

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. EAD-9/SM/ 104-111 /2018-19]**

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

In respect of:

Champalal Gopiram Agarwal PAN:AAPPA7695A	Sumit Champalal Agarwal PAN:AAPPA7700E	Varsha Rajnikant Agarwal PAN:AAPPA7705B
Shashidevi Subhash Agarwal PAN:AAPPA7698P	Krishnadevi Omkarmal Agarwal PAN:AAPPA7698P	Ronit Satyanarayan Agarwal PAN:AEYPA4660E
Prashant Shankarlal Agarwal PAN:ACNPA3954A	Satyabhama Champalal Agarwal PAN:AAPPA7704A	

In the matter of M/s. Omkar Overseas Limited

Facts of the Case:

1. Securities and Exchange Board of India ("SEBI") pursuant to investigation into the trading activities of certain entities in the scrip of Omkar Overseas Limited (hereinafter referred to as "OOL/Company") for the period from October 01, 2009 to April 01, 2010 (hereinafter referred to as "Investigation period/IP") observed that Champalal Gopiram Agarwal(Champalal), Sumit Champalal Agarwal(Sumit) , Varsha Rajnikant Agarwal(Varsha), Shashidevi Subhash Agarwal (Shashidevi), Krishnadevi Omkarmal Agarwal(Krishnadevi) Ronit Satyanarayan Agarwal (Ronit) Prashant Shankarlal Agarwal(Prashant) and Satyabhama Champalal Agarwal (Satyabhama) had traded in the scrip of OOL while in possession of unpublished price sensitive information and thus violated Regulation 3(i) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as "PIT Regulations")
2. It was also alleged that Satyabhama had traded in the scrip of OOL during the window closure period and being wife of Champalal (managing Director of OOL) it was alleged that by trading in the scrip of OOL during the trading window closure period, she had violated the provisions

of Clause 3.2-2 and 3.2-5 of the code of conduct as specified under Schedule I of Regulation 12(1) of PIT Regulations.

3. In this order wherever PIT Regulations is mentioned it should be referred to as PIT Regulations read with Regulation 12 of SEBI (Prohibition of Insider Trading) Regulations, 2015.
4. Noticees shall be collectively hereinafter referred to as Noticees.

Appointment of Adjudicating Officer

5. SEBI had appointed Shri D.S. Reddy as Adjudicating Officer vide order dated May 08, 2015 under Section 19 of the SEBI Act, 1992 read Section 15-I of SEBI Act, 1992 read with Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as AO Rules) to inquire and adjudge under Section 15G of SEBI Act on Champalal, Sumit, Varsha, Shashidevi, Krishnadevi, Ronit, Prashant, and Satyabhama and under 15HB on Satyabhama for the alleged provision of the law. Subsequently, pursuant to the transfer of the case, the undersigned have been appointed as Adjudicating Officer (AO), vide order dated May 18, 2017 for the aforesaid Noticees.

Show Cause Notice, Reply and Personal Hearing:

6. A common Show Cause Notice dated July 03, 2015 (hereinafter referred to as 'SCN') was served on Noticees in terms of Rule 4 of AO Rules read with Section 15 (I) of SEBI Act, calling upon the Noticees to show cause as to why an inquiry should not be held against the noticees for the alleged provisions of law.

Status of the SCN:

7. The SCN issued to all noticees was delivered except Champalal and Sumit. The undelivered SCN was duly affixed at the last known address of Champalal and Sumit. All noticees had sought inspection of documents and additional documents which was duly provided on November 05, 2015 and on July 08, 2016 respectively

Allegation in the SCN broadly are as follows:

8. It was observed that the noticees had started selling their shares from October 2009 and sold off the entire shareholding by the quarter ending June 2010. Investigation was carried out with respect to the Price Sensitive Information and trading by persons on the basis of unpublished price sensitive information. As per Regulation 2(ha) (i) of the PIT Regulations, periodic

financial results of the company are deemed to be a price sensitive information. Therefore, the information regarding the periodic financial results of the company was a price sensitive information. Further, it was observed that the price sensitive information came into existence during following two periods:-

- 8.1.1. Period 1: October 30, 2009 (post market hours), when the quarterly results for Quarter ending (QE) September 2009 were adopted in the Board Meeting.
- 8.1.2. Period 2: January 30, 2010, when the quarterly results for QE December 2009 were adopted in the Board Meeting.

9. Further, it was observed that the first price sensitive information was published on November 18, 2009 when the quarterly results of the quarter ended September 2009 were published in the newspaper namely "Western Times". The second price sensitive information was disseminated on July 30, 2010, when the quarterly results of OOL were disseminated on BSE website. Therefore, the trading window closure owing to unpublished price sensitive information should have been the following as per the PIT Regulations:

- 9.1. **Period 1:** From October 30, 2009 (Post Market Hours) when the quarterly results for quarter ended September 2009 were adopted in the Board Meeting to November 18, 2009 when the quarterly results for quarter ended September 2009 were published in the newspaper.
- 9.2. **Period 2:** From January 30, 2010 when the quarterly results for quarter ended December 2009 were adopted in the Board Meeting to July 30, 2010 when the quarterly results for quarter ended December 2009 were disseminated on BSE website.

10. OOL, vide its letter dated November 15, 2014, had confirmed that the financial results for quarter ended September 2009 and December 2009 were adopted on October 30, 2009 and January 30, 2010, respectively. Hence, the period of Price Sensitive Information has been taken from the date of adoption of financial results i.e October 30, 2009 (post market hours) effectively October 31 and January 30, 2010, respectively.

Unpublished Price Sensitive Information Period - 1 (From October 30, 2009 to November 18, 2009) :-

11. The persons who were in possession of the unpublished price sensitive information during Period-1 were Directors of OOL namely - Subhashchandra Agarwal, Shankarlal Agarwal, Niranjana Agarwal, Shivbhagwan Agarwal and Harikishan Agarwal who were present at Board Meeting held on October 30, 2009 when the quarterly results for quarter ended September 2009 were adopted. Further, it was observed from the minutes of the meeting of Board of Directors held on October 30, 2009 that Champalal Agarwal, Chairman of OOL was authorized to sign and take all necessary steps for the publication and submission of Quarterly results to the press and the stock exchange. Hence, it was alleged all the aforesaid directors who were present at the Board Meeting dated October 30, 2009 and Champalal Agarwal were the persons who were in possession of unpublished price sensitive information during unpublished price sensitive information period - 1.

Unpublished Price Sensitive Information Period - 2 (From January 30, 2010 to July 30, 2010)

12. The persons who were in possession of the unpublished price sensitive information during Period-2 were the directors of OOL - Champalal Agarwal, Shankarlal Agarwal, Subhashchandra Agarwal, Niranjana Agarwal, Shivbhagwan Agarwal and Harikishan Agarwal who were present at Board Meeting held on January 30, 2010 where the quarterly results for quarter ended December 2009 were adopted. Hence, it was alleged that all the aforesaid directors who were present at the Board Meeting dated January 30, 2010 were in possession of the unpublished price sensitive information during the unpublished price sensitive information period - 2.

13. Relationship among Noticees.

- 13.1. Prashant, is the son of Shankarlal who was in possession of unpublished price sensitive information during both periods
- 13.2. Shashidevi, is the wife of Subhash who was in possession of unpublished price sensitive information during both periods.
- 13.3. Sumit and Satyabhama, son and spouse of Champalal respectively who was in possession of unpublished price sensitive information during both periods.

- 13.4. Address of Shashidevi, Subhash Archanandevi, Ronit , Krishnadevi and Varsha was the same.
- 13.5. Address of Prashant and Shankar was the same.
- 13.6. Address of Sumit , Champa and Satyabhaama was the same.
14. It was alleged that the aforesaid noticees were connected persons / deemed to be connected persons in terms of Regulation 2(c) and 2(h) of the PIT Regulations and are relatives in terms of Regulation 2(i) of the PIT Regulations read with Section 6 of the Companies Act, 1956. Hence, they were alleged to be Insiders in terms of Regulation 2(e) of the PIT Regulations.
15. During the relevant period, trading in the scrip of OOL by the promoters/ directors was analyzed and it was revealed that they were all sellers during both the periods of unpublished price sensitive information. It was noted that none of the promoters/ directors had bought shares of the scrip of OOL in the market during the unpublished price sensitive information periods.
16. It was alleged that Champalal, Prashant , Krishnadevi , Satyabhama, Shashidevi , Sumit , Ronit & Varsha by trading in the scrip of OOL while in possession of the unpublished price sensitive information have violated the provision of Regulation 3(i) of the PIT Regulations.
17. It was also alleged that Satyabhama had traded during the window closure period and thus violated Clause 3.2.3 and 3.2.5 of code of conduct under Schedule I of PIT Regulations which states that trading window shall be ,inter alia ,closed at the time of declaration of financial results and all officers/directors /designated employees of the company shall conduct all their dealings in the securities of the company in a valid window and shall not deal in any transaction involving the purchase or sale of the company's securities during the periods when trading window is closed.

Inspection of Documents:

18. The Noticees had sought for inspection of documents which was conducted by the noticees on November 06, 2015 subsequently noticees had sought further documents which were also provided on July 08, 2016.

Filing of Settlement Application:

19. The Noticees have communicated that they had filed settlement application before SEBI. However I note that their settlement application was rejected as condonation of delay was not acceded by SEBI.
20. No reply was received from the Noticees.

Personal Hearing:

21. In the interest of natural justice and in order to conduct an inquiry in terms of Rule 4(3) of the Rules, Hearing Notice was issued to Noticees on January 19, 2018 granting an opportunity of personal hearing before the undersigned on February 09, 2018 along with the reminder to reply to SCN.
22. On scheduled hearing date on behalf of the Noticees, the Authorized Representative (hereinafter referred to as "AR") appeared before me seeking for adjournment of Personal Hearing seeking date after February 25, 2018.
23. The personal hearing was adjourn to February 26, 2018. However, on February 26, 2018, AR requested for another date due to medical reason and ask for adjournment to some other day preferably but not necessarily on March 15, 2018.
24. Another opportunity of personal hearing was granted on March 20, 2018, Vide communication dated March 20, 2018, OOL and on behalf of others sought for adjournment of personal hearing and sought for inspection of documents.
25. An e-mail was sent to OOL stating inspection of documents was already conducted by them on November 06, 2015 and further documents sought by them was provided on July 08, 2016. In view of the same, last and final opportunity was granted on April 09, 2018.
26. AR on behalf of the Noticees sought for adjournment of the personal hearing for a further period of month. Noticee was advised to appear on April 17, 2018, failing which it shall be construed that it has waived to avail the opportunity of personal hearing and the matter shall be proceeded further on the basis of the facts/materials available on record in terms of sub rule (7) of Rule (4) of the SEBI.
27. On April 17, 2018, AR appeared before me and made oral submission to submit written submission.

28. Reply to the SCN:

Reply of Noticees in respect to Insider Trading:

- 28.1. *Considering the period of UPSI as per the SCN (From October 30, 2009 to November 18, 2009 {UPSI period -I} and January 30, 2010 to July 30, 2010 {UPSI Period-II} is itself faulty as noted from above submissions (i.e. totally relied on the averments of unnamed authorized officers of the concerned stock exchange which has not been provided to the Noticees).*
- 28.2. *Further, no date wise trading details of the persons alleged to have traded while in possession of UPSI has been provided to the Noticees. We submit that the Notice has only made bald allegations without any documentary evidence.*
- 28.3. *Further, the classification of the persons alleged to have been traded in the scrip of OOL as insiders is totally false and mis-conceived.*
- 28.4. *Further, none of the persons who are alleged to have traded in the Scrip of OOL had been in possession of UPSI.*
- 28.5. *Moreover, the directors who attended the Board Meeting were in possession of UPSI but none of them have traded in the scrip of OOL during the period alleged by you, in the SCN.*
- 28.6. *Further, the SCN fails to bring any material on record to show the communication of UPSI.*
- 28.7. *Further, the SCN has miserably failed to bring out as to whom UPSI was communicated. The SCN fails to prove who has communicated UPSI and to whom it was communicated and by what manner. Just by being related does not make them liable for the serious charge of insider trading.*
- 28.8. *Further, Mr. Champalal Agarwal was never present in the Board Meetings when the quarterly results were approved. He was just authorized to sign and take all steps necessary for publication of the quarterly results. Even if it is assumed that he was in possession of UPSI, it is stated that he had not traded on October 30 and 31, 2009 and January 30, 2010 when he was in possession of UPSI. In the absence of date wise trading details of his, he is not in a position to comment on the same.*
- 28.9. *In this connection, we would like to invite your kind attention to the judgement delivered by Hon'ble SAT in the case of Manoj Gaur Vs SEBI (Appeal no. 64 of 2012) wherein it was held that "It may be noted that the trading has not been done by Mr. Manoj Gaur who is not supposed to trade during the closure of trading window. The trading is done by his wife and brother. No doubt, being deemed to be connected persons to Mr. Manoj Gaur, they were insiders. But no evidence has been brought on record, direct or circumstantial, to show that they were in possession of UPSI about the financial results of the company for the quarter ending September 30, 2008. As we have observed earlier, having regard to the gravity of charge of insider trading, higher degree of*

preponderance of probabilities is needed to bring home the charge. The adjudicating officer has not brought any material on record to show that they were in possession of UPSI”.

28.10. *Similarly in the SCN no material has been brought on record to show that the promoters who have traded in the shares of OOL were in possession of UPSI.*

28.11. *Therefore, it is submitted that the charge of violating Regulation 3(i) of SEBI (PIT) Regulations by Mr. Champalal Agarwal, Mr. Prashant Shankarlal Agarwal, Mr. Krishnadevi Omkarmal Agarwal, Ms. Satyabhama Champalal Agarwal, Ms. Shashidevi Subhash Agarwal, Mr. Sumit Champalal Agarwal, Mr. Ronit Satyanaran Agarwal and Ms. Varsha Rajnikant Agarwal is baseless and without any legal basis in absence of any documentary evidence. In view of the same it is denied that any of the noticees have violated Regulation 3(i) of SEBI (PIT) Regulations.*

Reply of Satyabhama:

28.12. *it is submitted that Classification of Satyabhama as designated employee of OOL is not true and correct. Moreover, it was not provided how many shares did she trade on 30-10-2009 and the proof that she actually traded on the said date. In view of this, allegation of violation of Clause 3.2-2 and 3.2-5 of Code of Conduct as specified under Schedule I read with Regulation 12(1) of SEBI (PIT) Regulations by Satyabhama Agarwal is baseless.*

ISSUES FOR CONSIDERATION and FINDINGS:

29. I have carefully perused the replies and submissions of the Noticees and the documents available on record. The issues that arise for consideration in the present case are:

- **Issue I:** Whether there was any unpublished price sensitive information during October 30-November 18, 2009 and January 31- July 30, 2010.
- **Issue II:** Whether Noticees were Insiders or deemed Insiders as per PIT Regulations
- **Issue III:** Whether noticees were having access to UPSI.
- **Issue IV:** whether the trading done by the noticees during the trading window closure period was based UPSI and hence violated Regulation 3(i) of PIT Regulations
- **Issue: V:** Whether Satyabhama had violated the provisions of clause 3.2 and 3.2.5 of the code of conduct as specified under Schedule I of Regulation 12(1) of PIT Regulations.
- **Issue: VI:** Does the violation, if any, attract monetary penalty under Section 15G of SEBI Act on Champalal, Prashant, Krishnadevi, Satyabhama, Shashidevi, Sumit, Ronit & Varsha and under Section 15HB of SEBI Act on Satyabhama;
- **Issue VII:** If so, what should be the quantum of monetary penalty?

FINDINGS

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

31. Issue I: Whether there was any unpublished price sensitive information during October 30-November 18, 2009 and January 31- July 30, 2010;

As per Regulation 2(ha) of PIT Regulations,

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

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

(i) Periodical financial results of the company;

32. Hence, the information related to the quarterly financial results of the company relating to the quarter ending September and December 2009 was the price sensitive information and since it was not published until November 18,2009 and July 30,2010 respectively ,therefore it was unpublished price sensitive information (UPSI).

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

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

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

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

"Connected person" means any person who—

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

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

(viii) Relatives of any of the aforementioned persons

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

34. I note Champalal, Shankarlal and Subhash Chandra were the connected person as they were the Director of the company during the investigation period and other Noticees were the relatives of the connected person and were expected to have access to UPSI and hence they all were insiders as per the definition of Insider in PIT Regulations.

35. Issue III: Whether noticees were having access to UPSI.

35.1. As per Regulation 2(k) of PIT Regulations, Unpublished means information which is not published by the company or its agents and is not specific in nature.

35.2. Pursuant to the definition of Price Sensitive Information and Unpublished, it can be construed that UPSI is the information which is not published by the company or its agents and that information is related to the events as mentioned in Regulation 2(ha) of PIT Regulations. In the instant matter, the information relating to the financial results of Company for the quarter ending September and December 2009 was price sensitive information and since it was not published, therefore the said information was UPSI during October 30, 2009-November 18, 2009 and January 31, 2010- July 30, 2010.

35.3. I note that noticees had made contention that none of the persons (Directors) who were having access to UPSI had traded on the basis of UPSI. In this regard I note that Champalal being the Managing Director had traded in the shares of the company when the PSI was not made public. I note that though Champalal was not present in the Board Meeting held on October 30, 2009, however it was observed from the Minutes of the meeting that Champalal was authorized to sign and take all necessary steps for the publication and submission of quarterly results to press and the stock exchange where the shares are listed. It was also confirmed from the minutes of the meeting of Directors of OOL that Champalal was present in the meeting held on January 30, 2010. Therefore Champalal was aware of the quarterly results before its publication and hence he was the person having access to UPSI. *Champalal being the Chairman and Managing Director of the Company at all relevant times falls squarely within the definition of "Insider" as defined in Regulation 2(c) of PIT Regulations. Therefore, I conclude that Champalal was an insider and was having access to UPSI.*

35.4. There is nothing on the record to prove that other Noticees who had traded in the shares of OOL were having access to UPSI. I also note that there is no mention about who had communicated UPSI and to whom, day and time of the communication. However since all the noticees are related/ deemed connected to each other and were expected to have access to UPSI.

36. Issue IV: whether the trading done by the noticees during the trading window closure period was based UPSI and hence violated Regulation 3(i) of PIT Regulations.

I note that though the noticees were insiders in terms of PIT Regulations, however no evidence is on record that they were having access to UPSI during the trading window closure period except in case of Champalal. In order to ascertain whether the trading done by noticees in the company's scrip during the trading window closure period was based on UPSI, I would like to refer the details of trades done by the noticees during the investigation period.

36.1. Champalal-Period -1 (October 31,2009-November 18,2009)

Pre UPSI period				
Date	Shares Sold	Price	% of total individual shareholding	
30/09/2009	29250	121.10	5.75	
01/10/2009	2113	103.93	0.42	
05/10/2009	2507	93.52	0.49	
06/10/2009	500	84.15	0.10	
07/10/2009	2271	75.75	0.45	
09/10/2009	859	70.95	0.17	
15/10/2009	100000	73.55	19.65	27.02% shares already sold Pre UPSI Period
UPSI Period				
10/11/2009	39403	50.60	7.74	
11/11/2009	80000	55.28	15.72	
16/11/2009	43097	57.55	8.47	31.94% shares sold during UPSI Period

36.2. Champalal-Period -2 (January 30,2010-July 31,2010)

UPSI period				
Date	Shares Sold	Price	% of Shares sold	
05/03/2010	13000	57.50	2.55	
08/03/2010	50000	57.70	9.83	
10/03/2010	11301	58.76	2.22	
11/03/2010	25000	59.50	4.91	
15/03/2010	25699	61.20	5.05	
23/03/2010	25000	66.15	4.91	
25/03/2010	700	67.75	0.14	
26/03/2010	40000	67.75	7.86	
30/03/2010	18130	68.02	3.56	41.04% shares sold during UPSI period

36.3. Sumit -Period -1 (October 31,2009-November 18,2009)

Pre UPSI period				
Date	Shares Sold	Price	% of Shares sold	
14/10/2009	55000	76.97	22.00	
21/10/2009	50000	73.15	20.00	
23/10/2009	55395	68.65	22.16	
28/10/2009	48890	58.95	19.56	
29/10/2009	5000	56.20	2.00	
30/10/2009*	35715	56.42	14.29	Entire 100% shareholding sold pre UPSI Period

*Since results of September quarter were adopted in the Board meeting held post market hours on October 30, 2009, therefore trading done on October 30 is considered as pre UPSI Period.

36.4. Varsha Period -1(October 31,2009-November 18,2009)

UPSI period				
Date	Shares Sold	Price	% of Shares sold	
04/11/2009	50579	55.02	50.58	
05/11/2009	49421	53.73	49.42	Entire 100% shareholding sold during UPSI Period

36.5. Shashidevi-Period-1 (October 31,2009-November 18,2009)

UPSI period				
Date	Shares Sold	Price	% of Shares sold	
05/11/2009	590	53.50	0.84	
06/11/2009	50000	56.00	71.43	
09/11/2009	19410	56.26	27.73	Entire 100% shareholding sold during UPSI Period

36.6. Krishnadevi-Period-1(October 31,2009-November 18,2009)

UPSI period				
Date	Shares Sold	Price	% of Shares sold	
09/11/2009	151000	56.15	39.22	
12/11/2009	9000	54.70	2.34	41.56% was sold during UPSI period
Post UPSI Period				
16/12/2009	78256	40.50	20.33	
17/12/2009	92000	43.05	23.90	
21/12/2009	54744	43.95	14.22	58..44% was sold post UPSI period

36.7. Ronit-Period -1 (October 31,2009-November 18,2009)

Post UPSI period				
Date	Shares Sold	Price	% of Shares sold	
23/11/2009	50000	45.95	14.29	
15/12/2009	138641	38.22	39.61	
24/12/2009	22000	42.00	6.29	

07/01/2010	25000	50.25	7.14	
11/01/2010	25000	52.90	7.14	
12/01/2010	17793	50.75	5.08	79.55% was sold Post UPSI period

Period -2 (January 30,2010-July 31,2010)

UPSI period				
Date	Shares Sold	Price	% of Shares sold	
01/02/2010	50000	48.79	14.29	
11/02/2010	21566	49.86	6.16	20.45% was sold during UPSI Period -2

36.8. Prashant -Period -1 (October 31,2009-November 18,2009)

Post UPSI period				
Date	Shares Sold	Price	% of Shares sold	
10/12/2009	17000	37.30	4.86	
11/12/2009	17000	39.15	4.86	
15/12/2009	50000	37.75	14.29	
28/01/2010	70000	45.89	20.00	
29/01/2010	75000	46.95	21.43	65.43% was sold Post UPSI period

Prashant -Period -2 (January 30,2010-July 31,2010)

UPSI period				
Date	Shares Sold	Price	% of Shares sold	
03/02/2010	50000	48.25	14.29	
09/02/2010	71000	46.00	20.29	34.57% was sold during UPSI Period -2

36.9. Satyabhama- Period -1 (October 31,2009-November 18,2009)

Pre UPSI period				
Date	Shares Sold	Price	% of Shares sold	
14/10/2009	46000	76.83	18.40	
29/10/2009	45050	56.25	18.02	
30/10/2009	59285	55.94	23.71	60.13% shares were sold pre UPSI period
UPSI Period				
10/11/2009	99665	55.96		39.87% shares were sold during UPSI period

Trading of all Noticees			
Noticees	Pre UPSI Period (Shares sold and % of individual holding)	UPSI Period (Shares sold and % of individual holding)	Post UPSI (Shares sold and % of individual holding)
Period -1			
Champalal	137500(27%)	162500 (32%)	-
Sumit	2, 50,000(100%)	-	-
Varsha	-	1, 00,000(100%)	-
Shashidevi	-	70,000 (100%)	-
Krishnadevi	-	1, 60,000 (42%)	2, 25,000(58%)
Ronit	-	-	278,434 (80%)
Prashant	-	-	2, 29,000(65%)
Satyabhama	150,335(60%)	99665(40%)	-
Total Shares sold \$	5, 37,835 (24%)	5, 92,165(26%)	7, 32,434(32%)
Period -2			
Champalal	-	2, 08,830(41%)	-
Ronit	-	71566(20%)	-
Prashant	-	1, 21,000(35%)	-
Total Shares sold	-	4, 01,396(18%)	
Cumulative of both periods	24% sold during pre UPSI	44% sold during UPSI period	32% sold post UPSI period.

\$ Cumulative Shareholding of all noticees

36.10. It is interesting to note shares sold by other relatives of the Noticees during the Period-1 and Period -2:

	Pre UPSI Period (Shares sold and % of individual holding)	UPSI Period (Shares sold and % of individual holding)	Post UPSI (Shares sold and % of individual holding)
Period -1			
Archanadevi Agarwal (Sister in Law of Shri Champalal and mother of Ronit,	-	-	1, 50,000 (100%)
Manjulata Shankarlal Agarwal (Now Deceased- Wife of Shankarlal#	-	1, 25,000 (90%)	25,000 (25%)
Rajnikant Omkarmal Agarwal(Nephew of Shri Chamapalal and Spouse of Ms Varsha)	-	-	160,000 (100%)
Shankarlal Gopiram Agarwal (Director of OOL)	-	-	4, 50,000 (100%)
Subhashchandra Omkarmal Agarwal(Director of OOL)			1, 60,000(100%)
Total	Nil	1,25,000 (12%)**	785,000 (88%)

** Total shareholding of Archanadevi ,Manjulata, Rajnikant and Shankarlal

Since deceased

36.11. I also note that all designated directors had taken pre-clearance from the company for the trades done in their and their dependents name in the shares of OOL from the company. It is also noted that company has issued pre clearance to the directors which was valid even on the window closure period which could have enabled directors to trade in the shares of OOL during window closure which is against the spirit of PIT Regulations. Hence I am not inclined to consider pre clearance obtained by the noticees as compliance under PIT Regulations.

- 36.12. Based on above tables, it is amply clear that noticees had started selling their shares prior to the UPSI period and they continued to sell their shareholding post UPSI as well. I note that 44% of shareholding of noticees was sold during UPSI period and remaining 66% was sold either prior to UPSI period or post UPSI period. It is also interesting to note that other relatives of the noticees were also selling their shareholding post UPSI period which indicates that trading by noticees was not entirely based on insider information of UPSI.
37. Sumit had sold his entire shareholding before UPSI period, hence charges levelled against him does not stand established.
38. Noticees have cited the judgment delivered by *Hon'ble SAT in the case of Manoj Gaur Vs SEBI (Appeal No. 64 of 201) in the scrip of Jaiprakash Associates Limited*, in this regard in the cited order Mrs Urvarshi Gaur and Mr Sameer Gaur were active traders in the stock Market whereas in the current proceedings except Champalal all other noticees were inactive and trades done by them during the investigation period was only in the scrip of OOL. Secondly, I note that Mrs Urvarshi Gaur had sold a small portion of her total shareholding during UPSI period, however in this case Varsha and Shashidevi had sold their 100% shareholding during UPSI period and others had sold substantial portion of their shareholding during UPSI. Hence the facts of the cited case do not fit in the current proceedings.
39. In the facts and circumstance of the case and referring to my findings in the preceding paragraphs, I note that though the Noticee(s) Satyabhama, Varsha, Shashidevi, Krishnadevi, Prashant and Ronit have been concluded as insiders and deemed to be connected, though there is no material available on record to show that they were having access to UPSI and trading done by them was based on UPSI Period -1 and Period 2. However, I note that there are several circumstantial evidence which suggest that all other Noticees had acted along with Champalal, who was the Chairman and Managing Director of the company. All the Noticees are related to each other and many of them stays at the same address. Here I would like to refer the submission made by the promoters of OOL to the investigation department of SEBI wherein they had stated the following:
- "We had started the company in the year 1995 mainly for the purpose of tapping the overseas market. But we had incurred huge loss in the year 1999 to 2001, due to which we had to stop our overseas operations. Further, due to inability to pay our debts to banks, the company had become a lost company in the year around 2001. Since then, we are trading only in the local market with very limited profit margin. As the goal of the company got demolished, we had no more attachment and enthusiasm left to hold in the company. Further, as the entire textile industry was facing very stiff competition from local as well as international players and there was a huge fluctuation in the raw materials market, we*

had to face very high liquidity problems in our main core business. And we had no option to raise the long term funds other than our own pockets, therefore, our family had decided to offload the stake in the company in the open market”.

40. I note here that in the span of six months, all the promoters of the company had sold their shareholding in the open market and while selling shares on several days, these promoters had also sold the shares when trading window was closed due to availability of UPSI to the directors and apparently to their family members as well and they continue to sell their shareholding till entire shareholding becomes zero.
41. Also upon perusal of the trading pattern of the noticees, I note that noticees who had decided to offload their entire shareholding and exit from the business had not considered the price of the share while selling as price range on which shares were sold was Rs 37-121 which is quite sporadic. The average price at which shares were sold by the noticees was Rs 53.25.
42. In the light of the above, I conclude that noticees Champalal, Prashant, Krishnadevi, Satyabhama, Shashidevi, Ronit and Varsha were trading in the shares of OOL for the period of six months and in this period on two occasions while they were having access to UPSI, they continue to deal in the shares therefore they are liable for penalty under Section 15G of the SEBI Act.

Issue V: Findings with regard to violation of code of conduct by Satyabhama

43. I find from the Clause 3.2.2 and 3.2.5 of Code of Conduct under Schedule I read with Regulation 12(1) of PIT Regulation that there is the condition for the employees/directors/officers/designated employees of the company that they shall not trade in the company's shares during trading window closure and they shall conduct all their dealing only in a valid trading window. I note that in the above provision of law there is no mention of dependents of Directors/Officers/designated employees.
44. In view of the above, Satyabhama (wife of a director of the company) do not fall under the stipulation under Clause 3.2.2 and 3.2.5 of Code of Conduct under Schedule I read with Regulation 12(1) of PIT Regulation and therefore the violation do not stand established.

45. Issue: VI: Does the violation, if any, attract monetary penalty under Section 15G of SEBI Act, 1992 on Champalal, Prashant, Krishnadevi, Satyabhama, Shashidevi, Ronit and Varsha:

As concluded above, Champalal, Prashant, Krishnadevi, Satyabhama, Shashidevi, Ronit and Varsha are liable for penalty under 15G of the SEBI Act, 1992.

Relevant provisions of the SEBI Act, 1992:

Penalty for insider trading.

15G. If any insider who,—

- (i) either on his own behalf or on behalf of any other person, deals in securities of a body corporate listed on any stock exchange on the basis of any unpublished price-sensitive information; or
- (ii) Communicates any unpublished price-sensitive information to any person, with or without his request for such information except as required in the ordinary course of business or under any law; or
- (iii) Counsels, or procures for any other person to deal in any securities of anybody corporate on the basis of unpublished price-sensitive information,

shall be liable to a penalty of twenty five crores or the three times of profit made out of insider trading whichever is higher.

Issue VII: If so, what should be the quantum of monetary penalty;

46. While determining the quantum of penalty under section 15G, it is important to consider the factors stipulated in section 15J of the SEBI Act, which reads as under:-

"15J- Factors to be taken into account by the adjudicating officer

While adjudging quantum of penalty under section 15-1, the adjudicating officer shall have due regard to the following factors, namely:-

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

47. It is difficult, in cases of such nature, to quantify exactly the disproportionate gains or unfair advantage enjoyed by the Noticees and the consequent losses suffered by the investors. I have noted that the investigation report also does not dwell on the extent of specific gains or loss avoided by the noticees and defaults are not repetitive in nature.

ORDER

48. In view of the above, after considering all the facts and circumstances of the case, the material available on record, the submission made by the Noticee in exercise of the powers conferred upon me under 15-I of the SEBI Act read with Rule 5 of Rules, I hereby impose a monetary penalty (payable jointly and severally) under Section 15G of SEBI Act, 1992 of Rs.

1,00,00,000/- (Rupees One crore only) on Noticee(s) Champalal, Varsha, Shashidevi, Krishnadevi, Ronit, Prashant and Satyabhama. In my view, the said penalty is commensurate with the violation committed by the Noticees in this case.

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

Account No. for remittance of penalties levied by Adjudication Officer

Bank Name	State Bank of India
Branch	Bandra-Kurla Complex
RTGS Code	SBIN0004380
Beneficiary Name	SEBI – Penalties Remittable To Government of India
Beneficiary A/c No	31465271959

50. The Noticees shall forward said Demand Draft or the details/confirmation of penalty so paid through e-payment to the General Manager (Enforcement Department - DRA- II) of SEBI. The format for forwarding details/confirmations of e-payments shall be made in the following tabulated form as provided in SEBI Circular No. SEBI/HO/GSD/T&A/CIR/P/2017/42 dated May 16, 2017 and details of such payment shall be intimated at e-mail ID- tad@sebi.gov.in:

Date	
Department of SEBI	
Name of Intermediary/other Entity	
Type of Intermediary	
SEBI Registration Number (if any)	
PAN	
Amount (in Rs.)	
Purpose of payment (Penalty)	
Bank Name and Account Number from which payment is remitted	
UTR No	

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

Date: August 28, 2018
Place: Mumbai

SAHIL MALIK
ADJUDICATING OFFICER