

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
(ADJUDICATION ORDER NO. AO/SBM/EAD-1/12/2019)

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. Utsav Pathak

(PAN No- ANBPP6287G)

C-27/28, Patel Park Society,
Opp. P& T Quarters,
Santacruz (East),
Mumbai-400029

In the matter of

Insider trading in the scrip of CRISIL Ltd

BACKGROUND OF THE CASE

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') conducted an investigation into the dealings in the scrip of M/s CRISIL Ltd (hereinafter referred to as '**CRISIL**'/ '**Company**') by Mr. Utsav Pathak (hereinafter referred to as '**Noticee**'/ '**Tipper**') and also the trading/dealings in the scrip of CRISIL by other persons who were allegedly related to the Noticee during the period November 05, 2012 to August 08, 2013 (hereinafter referred to as '**investigation period**'). The connection of the Noticee with his relatives who have allegedly traded / dealt in the scrip of CRISIL during the investigation period is mentioned as under:--

- a) The sister of the Tippee / Noticee (hereinafter referred to as '**Tippee -1**') had allegedly traded in the scrip of CRISIL during the above mentioned investigation period.
- b) The mother in law of Tippee 1 (hereinafter referred to as '**Tippee 2**') had allegedly traded in the scrip of CRISIL during the above mentioned investigation period.
- c) The husband of Tippee 1 and the son of Tippee 2 (hereinafter referred to as '**Tippee 3**') had dealt in the scrip of CRISIL during the above mentioned investigation period by allegedly funding Tippee 2 towards her purchases in the shares of CRISIL.
- d) The husband of Tippee 2 and the father in law of Tippee 1 (hereinafter referred to as '**Tippee 4**') had allegedly dealt in the scrip of CRISIL during the above mentioned investigation period by placing the orders in the scrip of CRISIL on behalf of Tippee 2.

Therefore, in the context of the present adjudication proceedings, Tippee 1 to 4 are also hereinafter collectively referred to as '**relatives of the Noticee**' or '**Tippees**'.

- 2. CRISIL is a Credit Rating Agency registered with SEBI and the shares of the company are listed on the Bombay Stock Exchange ('**BSE**') and the National Stock Exchange ('**NSE**'). On June 03, 2013, McGraw Hill Asian Holdings (Singapore) (hereinafter termed as the '**acquirer**') along with its persons acting in concert namely, McGraw Hill Financial Inc, S & P India LLC and Standard & Poor International LLC (hereinafter referred to as '**PACs**') made an announcement of open offer to acquire upto 1,56,70,372 equity shares of CRISIL, representing 22.23% of the total equity shares outstanding in CRISIL, at a price of Rs. 1210 per share. The tender period under the open offer was from July 24, 2013 to August 06, 2013. The total number of shares tendered in the Open Offer was 1,06,23,059 shares, which constituted 15.07% of the total share capital of the company. Consequently, the shareholding of the promoters of CRISIL increased from 52.77% to 67.82%

of the total share capital of the company. It is observed that as on the date when the corporate announcement pertaining to the above mentioned open offer was made to the stock exchanges i.e. on June 03, 2013, the scrip price of CRISIL opened at the upper price band of Rs. 1129.90 i.e. 20% higher than the previous day's closing price.

3. During the course of investigations by SEBI, it was revealed that the voluntary open offer for the acquisition of shares of CRISIL by the acquirer along with the PAC was managed by Morgan Stanley India Company Private Limited (hereinafter referred to as '**Morgan Stanley**'), as the Merchant Banker to the open offer. On May 01, 2013, Morgan Stanley was formally engaged by McGraw Hill to work on the open offer assignment (the assignment was termed as '**Project Lilly**') and an engagement letter was also signed by the parties to this effect. The aforementioned open offer of CRISIL was a price sensitive information (PSI) within the meaning of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as '**PIT Regulations, 1992**'). The Noticee / Tipper, who was employed with Morgan Stanley during the relevant period of the open offer, was privy to the price sensitive information pertaining to the open offer as he was directly involved with the activities pertaining to the said open offer. The same was also confirmed by Morgan Stanley in its communication with SEBI. During the course of investigations, Mr. Kamal Yadav, the Managing Director of Morgan Stanley (Investment Banking Division), mentioned that he along with the Noticee/Tipper had worked on the 'Project Lilly assignment'. Mr Kamal Yadav also mentioned that all the employees of Morgan Stanley who had worked on the above project would have come to know of the open offer of CRISIL on May 01-02, 2013. Pursuant to the investigations conducted by SEBI and the observations/findings made in the Investigation Report, it is alleged that the Tipper/Noticee who was privy to the PSI pertaining to the open offer of CRISIL had communicated the PSI to the Tippees, which the

Tippees had allegedly used to trade/deal in the shares of CRISIL during the investigation period.

4. During the course of investigations, it was revealed that Tippee 1 is the sister of the Noticee/Tipper and Tippee 2 is the mother-in-law of Tippee 1. As already stated, as per the findings of the investigation, both Tippee 1 and Tippee 2 have traded in the scrip of CRISIL during the investigation period. It was also noted that Tippee 2 had received funds from her son i.e. Tippee 3 (who is the husband of Tippee 1) on May 23, 2013, which enabled Tippee 2 to fulfil her pay-in obligations towards her purchases of shares of CRISIL during May 2013. Further, it emerged during the investigations that Tippee 4 (the husband of Tippee 2 and father-in-law of Tippee 1) had allegedly placed the orders in the scrip of CRISIL on behalf of Tippee 2.
5. In view of the above observations/findings, it is alleged that the Noticee /Tipper had communicated the price sensitive information pertaining to the open offer of CRISIL to his sister i.e. Tippee 1 and both his sister and Tippee 2 (the mother in law of Tippee 1) had traded in the scrip of CRISIL during the investigation period and made a profit of Rs. 37,98,969. The aforesaid trading/dealings in the scrip of CRISIL by the Tippees is alleged to be in the nature of Insider Trading, which was aided and abetted by the Noticee / Tipper who had allegedly communicated the price sensitive information pertaining to the impending open offer of CRISIL to them. Therefore, it is alleged that the Noticee / Tipper has violated the provisions of Regulation 3(ii), Clause 2.0 and 2.1 of Schedule I read with Regulation 12(1) of the PIT Regulations, 1992 read with Regulation 12(2) of SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as '**PIT Regulations, 2015**'). In view of the above reasons, adjudication proceedings have been initiated against the Noticee/Tipper under the provisions of sections 15G(ii) and 15HB of the SEBI Act, 1992 (hereinafter referred to as '**SEBI Act**').

6. During the course of the present proceedings, it was observed that the Tippees who have allegedly traded/dealt in the scrip of CRISIL during the investigation period had filed settlement applications in terms of SEBI (Settlement of Administrative and Civil Proceedings) Regulations, 2014, which has been repealed and replaced with SEBI (Settlement Proceedings) Regulations, 2018, without admitting the findings of the fact and conclusions of law, proposing to settle, through the settlement order, the pending proceedings initiated against the Tippees by SEBI under section 11 B r/w section 11(4) of SEBI Act and also the pending adjudication proceedings initiated against them in the said matter. Accordingly, settlement orders were passed against the Tippees in the matter disposing of the aforesaid proceedings against the Tippees. The Noticee/Tipper has chosen not to settle the present proceedings initiated against him for the alleged violation of the provisions of Regulation 3(ii), Clause 2.0 and 2.1 of Schedule I read with Regulation 12(1) of the PIT Regulations, 1992

APPOINTMENT OF ADJUDICATING OFFICER

7. The undersigned was appointed as the Adjudicating Officer in the matter under section 19 r/w section 15-I(1) of the SEBI Act and rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as 'Adjudication Rules') to conduct the adjudication proceedings in the manner specified under Rule 4 of the Adjudication Rules read with sections 15I(1) and 15-I(2) of the SEBI Act, and if satisfied, impose penalty, as deemed fit, in terms of Rule 5 of the Adjudication Rules and Sections 15G(ii) and 15HB of the SEBI Act.

SHOW CAUSE NOTICE, REPLY AND HEARING

8. A Show Cause Notice ('SCN') ref SEBI/EAD-3/SBM/19041/2017 dated August 09, 2017 was initially issued to the Noticee in the said matter. However, due to an inadvertent error that occurred in the SCN dated August

09, 2017, the Noticee was issued another Show Cause Notice vide ref no. SEBI/EAD-3/SBM/13583/2018 dated April 27, 2018 under the provisions of Rule 4(1) of the Adjudication Rules to show cause as to why an inquiry should not be initiated against the Noticee and why penalty should not be imposed on him under the provisions of Sections 15G(ii) and 15HB of the SEBI Act, for the aforementioned alleged violation of the provisions of law by the Noticee. During the course of the proceedings, it was specifically clarified to the Noticee that the SCN dated April 27, 2018 issued to the Noticee supplants the previous SCN dated August 09, 2017.

9. Briefly, the allegations levelled in the SCN dated April 27, 2018 against the Noticee are as under:--
 - a. On June 03, 2013, CRISIL made a corporate announcement of a voluntary open offer for acquisition of up to 1,56,70,372 equity shares of CRISIL from the public shareholders by McGraw-Hill Asian Holdings(Singapore) along with its persons acting in concert (PACs) namely, McGraw Hill Financial Inc. ('McGraw Hill'), S&P India LLC ('S&P India') and Standard & Poor International LLC ('S&P International'). On the said date of the corporate announcement made by CRISIL, the scrip of CRISIL opened at the upper price band of Rs. 1129.90 i.e. a variation of 20% *vis a vis* the previous trading day's closing price was witnessed.
 - b. SEBI, on the basis of a reference received from NSE relating to suspected insider trading by certain persons/entities in the scrip of Crisil, conducted an investigation to ascertain whether there was any violation of the provisions of SEBI Act, 1992 and PIT Regulations due to the trading activity of certain persons / entities in the scrip of Crisil during the investigation period from November 05, 2012 to August 08, 2013. It is observed that the Voluntary open offer for acquisition of Crisil was managed by Morgan Stanley India Company Private Limited (hereinafter 'Morgan Stanley'), the Merchant Banker to the open offer whose

employee viz. Mr. Utsav Pathak i.e. the Noticee, who worked on the open offer project was privy to the price sensitive Information of the aforementioned Voluntary open offer. It was alleged in the SCN that the Tippees were related/connected to the Noticee and the details of such connections have been elucidated in the SCN. It is alleged in the SCN that due to such connections with the Noticee, the Tippees have traded in the scrip of Crisil during the period when the price sensitive information on the open offer announcement was unpublished. It is further alleged that the Tippees also made a profit from their aforementioned trades in Crisil during the period referred above.

- c. It is observed that Mr. Kamal Yadav, Managing Director, Investment Banking division of Morgan Stanley in his statement dated August 28, 2015 (Annexure-C) submitted that he and the Noticee worked on the project relating to the Open offer proposal of McGraw Hill. He submitted that Morgan Stanley was formally engaged by McGraw Hill on May 01, 2013 to work on the open offer project. He further submitted that all the Morgan Stanley employees who were working on the project would have come to know of the open offer of CRISIL on May 01-02, 2013.
- d. Mr. Kamal Yadav also submitted that the Noticee was a member of the global capital markets team providing execution support on the open offer. It was mentioned that Noticee, as part of the team, was involved in various activities pertaining to the open offer including, preparation of documents, various internal and external transaction related documents, including analysis of the target company's (Crisil's) shareholder base, pricing analysis of various historical voluntary open offers especially by multinational companies, analysis of share price performance of Crisil on an absolute and relative basis and pricing analysis for the said open offer. Thus, it is alleged in the SCN that the Noticee was in the knowledge of the impending open offer and was also privy to the probable pricing of the

open offer, as he directly worked on the open offer project and its pricing analysis.

- e. It was alleged in the SCN that Noticee is related to Tippee 1 and Tippee 2, both of whom have traded in the scrip of Crisil during the period when the said information on the open offer of CRISIL was unpublished and price sensitive. The two persons mentioned above had made profit from the said trades. The price-volume analysis of Crisil during the investigation period, relevant corporate announcement made by Crisil, information relating to unpublished price sensitive information, period during which the information was unpublished, relationship of the Noticee with Tippee 1 and Tippee 2 and the trading details and trading pattern of Tippee 1 and 2 during the relevant period have been mentioned in the SCN.
- f. In terms of regulation 2(ha)(v) of PIT Regulations, 1992, announcements relating to amalgamation, mergers or takeovers are inter alia considered as price sensitive information (PSI). During the investigation period, McGraw-Hill and its PACs made a voluntary open offer on June 03, 2013 to acquire up to 15,670,372 (22.23%) shares of Crisil at Rs. 1210 and the same was an unpublished price sensitive information (hereinafter referred to as "UPSI") before the said announcement.
- g. The chronology of events leading to the open offer was mentioned in the SCN. After taking into consideration the chronology of events in the SCN, it is alleged that the Price Sensitive Information pertaining to open offer had come into existence on May 01, 2013 after the engagement letter was signed between Morgan Stanley and McGraw Hill. Further, the corporate announcement of voluntary open offer was made to the stock exchanges by Morgan Stanley on June 03, 2013. In view of the same, the period of May 01, 2013 to June 03, 2013 is considered as the period when the price sensitive information of Open offer was unpublished and price sensitive i.e. UPSI period in the context of the proceedings.

- h. In the SCN, it was mentioned that Morgan Stanley vide its email dated April 29, 2015, had submitted a list of employees who were privy to the price sensitive information w.r.t the 'Open Offer' project. Further, it was observed from the statement dated August 28, 2015 furnished by Mr. Kamal Yadav, the MD of Investment banking division of Morgan Stanley that he along with Mr. Utsav Pathak had worked on the open offer project of CRISIL. As per the list of employees submitted by Morgan Stanley, it is noted that Noticee was a key employee who was closely associated with the open offer project and therefore, it is alleged that the Noticee was a 'connected person' within the meaning of PIT Regulations, 1992. As the Noticee is a person connected with the company and by virtue of his business / professional relationship the Noticee was privy to the price sensitive information of open offer by McGraw- Hill, the Noticee is an 'insider' within the meaning of PIT Regulations, 1992.
- i. It is observed during the course of Investigation that Tippee 1 is the sister of the Noticee and Tippee 1 is also the daughter-in-law of Tippee 2. As already mentioned above, both Tippee 1 and Tippee 2 had purchased significant quantities of shares of Crisil during the UPSI period and both the persons sold the shares of Crisil immediately after the price sensitive information was disseminated to the stock exchange. Thus, investigation report had alleged that the Noticee was related to Tippee 1 and Tippee 2.
- j. From the trading pattern of Tippee 2, it is alleged that 15000 shares of Crisil were purchased in the account of Tippee 2 during the UPSI period i.e. May 1, 2013 to June 3, 2013. Thereafter, Tippee 2 sold the entire 15000 shares of Crisil on June 04, 2013 i.e. on the very next day after the announcement of open offer was made public and made a profit of Rs. 30,14,217.
- k. From the trading pattern of Tippee 1 in the scrip of Crisil, it is alleged that 4202 shares of Crisil were purchased by Tippee 1 during the UPSI period and thereafter, Tippee 1 sold the entire 4202 shares of Crisil on June 03,

2013 i.e. immediately after the announcement of open offer and made a profit of Rs. 7,84,752. It is observed that Tippee 1 had traded in the scrip of Crisil only on this instance during the year 2013.

- I. From the observations made above and also from the trading pattern in the scrip of Crisil by both Tippee 1 & Tippee 2, it was alleged in the SCN that the said persons had an access to / were in possession of UPSI (i.e. Open offer Announcement), which was allegedly communicated to them by the Noticee. It is alleged in the SCN that there is strong preponderance of probability to indicate that the Noticee (who was an insider and who was privy to the UPSI) had communicated the price sensitive information about the impending open offer of CRISIL by McGraw and PACs to Tippee 1 and Tippee 2, which motivated them to buy/sell shares of Crisil during the UPSI period. As already stated, it was alleged in the SCN that the Noticee was also related to both the persons i.e Tippee 1 & 2, details of such relationship were brought out in the SCN. As the Noticee has allegedly communicated the UPSI pertaining to the Open Offer to the above persons and on the basis of such UPSI, the aforesaid persons had also allegedly traded in the shares of Crisil during the relevant period, it was alleged in the SCN that the Noticee (being an insider as per regulation 2(e) of PIT Regulations, 1992) has violated the provisions of Regulation 3(ii) of PIT Regulations, 1992 and Clause 2.0 and 2.1 of Schedule I read with Regulation 12 (1) of SEBI (Prohibition of Insider Trading) Regulations, 1992.
- m. In view of the above, Noticee was required to Show Cause as to why an inquiry should not be held against him in terms of Rule 4 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 read with Section 15 I of the SEBI Act and why penalty, if any, should not be imposed on him under the provisions of sections 15 G (ii) & 15 HB of the SEBI Act.

10. In response to the SCN, the Noticee vide his letters dated August 22, 2017, September 20, 2017, May 21, 2018, July 10, 2018 and July 22, 2019 made his submissions, details of which are as follows:-

- a. The Noticee completely denies the allegation made against him in the SCN and respectfully submits that he has always performed his professional duties with utmost honesty, sincerity and discipline, and his commitment has been acknowledged by his employer as well. The allegation made against the Noticee in the SCN is an act that is completely out of character for him and it does not stand to reason that the Noticee would jeopardize his entire professional career by acting in such a callous manner.
- b. Noticee also categorically confirmed that he has not, whether directly or indirectly, executed any trades in the CRISIL scrip at any time.
- c. Noticee mentioned that Tippee 1 is his sister and she is an award winning financial journalist. A graduate of Columbia Journalism School, she worked with the newspaper Mint, for the period 2007 - 2013. She is married to Tippee 3. The Noticee mentioned that his sister is an independent professional working as a journalist in the Business and Finance sector.
- d. Given her professional pursuits, Noticee stated that his sister is an independent woman working in the financial journalism space and does not consult the Noticee in any of her financial matters, including her investment decisions.
- e. In so far as Tippee 3 is concerned, Noticee stated that he is his brother in law, who is also an independent professional in the financial services industry and a well-known Indian private equity investor. Noticee stated that both Tippee 1 and Tippee 3 are well known amongst the financial services industry due to their professional pursuits.
- f. On account of certain family matters, Noticee mentioned that he does not maintain a very close relationship with his sister i.e Tippee 1. As far as

other family members are concerned viz. Tippee 2 to 4, Noticee has stated that he has interacted with them only on a handful of occasions and has not been in regular communication with them.

- g. Noticee confirmed that there has not been any financial transaction between him and the Tippees till date, and particularly during the period May, 2013 - June, 2013.
- h. Further, Noticee submitted that there does not exist any 'available evidence', as has been indicated in the investigation report, to conclude that the Noticee had communicated the UPSI and the allegation is based entirely on assumption and surmise. In fact, the statement made by Mr. Kamal Yadav (annexed as Annexure C to the SCN) also merely provides a description of the work undertaken by the Noticee as a member of the team working on the CRISIL Open Offer and does not indicate or state that the Noticee has misused the information or passed on the information, directly or indirectly, to any person whatsoever.
- i. Noticee also drew attention to the statement dated August 11, 2015 furnished by Tippee 4 whereby Noticee re-produced the following statement of Tippee 4, "In view of the strained relations between my son and daughter - in - law since last 3-4 years, the two families have not been in speaking terms with each other." In the same statement, Tippee 4 also mentioned that he "had no knowledge" of where the Noticee worked.
- j. Additionally, Noticee also enclosed a letter dated September 22, 2015 sent by Tippee 4 to SEBI wherein Tippee 4 had provided a cogent and detailed explanation justifying the trades undertaken by Tippee 2 in the scrip of CRISIL during May - June, 2013 and had also noted that there was no rational reason for his daughter - in law's brother i.e the Noticee to try and help them with any privileged information at the cost of jeopardising his own career.

- k. In the aforementioned letter dated September 22, 2015 of Tippee 4 to SEBI, which was submitted by the Noticee in his reply, Tippee 4 had stated that he had (through the account held by Tippee 2) traded in small and mid - cap listed companies and had decided to purchase CRISIL shares after detailed market research. He had also specifically mentioned that the investment in CRISIL was intended to be a long term investment and that they were compelled to sell the investment in CRISIL in order to meet with rapidly increasing margin calls and to maintain further substantial liquidity reserves due to their increasing position in currency futures. The Daily Activity Statements dated May 29, 2013 and May 31, 2013 for trading in currency futures, which were submitted by Tippee 4, also indicate that their account had a deficit margin of approximately INR 2-3.5 lakhs.
- l. In view of the above, Noticee stated that not only was Tippee 4 familiar with the securities market, but also that he had conducted his own independent research prior to investing in CRISIL in the account of Tippee 2 and had thereafter sold his investment in CRISIL due to his trading requirements. Therefore the Noticee mentioned that the SCN has erred in making serious allegations against him without presenting any evidence to substantiate such allegation, while completely ignoring the trading rationale provided by Tippee 4, details of which is mentioned above.
- m. Noticee also drew reference to the submissions made by Tippee 1 in her email responding to SEBI summons dated October 27, 2016. Noticee mentioned that his sister i.e. Tippee 1 had categorically stated that she had "never discussed any deals that my brother is or was working on with him under any circumstances" and also that the Noticee's "interaction with my husband's family has been bare minimum since his academic studies at a distant hostel from 2005 onwards."

- n. It was stated by the Noticee that his sister i.e Tippee 1 is an award - winning journalist and author, and has recently published a book "Godman to Tycoon: The Untold Story of Baba Ramdev" based on extensive research as well as interviews she conducted with various prominent individuals. As part of her profession, she has developed a wide network of contacts and sources in the financial industry and in the aforementioned email, she has in fact, clearly acknowledged that her 'sources in the media' had told her that CRISIL was doing extremely well and 'Something was about to happen over the next several weeks to bring a great boost to the company'.
- o. Noticee also brought to attention about an interview with Mr. Ajay Garg (Senior Fund Manager, Birla Sun Life at the time of publication) which was published on Feb 11, 2013 wherein Mr. Garg had quoted that, "...the promoters of MNCs like Levers, Bosch, ABB, Alfa Laval, Pfizer, Nestle, GSK Consumer, CRISIL, among others have been looking to steadily increase their stake through buy-back/open offer of shares at a substantially high premium to market price..." A copy of the interview was also enclosed as Annexure 12 by the Noticee in his submissions.
- p. Therefore, it is likely that rumors relating to a potential open offer by the promoters of CRISIL was doing the rounds in the media and as stated by Tippee 1 herself, she had also received such information from her sources in the market.
- q. Noticee submitted that in view of the categorical submission made by his sister i.e. Tippee 1 that she did not receive any UPSI from the Noticee, the SCN does not provide any explanation for ignoring the statements made by Tippee 1 (as to her motivation for trading in CRISIL) and instead alleges breach of insider trading by the Noticee without any evidentiary basis.
- r. In an email dated January 12, 2016 sent by Tippee 3 to SEBI (enclosed as Annexure **13** for ease of reference), Tippee 3 had categorically stated

that Noticee had not provided any input in respect of any of the investment decisions made by Tippee 3. It was mentioned by Tippee 3 that Noticee's contact with his father (i.e. Tippee 4) who used to trade in his mother's account (i.e. Tippee 2) has been even more rare.

- s. Noticee mentioned that in order for SEBI to rely on circumstantial evidence, "the circumstances must point unerringly to the conclusion, and must not admit of any other explanation"" even if the proceeding is a civil and not a criminal one. It is also recognized that circumstantial evidence and probabilities cannot be used to outweigh direct evidence where it exists
- t. Therefore, in the absence of any specific evidence indicating communication of UPSI, the mere existence of a relationship between the Noticee and Tippee 1 (and through her, with Tippee 2) cannot be relied upon to establish communication of UPSI by the Noticee.
- u. Noticee has submitted that in the present case as well, in the absence of any definitive evidence demonstrating that the Noticee had communicated price sensitive information pertaining to the CRISIL's Open Offer, the relationship of brother and sister i.e. between the Noticee and Tippee 1 cannot be the sole reason for the allegation made against the Noticee in the SCN.
- v. Hence, the Noticee has mentioned that in the present case, there exists a plethora of evidence clearly pointing towards his innocence and statements/ submissions made by multiple parties confirming the fact that the Noticee had not provided any inputs on the CRISIL's Open Offer to Tippee 1 and 2 also supports his submissions. Therefore, the Noticee submitted that due to lack of direct evidence, the reliance that has been placed in the observations made in the SCN on the basis of assumptions and suppositions is misguided and flawed.

11. In support of his submissions, the Noticee has also relied upon the following orders of Hon'ble SAT and the observations of Hon'ble SAT made therein.

- a. *Samir Arora vs. SEBI.*
- b. *Sterlite vs. SEBI.*
- c. *Dilip Pendse v. SEBI.*
- d. *Imperial Construction Financial Services v. SEBI*
- e. *Manoj Gaur v. SEBI*

12. In the interest of natural justice, opportunity of personal hearing was provided to the Noticee in the matter on September 11, 2017 and August 09, 2018. During the course of the hearing, the representatives of M/s Cyril Amarchand Mangaldas, the authorized representatives on behalf of the Noticee (hereinafter referred to as '**the ARs**') appeared on behalf of the Noticee and made the following submissions:-

- a. The ARs mainly reiterated the earlier submissions made by the Noticee vide his letters dated August 22, 2017, September 20, 2017 and May 21, 2018.
- b. An affidavit dated September 20, 2017 enumerating the submissions of the Noticee was also submitted.
- c. During the course of the hearing which was held on August 09, 2018, it was clarified to the ARs that the SCN dated April 27, 2018 which was issued to the Noticee supplants the previous SCN dated August 09, 2017 that was issued to him in the said matter.
- d. The ARs were granted time till August 29, 2018 to make additional submissions, if any in the matter.

CONSIDERATION OF ISSUES AND FINDINGS

13. I have carefully perused the facts and circumstances of the case, the documents/material available on record, including the investigation report submitted in the matter and the various submissions made by the Noticee

during the course of the current proceedings. It is alleged that the Noticee/Tipper has communicated the price sensitive information pertaining to the open offer of CRISIL to his relatives (i.e the Tippees) and based on the information that was communicated by the Noticee / Tipper, the Tippees had allegedly traded/dealt in the scrip of CRISIL during the investigation period. Therefore, it is alleged that Noticee has violated the provisions of Regulation 3(ii), Clause 2.0 and 2.1 of Schedule I read with Regulation 12(1) of PIT Regulations, 1992 read with Regulation 12(2) of the PIT Regulations, 2015.

14. In the context of the present proceedings, it is imperative to establish the following :-

- a) There was an Unpublished Price Sensitive Information (UPSI), which existed and the UPSI had significant impact on the scrip price of CRISIL;
- b) The Noticee was a 'connected person' within the meaning of the PIT Regulations, 1992 and therefore, he was an 'insider' as per the PIT Regulations;
- c) The relatives of the Noticee i.e the Tippees who have allegedly traded/dealt in the scrip of CRISIL during the UPSI period are 'persons deemed to be connected' within the meaning of the PIT Regulations, 1992;
- d) The Noticee has communicated the price sensitive information pertaining to the open offer of CRISIL to his relatives/Tippees based on which the Tippees had traded/dealt in the scrip of CRISIL during the UPSI period.

15. Before dealing with the aforesaid charges in seriatim, the relevant legal provisions of law, the contraventions of which have been alleged in this case against the Noticee is mentioned as under:

PIT Regulations, 1992

Definition

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;*

Prohibition on dealing, communicating or counselling on matters relating to insider trading.

Regulation 3. No insider shall—

- (ii) communicate or counsel or procure directly or indirectly any unpublished price sensitive information to any person who while in possession of such unpublished price sensitive information shall not deal in securities.*

Code of internal procedures and conduct for listed companies and other entities.

Regulation 12(1) All listed companies and organisations associated with securities markets including:

- (a) the intermediaries as mentioned in section 12 of the Act, asset management company and trustees of mutual funds ;*

....

shall frame a code of internal procedures and conduct as near thereto the Model Code specified in Schedule I of the said Regulations.

Schedule I Part B Model Code Of Conduct For Prevention Of Insider Trading For Other Entities:

2.0 Preservation of “Price Sensitive Information”

2.1 Employees/directors/partners shall maintain the confidentiality of all Price Sensitive Information. Employees/directors/partners must not pass on such information directly or indirectly by way of making a recommendation for the purchase or sale of securities.

PIT Regulations, 2015

12. (2) *Notwithstanding such repeal,— (a) the previous operation of the repealed regulations or anything duly done or suffered thereunder, any right, privilege, obligation or liability acquired, accrued or incurred under the repealed regulations, any penalty, forfeiture or punishment incurred in respect of any offence committed against the repealed regulations, or any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, shall remain unaffected as if the repealed regulations had never been repealed; and*
- (b) anything done or any action taken or purported to have been done or taken including any adjudication, enquiry or investigation commenced or show-cause notice issued under the repealed regulations prior to such repeal, shall be deemed to have been done or taken under the corresponding provisions of these regulations;*

UPSI and its significance w.r.t the scrip of CRISIL.

16. It is observed that Morgan Stanley had made the announcement to BSE on June 03, 2013 at 8:37 am (before the opening of the stock market) regarding the Voluntary Open Offer for acquisition of up to 1,56,70,372 shares of CRISIL by the Acquirer and the PACs. In terms of Regulation 2(ha)(v) of the PIT Regulations, 1992, announcement relating to amalgamation, mergers or takeovers are *inter-alia* considered as price sensitive information. In the instant matter, it is noted that the Merchant Banker viz. Morgan Stanley had made the announcement of the open offer by the Acquirer and the PACs on

June 03, 2013 to the stock exchanges (before the market hours). I note that, the scrip price of CRISIL witnessed upward price movement immediately after the information on the voluntary open offer of CRISIL was disseminated to the stock exchanges. The scrip of CRISIL witnessed 20% upward movement on June 03, 2013 i.e. on the day when the price sensitive information was disseminated to stock exchanges. It is noted that the scrip of CRISIL had closed at Rs. 941.6 on NSE on May 31, 2013 i.e. the previous trading day and on June 03, 2013, after the information on the open offer was disseminated to the stock exchanges, the scrip of CRISIL opened at Rs 1129.9 on NSE. Thus, the price of the scrip opened 20% higher due to the public announcement, which was perceived to be a positive announcement. After the dissemination of the PSI to the stock exchanges, the scrip of CRISIL was hovering in the region of Rs 1100 – Rs 1165 during the entire month of June 2013. The following table summarizes the price movement in the scrip of CRISIL after the information on the open offer of CRISIL was disseminated to the stock exchanges:-

Date-Time	Announcement/News	Price Impact/Shares Traded	Remarks																																
June 03, 2013 @ 08:37	Voluntary Open Offer for Acquisition of Equity Shares: Morgan Stanley India Company Private Limited ("Manager" to the voluntary open offer) has informed BSE about Voluntary Open offer for acquisition of up to 15,670,372 equity shares from public shareholders of CRISIL Limited ("Target Company• ") by McGraw-Hill Asian Holdings (Singapore) Pte. Ltd. (the "Acquirer• ") along with McGraw Hill Financial, Inc. ("McGraw Hill"), S&P India LLC ("S&P India• ") and Standard & Poor's International LLC ("S&P International• ")	31/05/2013 Friday BSE <table border="1"> <tr> <th>O</th><th>H</th><th>L</th><th>C</th></tr> <tr> <td>935.95</td><td>956</td><td>934.1</td><td>938.85</td></tr> </table> NSE <table border="1"> <tr> <th>O</th><th>H</th><th>L</th><th>C</th></tr> <tr> <td>931.95</td><td>960</td><td>931.95</td><td>941.6</td></tr> </table> No. of shares traded: BSE 4,501 NSE 20,163 03/06/2013 Monday BSE <table border="1"> <tr> <th>O</th><th>H</th><th>L</th><th>C</th></tr> <tr> <td>1126.6</td><td>1126.6</td><td>1126.6</td><td>1126.6</td></tr> </table> NSE <table border="1"> <tr> <th>O</th><th>H</th><th>L</th><th>C</th></tr> <tr> <td>1129.9</td><td>1129.9</td><td>1129.9</td><td>1129.9</td></tr> </table> No. of shares traded: BSE 21,202 NSE 46,569	O	H	L	C	935.95	956	934.1	938.85	O	H	L	C	931.95	960	931.95	941.6	O	H	L	C	1126.6	1126.6	1126.6	1126.6	O	H	L	C	1129.9	1129.9	1129.9	1129.9	On June 03, 2013 (Monday), the scrip of CRISIL opened and closed at upper circuit price 20% up than the previous close on 31 May 2013.
O	H	L	C																																
935.95	956	934.1	938.85																																
O	H	L	C																																
931.95	960	931.95	941.6																																
O	H	L	C																																
1126.6	1126.6	1126.6	1126.6																																
O	H	L	C																																
1129.9	1129.9	1129.9	1129.9																																

In terms of Regulation 2(ha) of the PIT Regulations, 1992, “*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 the securities of company. Therefore, in view of the above observations and in terms of Regulation 2(ha) of PIT Regulations, 1992, the said information on the open offer of CRISIL was indeed a price sensitive information within the meaning of the PIT Regulations, 1992.

17. The following Table shows the chronology of events (date wise) leading to the announcement of the voluntary open offer by the Acquirer and PACs:

Date	Event
04/04/2013	Signing of Confidentiality Agreement between McGraw Hill Financial, Inc. (formerly known as The McGraw-Hill Companies, Inc.) (“McGraw-Hill”) and Morgan Stanley India Company Private Company Ltd. (“Morgan Stanley”)
01/05/2013	Engagement Letter between McGraw-Hill and Morgan Stanley was signed.
16/05/2013	McGraw-Hill Asian Holdings (Singapore) Pte. Ltd. (“MH Singapore”) Board approval regarding commencing the Open Offer.
29/05/2013	Escrow Agreement among McGraw-Hill, Morgan Stanley and Bank of Tokyo-Mitsubishi UFJ, Ltd.
03/06/2013	Decision to make an open offer and appointment of Morgan Stanley as Manager to the Open Offer.
03/06/2013	Letter from R D Sarfare & Co., Chartered Accountants to Morgan Stanley certifying that MH Singapore has the financial resources to complete the Offer.
03/06/2013	Public Announcement to the shareholders of CRISIL
05/06/2013	Board of CRISIL took note of the Open Offer
10/06/2013	Date of publication of Detailed Public Statement
24/07/2013	Date of Commencement of Tendering Period
06/08/2013	Date of expiry of tendering period

18. From the above Table and observations contained therein, it is amply clear that the price sensitive information pertaining to the open offer of CRISIL had come into existence on May 01, 2013 after the engagement letter was signed

between Morgan Stanley and the Acquirer. Further, the corporate announcement of voluntary open offer was made to the stock exchanges by the Merchant Banker viz. Morgan Stanley on June 03, 2013 at 8.37 am (i.e. before the market hours). Therefore, I am of the view that the period May 01, 2013 to June 02, 2013 should be reckoned as the period when the information regarding the open offer of CRISIL was unpublished and price sensitive (i.e. **UPSI period**).

Observations/allegations regarding connections of the Noticee with his Relatives (i.e. the Tippees)

19. After having determined the fact that the open offer of CRISIL is a price sensitive information within the meaning of the PIT Regulations and also arriving at the UPSI period, the other issues to be examined in the context of the present proceedings are (a) whether the Noticee is a 'connected person' and therefore, an 'insider' within the meaning of the PIT Regulations, 1992? (b) whether there was connection/relationship that existed between the Noticee and the Tippees and therefore, whether the Tippees can be considered as 'deemed to be connected persons' within the meaning of the PIT Regulations? (c) whether the Tippees have traded/dealt in the scrip of CRISIL during the UPSI period and, if yes, details of their trading/dealings in CRISIL and (d) whether the Noticee has communicated the PSI to his relatives (i.e. the Tippees)?

20. In terms of the Regulation 2(e) of the PIT Regulations, 1992, an 'insider' is defined as any person who, *"is or was connected with the company or is deemed to have been connected with the company and who is reasonably expected to have access to the unpublished price sensitive information in respect of securities of a company, or has received or has had access to such unpublished price sensitive information"*. In the instant matter, I find that Morgan Stanley was appointed as the Merchant Banker for the voluntary open offer of CRISIL. Morgan Stanley, vide its email dated April 29, 2015,

which was addressed to SEBI had submitted a list of its employees who were privy to the price sensitive information pertaining to the Open Offer of CRISIL. The said list submitted by Morgan Stanley also included the name of the Noticee. I also note from the statement dated August 28, 2015 of Mr. Kamal Yadav, the Managing Director of Morgan Stanley (Investment Banking Division) that he along with the Noticee had worked on the open offer assignment of CRISIL, which was termed as "Project Lilly". I find that, as per the list of employees submitted by Morgan Stanley to SEBI, the Noticee is mentioned as an 'insider' within the meaning of the PIT Regulations, 1992 as he was a person connected to CRISIL by virtue of his professional /business relationship in the matter of the open offer of the company and also had direct access to such UPSI by virtue of his professional/business relationship with the company in the matter of the aforementioned open offer. Therefore, from the above observations/findings, I am convinced that the Noticee is a 'connected person' within the meaning of Regulation 2(c)(ii) of the PIT Regulations, 1992 and therefore, an 'insider' within the meaning of Regulation 2(e) of the PIT Regulations, 1992.

21. From the facts/material available on record and also the observations made in the investigation report, I observe that the Noticee is the brother of Tippee 1 and Tippee 2 is the mother in law of Tippee 1. It was observed during the course of investigations that Tippee 1 is married to Tippee 3 (who is the son of Tippee 2 and the brother in law of the Noticee). The trading details/information obtained from the stock exchanges revealed that both Tippee 1 and Tippee 2 had traded in the shares of CRISIL during the UPSI period and profited from these transactions to the tune of Rs. 37.84 lacs. The details of their trading in the scrip of CRISIL during the UPSI period and the profits earned by them as a result of such trades are discussed in the following paras. I note from the investigation report and also from the SCN that Tippee 2 had received Rs. 1 crore from her son i.e. Tippee 3 which enabled Tippee 2 to meet her pay-in obligations pertaining to her purchases

in CRISIL during May 2013. Further, it is also on record that Tippee 2 has confirmed that her husband i.e. Tippee 4 had been trading in her account and was placing the orders in the scrip of CRISIL on her behalf with the stock broker during the investigation period. Therefore, from the facts and circumstances and the observations made above, which is supported by trading records, I am convinced that there is strong connection/relationship between the Noticee and the above mentioned persons who have traded/dealt in the scrip of CRISIL during the UPSI period. From the above, it is amply clear that the relatives of the Noticee who have traded/dealt in the scrip of CRISIL are members of the same family and the above persons viz. Tippee 1 to 4 are closely related/connected to the Noticee (i.e. Insider). During the course of investigation, Noticee has also admitted his connection/relationship with his relatives viz. Tippee 1 (sister), Tippee 3 (his brother in law) and Tippee 2 (the mother in law of his sister). Morgan Stanley has also confirmed vide its email dated August 26, 2015 that Noticee was related to Tippee 2 (being the mother in law of his sister i.e. Tippee 1).

22. In view of the above observations, it is concluded that the relatives of the Noticee viz. Tippees are 'persons deemed to be connected' with the 'insider' within the meaning of Regulation 2(h) (viii) of the PIT Regulations, 1992.

Observations regarding trading/dealings in the shares of CRISIL by the relatives of the Noticee / Tippees during the UPSI period / investigation period

23. As per the trading records submitted by the stock exchanges, it is noted that Tippee 1 purchased 4,202 shares of CRISIL on May 31, 2013 (during the UPSI period) and sold the entire lot of shares on June 03, 2013 i.e. on the same day when the PSI on the open offer was disseminated to the stock exchanges. It is noted that Tippee 1 had sold the shares on the very next trading day as June 1, 2013 and June 2, 2013 were Saturday and Sunday

and therefore, trading holidays. Similarly, the trading records obtained from the stock exchanges also showed that Tippee 2 purchased 15,000 shares of CRISIL during the UPSI period in three tranches and sold the entire lot of shares on June 04, 2013 i.e immediately after the PSI on the open offer was disseminated to the stock exchanges. It was also observed that the orders in the scrip of CRISIL on behalf of Tippee 2 was placed by her husband i.e Tippee 4. Further, the account of Tippee 2 was funded to the extent of Rs 1 crore by her son i.e Tippee 3, which enabled Tippee 2 to meet her pay-in obligations with the stock broker during May 2013. It is noted that the Tippees have not disputed the above facts, including the trading details. In view of the same, I conclude that the Tippees have traded/dealt in the scrip of CRISIL during the UPSI period / investigation period.

24. The following observations w.r.t the trading/dealings in the shares of CRISIL by the Tippees are very relevant in the context of the present proceedings against the Noticee:-

- (a) Both Tippee 1 and Tippee 2 have purchased the shares in the scrip of CRISIL during the UPSI period in large quantities. From their trading pattern /trading history, Tippee 1 and Tippee 2 have made investment in the scrip of CRISIL for the first time. There was close proximity of time w.r.t the purchases of Tippee 1 and Tippee 2 in the scrip of CRISIL.
- (b) Both Tippee 1 and Tippee 2 sold their entire holdings in CRISIL immediately after the PSI was disseminated to the Stock Exchanges. It is noted that they sold the shares within close proximity of dates. In the process, both Tippee 1 and Tippee 2 collectively made a profit of Rs. 37.98 lacs.
- (c) The pattern of trading employed by the Tippees in CRISIL, including the timing of their trades appeared to be on similar footing. The Tippees traded/dealt in the scrip of CRISIL when the Noticee was in possession of the PSI pertaining to the impending open offer of CRISIL and as such was privy to the PSI.

- (d) The Noticee/Tipper was closely related to the Tippees. The same has already been established in the present order.
- (e) The Tippees, during the course of adjudication proceedings, had contended that they had invested in the scrip of CRISIL as part of their long term investment strategy. However, their immediate sale of shares of CRISIL during the investigation period does not justify their contention.
- (f) The track record of earlier trading in the shares by Tippee 1 and Tippee 2 does not indicate trading in such large volume in the normal course of their business.

25. It cannot be a mere coincidence that the Tippees suddenly invested in the scrip of CRISIL particularly during the UPSI period, while the Noticee (who was related to the Tippees) worked on the open offer project of CRISIL. In view of the above observations and more pertinently from the trading pattern and other attendant circumstances which has been discussed above, a natural and logical inference can be drawn that Noticee has communicated the PSI to the Tippees. I am of the view that the Tippees would not have entered into the transactions in question, had it not been for the price sensitive information parted with by the Noticee. In the facts and circumstances of the case, the standard of proof is 'strong preponderance of probability'. The facts surrounding the allegations /charges against the Noticee and the timing and pattern of trades employed by the Tippees strongly indicate that the Noticee had leaked the PSI to the Tippees who had benefitted by trading in the scrip of CRISIL on the basis of PSI. In this context, I would like to refer to the order of Hon'ble Supreme Court of India in the matter of SEBI vs Kishore R Ajmera; (2016) 6 SCC 368 wherein Hon'ble SC had observed the following :

"It is a fundamental principle of law that proof of an allegation levelled against a person may be in the form of direct substantive evidence or, as in many cases, such proof may have to be inferred by a logical process of reasoning from the totality of the attending facts and circumstances surrounding the

allegations/charges made and levelled. While direct evidence is a more certain basis to come to a conclusion, yet, in the absence thereof the Courts cannot be helpless. It is the judicial duty to take note of the immediate and proximate facts and circumstances surrounding the events on which the charges/allegations are founded and to reach what would appear to the Court to be a reasonable conclusion therefrom. The test would always be that what inferential process that a reasonable/prudent man would adopt to arrive at a conclusion.....”

26. Regarding the issue of relevance of circumstantial evidence, the Hon’ble District Court, Southern District of New York in the matter of United States of America V Raj Rajaratnam 09 Cr. 1184 (RJH) decided on 11.08.2011 has observed the following:

“...Moreover, several other Courts of Appeals have sustained insider trading convictions based on circumstantial evidence in considering such factors as “(1) access to information; (2) relationship between the tipper and the tippee; (3) timing of contact between the tipper and the tippee; (4) timing of the trades; (5) pattern of the trades; and (6) attempts to conceal either the trades or the relationship between the tipper and the tippee.” United States v. Larrabee, 240 F.3d 18, 21-22 (1st Cir. 2001)...”

27. In the instant matter, all the relevant parameters mentioned in the aforesaid case have been established in the pre paras. Therefore, I conclude that Noticee has communicated the PSI to the Tippees. In view of the same, I hold that the Noticee has violated the provisions of Regulation 3(ii), Clause 2.0 and 2.1 of Schedule I read with Regulation 12(1) of PIT Regulations, 1992.

28. In the context of the present proceedings, I have taken note of the fact that the Tippees who have traded/dealt in the scrip of CRISIL during the investigation period have filed settlement applications in terms of SEBI

(Settlement of Administrative and Civil Proceedings) Regulations, 2014, which has been repealed and replaced with SEBI (Settlement Proceedings) Regulations, 2018, without admitting the findings of the fact and conclusions of law, proposing to settle, through the settlement order, the pending proceedings initiated against the Tippees by SEBI under section 11 B r/w section 11(4) of SEBI Act and also the pending adjudication proceedings initiated against them in the said matter. Accordingly, settlement orders were passed by SEBI against the Tippees in the matter disposing of the aforesaid proceedings against them. I have taken note of the fact that the Tippees, who had actually benefitted from the PSI, have settled the proceedings initiated against them by paying an amount of more than Rs 2 crore, which includes profit earned by them as a result of their trading and other charges, including interest etc. In his submission dated July 22, 2019, the Noticee has stated that he has also resigned from Morgan Stanley w.e.f December 31, 2018 and since then, he is unemployed. Therefore, in view of the above factors, I am not inclined to impose any penalty on the Noticee.

ORDER:

29. In view of the above observations and considering the facts and circumstances of the case, no penalty is imposed on the Noticee and the adjudication proceedings initiated against the Noticee vide SCN dated April 27, 2018 is accordingly disposed of.

30. In terms of the provisions of Rule 6 of the Adjudication Rules, copies of this order are being sent to the Noticee viz. Mr. Utsav Pathak and also to the Securities and Exchange Board of India

Place: Mumbai
Date: August 30, 2019

SURESH B. MENON
ADJUDICATING OFFICER