again discussed between five officials of which none were the Noticee. I further note that there is no evidence to the contrary which can establish that the Noticee came into the knowledge of the said PRAR.

29. I also note that the "*Policy on Reporting of Material Events under Regulation 30 of Listing Regulations*" of YBL, at point no. 4 clearly states that:

> *"The Listing Regulations requires the Board of Directors to authorize one or more Key Managerial Personnel for the purpose of determining materiality of an event or information which qualifies for disclosure under Regulation 30 of Listing Regulations and to decide the timeline within which such disclosure is required to be disseminated to the stock exchanges. The Board of Directors has approved that the MD&CEO shall be the said Key Managerial Personnel.*" [emphasis supplied]

From the letter of YBL dated July 22, 2019, I note that the approval of the then MD&CEO of YBL was not obtained for determining the materiality of the said information or for disclosure of the any content of the RAR received from YBL. Thus, in this regard, YBL is observed to have violated its own policy on disclosure of material information. Also, the

"materiality" of the said information was decided upon by persons other than the competent authority.

30. From the aforesaid reply of YBL dated July 22, 2019, I also note that the trading window was not closed at the time when the impugned trade was executed by the Noticee. From the same reply I further observe that in terms of the code of conduct of YBL, for any trades amounting to Rs. 10 lakhs or above, pre-clearance was required for a designated employee. Since, the value of trade executed by the Noticee was less than Rs. 10 lakhs, no pre-clearance was required. There is no evidence to suggest that it was an error on the part of YBL or any of its Directors/ KMPs in not closing the trading window from February 5, 2019 till February 13, 2019 (the "UPSI period"). There was also no such charge of wrongly keeping the trading window open during the period of UPSI, levelled against YBL or its compliance officer in the separate proceedings initiated with respect to them. Therefore, the trading window being kept open, the Noticee further seems to have had no reason to construe the information in question as UPSI.

31. Therefore, on a reading of the regulatory provisions for the disclosure done by YBL and on an observation of the conduct of YBL in making the said disclosure as already narrated above, it is clear that such disclosure, which was not required to be made was actually done in violation of the regulatory norms as well as the internal policy of YBL. In view of the above, no reasonable person having knowledge/ understanding of the said regulatory provisions could have anticipated that such a disclosure would be made by YBL. More particularly in the present case, the Noticee who is a member of the audit committee of a scheduled commercial bank and the member of Risk Monitoring Committee having significant experience and expertise in the said provisions of law, could not have traded

anticipating that the said information would be published, contrary to the said provisions of law unless otherwise the Noticee was in collusion with the officials of YBL who had decided to disclose the said information. However, there is no evidence to suggest that the Noticee was in collusion with the officials of YBL, who had decided to disclose the said information contrary to the practice generally being followed and that too without the approval of the competent authority as required by law, in a hasty manner. Therefore, I hold that the Noticee, even if he is expected to have access to the said information being the member of audit committee as had been charged in the present case, he would not have had any reason to believe that such information would be disclosed to the public at large in violation of the extant legal provisions as well as the internal policies of YBL. In this context, I note that the Sodhi Committee had *inter alia* observed at paragraph no. 54 of its report that:

> *"If the insider can indeed demonstrate that he did not bona fide understand the nature of the UPSI or that the UPSI was price sensitive to attract the prohibition (in doing so, adopting the standard of a reasonable man), he should not be held to have violated the prohibition.*" [emphasis supplied]

32. I note that the Noticee in all fairness could not have presumed that YBL shall disclose the information contained in the RAR, in violation of regulatory norms and its own policies. Therefore, the trade executed by him, cannot be held to be violative of Section 12A (d) and(e) of SEBI Act, 1992 and/or Regulation 4(1) of the PIT Regulations, 2015, as he had legitimate grounds to hold the *bona fide* belief that such information would not be disclosed to the public at all by YBL. Therefore, as on the date of the impugned trade, i.e., February 8, 2019, the information in question could not be qualified to be a UPSI.

33. I also observe from the "*Statement of Account from 01-Apr-2018 To 31-Mar-2020*" maintained with the DP of the Noticee and the statements of the trades executed by the Noticee in the scrip of YBL, that he had executed trades in the scrip of YBL both prior to and subsequent to the aforesaid period of UPSI. I also note from the said "statement of account" that he had started selling the shares of YBL only after he had ceased to be associated with YBL due to the supersession of the Board of YBL by the RBI. In this context, the following part of Sodhi Committee Report is relevant:

> *"52. The fundamental premise on which trading when in possession of UPSI is prohibited is that when an insider is in such possession, he would be assumed to be influenced by the nature of the UPSI in his possession, which others in the market would not have. Such a position would place him at an unfair advantage over the others in the market. However, it is noteworthy that insider trading is not only a tort (a civil wrong) but is also a punishable crime that could lead to an insider being imprisoned for a period of upto 10 years. Therefore, a charge of insider trading should be clear, precise and reasonable.*
>
> *Contrary to nature of UPSI*
>
> *53. Against this backdrop, it should be emphasized that insider trading is a wrong arising out of an insider taking advantage of UPSI in his possession to the exclusion of the others. Therefore, if the insider's trades were in fact contrary to the nature of the UPSI in his possession, such trading ought not to be treated as a wrongful act. Therefore, where an insider has traded in a manner contrary to how a reasonable man who is seeking to benefit from the UPSI would act, it should follow that he has not committed a tort or a crime.* [emphasis supplied]

The weighted average buy price of the shares of YBL by the Noticee has been found to be Rs. 174.1. The intra-day high price of the scrip both on BSE and NSE between March 11,

2020 and March 14, 2020 (when the sale transactions of the Noticee were settled) was significantly lower than the aforesaid buy price. I also note that the intra-day high price and closing price of the scrip of YBL during the months immediately after the period of UPSI (May, June, July, August, September, October) were significantly higher than the high price during the aforesaid period of sale, i.e, between March 11, 2020 to March 13, 2020. Therefore, if the Noticee had to benefit from act of insider trading, he would not have waited till the expiry of his tenure in YBL to sell the shares of YBL.

34. In view of what has been stated at preceding paragraphs in this order, I answer the question placed at paragraph no. 14 in this order in the negative and hold that the Noticee cannot be held to have traded in the securities of YBL while being in possession of the UPSI, inasmuch as the said information could not reasonably be construed to be UPSI by the Noticee even if he had known the said information; there is nothing on record to show that the Noticee was in collusion with any of the persons responsible for the dissemination of the information to the public and/or traded while in possession or on the basis of such information and the Noticee had sold the shares in a manner contrary to what a reasonable person seeking to gain from the possession of UPSI would have done.

ORDER

35. After Taking into consideration the facts of the case and the relevant legal provisions, and in exercise of the powers conferred upon me under Section 15-I of the SEBI Act, read with Rule 5 of the Adjudication Rules, I hereby hold that the charges levelled against the Noticee, i.e., **Shri Kalia Subhash Chandra** do not stand established and hence no penalty is to be imposed upon him.

36. In terms of Rule 6 of the Adjudication Rules, 1995, copy of this Order is sent to the Noticees and also to the Securities and Exchange Board of India.

Date : October 14, 2020 **G. Ramar**

Place : Mumbai **Adjudicating Officer**