

**BEFORE THE ADJUDICATING OFFICER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**  
**[ADJUDICATION ORDER NO. Order/MC/DPS/2019-20/4612-4613 ]**

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**UNDER SECTION 15-I (2) OF SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 AND RULE 5 OF SEBI (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995.**

In respect of –

- 1) **Ilam C Kamboj** (PAN – AAAPK8188K) having address at 117, Sector-5, Urban State, Gurgaon, Haryana – 122001.
- 2) **Alka Kamboj** (PAN – AAJPK1777B) having address at 117, Sector-5, Urban State, Gurgaon, Haryana – 122001.

In the matter of M/s Hero Motocorp Ltd.

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**BACKGROUND**

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') initiated adjudication proceedings against Ilam C Kamboj (**the Noticee No. 1 / Ilam**) and Alka Kamboj (**the Noticee No. 2 / Alka**). Both the Noticees are collectively referred as '**Noticees/ You**'. Noticee No. 1 was employed with Hero Motocorp Ltd (**Hero Motocorp / Scrip / the company**) in the capacity of Company Secretary cum Compliance Officer. Noticee No. 2 is the wife of Noticee No. 1. Adjudication proceedings have been initiated against the Noticees for the alleged violations of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as '**PIT Regulations**') and SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as '**PIT Regulations 2015**') as mentioned below:-

Noticees	Violations
Noticee No. 1 for trades in the account of Ilam C Kamboj HUF of which he is the Karta.	Para 3.2.2, 3.3, 4.2 and 5 of Code of Conduct given in Part A of Schedule 1 read with Regulation 12 (1) of PIT Regulations.
Noticee No. 2	Clause 6, 10 of Code of Conduct given in Schedule B under Regulation 9 of PIT Regulations 2015.
Noticee No. 1 for non-disclosure of trades in the a/c of his wife – Noticee No. 2	Regulation 7(2) (a) read with regulation 6(2) of PIT Regulations 2015.

## APPOINTMENT OF ADJUDICATING OFFICER

- SEBI appointed the undersigned as Adjudicating Officer (hereinafter referred to as “**AO**”) vide order dated October 30, 2018 to inquire into and adjudge under section 15A(b) and 15HB of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**'), the aforesaid alleged violations against the Noticees. The appointment of the AO was communicated vide order dated November 6, 2018.

## SHOW CAUSE NOTICE, REPLY AND HEARING

- Show Cause Notice No. EAD5/MC/DPS/5078/2019 dated February 25, 2019 (hereinafter referred to as “**SCN**”), was issued to the Noticees in terms of Rule 4(1) of the Adjudication Rules, to show cause as to why an inquiry should not be held and penalty not be imposed against the Noticee in terms of 15A(b) and 15HB of the SEBI Act, for the aforesaid alleged violations.
- The allegations levelled against the Noticee in the SCN are summarized as below:
  - It was observed that Noticee No. 1 is the Karta of Ilam C Kamboj HUF and Noticee and the HUF have common address, mobile number and email address as per the KYC documents submitted by its broker, Escorts Securities Limited and submission made by NSE vide its email dated May 9, 2017.

- b) It was observed that two entities connected to Noticee No. 1 viz. Noticee No. 2 / Alka Kamboj - (wife of Noticee No. 1) - AAJPK1777B and Ilam C Kamboj HUF - AAAHI5641B, have traded in the scrip in the derivative segment during the examination period.
- c) It was observed that Ilam C Kamboj HUF has taken both long and short positions in Hero MotoCorp futures and options and made a profit of Rs.6,88,881/-. The summary of the trades is given below:-

Security Name/ Contract	Buy Value (Rs)	Sale Value (Rs)
HEROMOTOCO13MAYFUT	1999018.75	2076437.5
HEROMOTOCO13JULFUT	10209062.5	9482843.75
HEROMOTOCO13AUGFUT	15675381.25	16734462.5
HEROMOTOCO13SEPFUT	21689750	21653237.5
HEROMOTOCO13OCTFUT	7108468.75	7237718.75
HEROMOTOCO13NOVFUT	9392206.25	9563068.75
HEROMOTOCO13NOV2000CE	5350	10000
HEROMOTOCO13NOV2050CE	4537.5	5250
HEROMOTOCO13NOV2100CE	13075	15825
HEROMOTOCO13NOV2100PE	11112.5	18000
<b>Total</b>	<b>66107962.5</b>	<b>66796843.75</b>
<b>Total Profit</b>		<b>688881.25</b>

- d) Further, it was observed that in 21 instances, trades were carried out during the trading window closure period i.e. during the period April 16, 2013 to April 27, 2013, July 13, 2013 to July 25, 2013 and October 12, 2013 to October 24, 2013. The details of trading window closure period as submitted by Hero Motocorp vide its email dated December 19, 2016 was provided to the Noticees as Annexure E of the SCN. The details of trade carried out by Ilam C Kamboj HUF during April 26, 2013 to November 27, 2013 is given below:-

Date	Sec Name/ Contract	Gr Buy Vol	Gr Sell Vol	Gr Buy Value	Gr Sell Value
<b>26/04/2013</b>	<b>HEROMOTOCO13MAYFUT</b>	<b>1250</b>	<b>250</b>	<b>1999018.75</b>	<b>409037.50</b>
29/04/2013	HEROMOTOCO13MAYFUT	0	1000	0.00	1667400.00
05/06/2013	HEROMOTOCO13AUGFUT	250	0	404500.00	0.00

Date	Sec Name/ Contract	Gr Buy Vol	Gr Sell Vol	Gr Buy Value	Gr Sell Value
05/06/2013	HEROMOTOCO13JULFUT	0	250	0.00	414650.00
07/06/2013	HEROMOTOCO13AUGFUT	125	0	200625.00	0.00
10/06/2013	HEROMOTOCO13JULFUT	0	125	0.00	205906.25
12/06/2013	HEROMOTOCO13AUGFUT	250	0	389750.00	0.00
12/06/2013	HEROMOTOCO13JULFUT	0	250	0.00	399875.00
13/06/2013	HEROMOTOCO13AUGFUT	250	0	388250.00	0.00
14/06/2013	HEROMOTOCO13JULFUT	0	250	0.00	400162.50
19/06/2013	HEROMOTOCO13AUGFUT	250	0	398000.00	0.00
19/06/2013	HEROMOTOCO13JULFUT	0	125	0.00	203000.00
21/06/2013	HEROMOTOCO13JULFUT	0	125	0.00	203750.00
24/06/2013	HEROMOTOCO13AUGFUT	250	0	386000.00	0.00
24/06/2013	HEROMOTOCO13JULFUT	0	250	0.00	396250.00
25/06/2013	HEROMOTOCO13AUGFUT	375	0	576368.75	0.00
25/06/2013	HEROMOTOCO13JULFUT	0	250	0.00	392250.00
26/06/2013	HEROMOTOCO13AUGFUT	125	0	197043.75	0.00
26/06/2013	HEROMOTOCO13JULFUT	0	125	0.00	197875.00
27/06/2013	HEROMOTOCO13AUGFUT	125	0	199237.50	0.00
27/06/2013	HEROMOTOCO13JULFUT	0	125	0.00	202000.00
28/06/2013	HEROMOTOCO13AUGFUT	125	0	201612.50	0.00
28/06/2013	HEROMOTOCO13JULFUT	0	125	0.00	203493.75
01/07/2013	HEROMOTOCO13JULFUT	0	125	0.00	206500.00
02/07/2013	HEROMOTOCO13AUGFUT	250	0	400250.00	0.00
02/07/2013	HEROMOTOCO13JULFUT	0	125	0.00	205250.00
03/07/2013	HEROMOTOCO13AUGFUT	125	0	200318.75	0.00
03/07/2013	HEROMOTOCO13JULFUT	0	125	0.00	205250.00
04/07/2013	HEROMOTOCO13AUGFUT	625	0	990400.00	0.00
04/07/2013	HEROMOTOCO13JULFUT	0	500	0.00	809543.75
05/07/2013	HEROMOTOCO13JULFUT	0	250	0.00	407250.00
<b>15/07/2013</b>	<b>HEROMOTOCO13JULFUT</b>	<b>0</b>	<b>125</b>	<b>0.00</b>	<b>214150.00</b>
<b>16/07/2013</b>	<b>HEROMOTOCO13AUGFUT</b>	<b>375</b>	<b>0</b>	<b>627675.00</b>	<b>0.00</b>
<b>18/07/2013</b>	<b>HEROMOTOCO13JULFUT</b>	<b>0</b>	<b>250</b>	<b>0.00</b>	<b>427600.00</b>
<b>19/07/2013</b>	<b>HEROMOTOCO13JULFUT</b>	<b>0</b>	<b>250</b>	<b>0.00</b>	<b>434443.75</b>
<b>22/07/2013</b>	<b>HEROMOTOCO13AUGFUT</b>	<b>875</b>	<b>0</b>	<b>1526406.25</b>	<b>0.00</b>
<b>22/07/2013</b>	<b>HEROMOTOCO13JULFUT</b>	<b>0</b>	<b>875</b>	<b>0.00</b>	<b>1566556.25</b>
<b>23/07/2013</b>	<b>HEROMOTOCO13AUGFUT</b>	<b>2250</b>	<b>0</b>	<b>3892893.75</b>	<b>0.00</b>
<b>23/07/2013</b>	<b>HEROMOTOCO13JULFUT</b>	<b>0</b>	<b>1000</b>	<b>0.00</b>	<b>1787087.50</b>
<b>23/07/2013</b>	<b>HEROMOTOCO13SEPFUT</b>	<b>0</b>	<b>750</b>	<b>0.00</b>	<b>1281406.25</b>
<b>24/07/2013</b>	<b>HEROMOTOCO13SEPFUT</b>	<b>0</b>	<b>500</b>	<b>0.00</b>	<b>855000.00</b>
<b>25/07/2013</b>	<b>HEROMOTOCO13AUGFUT</b>	<b>250</b>	<b>6875</b>	<b>456200.00</b>	<b>12424700.00</b>
<b>25/07/2013</b>	<b>HEROMOTOCO13JULFUT</b>	<b>5625</b>	<b>0</b>	<b>10209062.50</b>	<b>0.00</b>

Date	Sec Name/ Contract	Gr Buy Vol	Gr Sell Vol	Gr Buy Value	Gr Sell Value
<b>25/07/2013</b>	<b>HEROMOTOCO13SEPFUT</b>	<b>1250</b>	<b>0</b>	<b>2199356.25</b>	<b>0.00</b>
29/07/2013	HEROMOTOCO13AUGFUT	250	1250	471843.75	2368218.75
13/08/2013	HEROMOTOCO13AUGFUT	0	250	0.00	484375.00
16/08/2013	HEROMOTOCO13AUGFUT	0	250	0.00	494043.75
19/08/2013	HEROMOTOCO13AUGFUT	500	0	934050.00	0.00
27/08/2013	HEROMOTOCO13AUGFUT	500	500	951331.25	963125.00
28/08/2013	HEROMOTOCO13AUGFUT	1000	0	1882625.00	0.00
30/08/2013	HEROMOTOCO13SEPFUT	1000	1000	1896162.50	1930312.50
02/09/2013	HEROMOTOCO13SEPFUT	500	1000	967500.00	1949562.50
03/09/2013	HEROMOTOCO13SEPFUT	1500	500	2873750.00	971006.25
04/09/2013	HEROMOTOCO13SEPFUT	1625	2625	3103893.75	5035775.00
05/09/2013	HEROMOTOCO13SEPFUT	1125	1125	2171400.00	2186350.00
06/09/2013	HEROMOTOCO13SEPFUT	1000	1000	1918268.75	1931025.00
10/09/2013	HEROMOTOCO13SEPFUT	0	1500	0.00	2923706.25
11/09/2013	HEROMOTOCO13SEPFUT	0	250	0.00	523837.50
12/09/2013	HEROMOTOCO13SEPFUT	250	0	508387.50	0.00
16/09/2013	HEROMOTOCO13SEPFUT	0	250	0.00	525750.00
17/09/2013	HEROMOTOCO13SEPFUT	250	0	518918.75	0.00
19/09/2013	HEROMOTOCO13SEPFUT	250	250	519125.00	522506.25
20/09/2013	HEROMOTOCO13SEPFUT	1000	0	1963562.50	0.00
25/09/2013	HEROMOTOCO13OCTFUT	0	500	0.00	1022450.00
25/09/2013	HEROMOTOCO13SEPFUT	500	0	1019950.00	0.00
26/09/2013	HEROMOTOCO13OCTFUT	0	500	0.00	1016293.75
26/09/2013	HEROMOTOCO13SEPFUT	1000	500	2029475.00	1017000.00
27/09/2013	HEROMOTOCO13OCTFUT	3000	0	6071243.75	0.00
09/10/2013	HEROMOTOCO13OCTFUT	0	1000	0.00	2069000.00
<b>15/10/2013</b>	<b>HEROMOTOCO13OCTFUT</b>	<b>500</b>	<b>0</b>	<b>1037225.00</b>	<b>0.00</b>
<b>18/10/2013</b>	<b>HEROMOTOCO13OCTFUT</b>	<b>0</b>	<b>500</b>	<b>0.00</b>	<b>1045975.00</b>
<b>22/10/2013</b>	<b>HEROMOTOCO13NOVFUT</b>	<b>500</b>	<b>0</b>	<b>1040500.00</b>	<b>0.00</b>
<b>23/10/2013</b>	<b>HEROMOTOCO13NOVFUT</b>	<b>250</b>	<b>0</b>	<b>512887.50</b>	<b>0.00</b>
<b>23/10/2013</b>	<b>HEROMOTOCO13OCTFUT</b>	<b>0</b>	<b>750</b>	<b>0.00</b>	<b>1561218.75</b>
<b>24/10/2013</b>	<b>HEROMOTOCO13NOVFUT</b>	<b>250</b>	<b>0</b>	<b>521125.00</b>	<b>0.00</b>
<b>24/10/2013</b>	<b>HEROMOTOCO13OCTFUT</b>	<b>0</b>	<b>250</b>	<b>0.00</b>	<b>522781.25</b>
25/10/2013	HEROMOTOCO13NOVFUT	500	0	1028593.75	0.00
29/10/2013	HEROMOTOCO13NOVFUT	0	500	0.00	1035062.50
30/10/2013	HEROMOTOCO13NOVFUT	2000	0	4157100.00	0.00
01/11/2013	HEROMOTOCO13NOV2100PE	250	0	11112.50	0.00
01/11/2013	HEROMOTOCO13NOVFUT	1000	3500	2132000.00	7468006.25
03/11/2013	HEROMOTOCO13NOVFUT	0	500	0.00	1060000.00
11/11/2013	HEROMOTOCO13NOV2100CE	250	250	8287.50	10075.00

Date	Sec Name/ Contract	Gr Buy Vol	Gr Sell Vol	Gr Buy Value	Gr Sell Value
11/11/2013	HEROMOTOCO13NOV2100PE	0	250	0.00	18000.00
13/11/2013	HEROMOTOCO13NOV2100CE	250	0	4787.50	0.00
14/11/2013	HEROMOTOCO13NOV2100CE	0	250	0.00	5750.00
21/11/2013	HEROMOTOCO13NOV2050CE	250	0	4537.50	0.00
22/11/2013	HEROMOTOCO13NOV2000CE	250	0	5350.00	0.00
25/11/2013	HEROMOTOCO13NOV2000CE	0	250	0.00	10000.00
27/11/2013	HEROMOTOCO13NOV2050CE	0	250	0.00	5250.00
<b>TOTAL</b>				<b>66107962.50</b>	<b>66796843.75</b>

e) Noticee No. 2 has taken both long and short positions in Hero MotoCorp futures and options and made a profit of Rs. 52,210/-. The summary of the trades is given below:-

Security Name/ Contract	Buy Value (Rs)	Sale Value (Rs)
HEROMOTOCO15NOVFUT	2071300	2077570
HEROMOTOCO15NOV2650PE	26350	66200
HEROMOTOCO15DECFT	2614440	2620530
<b>Total</b>	<b>4712090</b>	<b>4764300</b>
<b>Total Profit</b>		<b>52210</b>

f) The details of trade carried out by Noticee No. 2 during November 19, 2015 to December 15, 2015 is given below:-

Date	Sec Name/ Contract	Gr Buy Vol	Gr Sell Vol	Gr Buy Value	Gr Sell Value
19/11/2015	HEROMOTOCO15NOV2650PE	1000	800	26350.00	52200.00
19/11/2015	HEROMOTOCO15NOVFUT	200	0	518830.00	0.00
20/11/2015	HEROMOTOCO15NOV2650PE	0	200	0.00	14000.00
20/11/2015	HEROMOTOCO15NOVFUT	600	800	1552470.00	2077570.00
03/12/2015	HEROMOTOCO15DECFT	600	200	1603280.00	535800.00
07/12/2015	HEROMOTOCO15DECFT	0	400	0.00	1065590.00
15/12/2015	HEROMOTOCO15DECFT	400	400	1011160.00	1019140.00
<b>TOTAL</b>				<b>4712090.00</b>	<b>4764300.00</b>

g) During examination, the company vide emails dated June 29, 2018, July 06, 2018 and July 16, 2018 has inter alia stated the following:

- a) Noticee No. 2, being immediate relative i.e. spouse of “insider” would fall under the definition of “insider” and is included as the designated person in terms of the Code of Conduct framed by the Company under PIT Regulations, 2015.
  - b) The relevant extract from list of designated persons for the period November 2015 and December 2015 showing Noticee No. 1 and Noticee No. 2 (wife) as designated person was provided.
  - c) Noticee No. 1 did not obtain any pre-clearance in respect of any trades executed by him / his connected entities for trades in the scrip of Hero Motocorp Limited.
  - d) For all the 3 years (i.e. examination period), Noticee No. 1 declared that he and his dependents have not transacted in the Company’s shares.
  - e) Noticee No. 1 has not complied with the Code of Conduct of the Company framed under the relevant PIT Regulations as he has failed to adhere to the Code with respect to obtaining pre-clearance for trades executed by Noticee No. 1 in the account of Ilam C Kamboj HUF of which he is the Karta and his wife (Noticee No. 2) in the derivative segment in the scrip of the Company, executing the trades in the window closure period and not disclosing the same to the Company.
  - f) Noticee No. 1 has resigned and ceased to be the Company Secretary and Compliance Officer of the company with effect from April 02, 2016.
  - g) Under the Code of Conduct framed under the 1992 Regulations, the designated employees were required to obtain pre-clearance to deal in securities of the Company above a minimum threshold. The prescribed threshold was ‘one lot’ in case of derivatives in a single transaction. Further, the designated employees were also prohibited to enter into an opposite transaction i.e. sell or buy any number of shares during the next six months following the prior transaction.
  - h) The Company has revised its Code of Conduct during the year 2017 wherein, trading in derivatives by designated employees is totally prohibited.
- h) In terms of regulation 2(d)(ii)(f) and 2(f) of PIT Regulations, 2015 spouse of an employee being an immediate relative is a connected person. Hence, she was named as designated person by the company in terms of the code of conduct as specified in Schedule B of PIT Regulations.
- i) In view of the above, Noticee No. 1 being the Karta of account Ilam C Kamboj HUF and Noticees being designated persons were required to obtain pre-clearance for trading in the scrip of the company during window closure period, which they failed to do. Further, they also entered into contra trades within a period of six months and did not report the trades executed

by them to the company. Therefore it was alleged that the Noticees have violated PIT Regulations as mentioned below:-

Client Name (PAN)	Nature of findings in Brief	Violations
Noticee No. 1 for trades in the account of Ilam C Kamboj (HUF) of which he is the Karta.	Trades executed during trading window closure period	Para 3.2.2 of Code of Conduct given in Part A of Schedule 1 read with Regulation 12 (1) of SEBI (PIT) Regulations, 1992
	Trades executed in derivatives and Contra trades executed within 6 months	Para 4.2 of Code of Conduct given in Part A of Schedule 1 under Regulation 12 (1) of SEBI (PIT) Regulations, 1992
	Non Reporting of transaction in securities to the Company	Para 5 of Code of Conduct given in Part A of Schedule 1 under Regulation 12 (1) of SEBI (PIT) Regulations, 1992
	Trades executed without pre clearance	Para 3.3 of Code of Conduct given in Part A of Schedule 1 under Regulation 12(1) of SEBI (PIT) Regulations, 1992
Noticee No. 2	Trades executed without pre clearance	Clause 6 of Code of Conduct given in Schedule B under Regulation 9 of SEBI (PIT) Regulations 2015.
	Contra trades executed within 6 months	Clause 10 of Schedule B under Regulation 9 of SEBI (PIT) Regulations 2015.
Noticee No. 1 for non-disclosure of trades in the account of his wife – Noticee No. 2	Non-disclosure of transactions to the Company	Regulation 7 (2) (a) read with regulation 6(2) of SEBI (PIT) Regulations, 2015

j) The aforesaid regulations are reproduced as under;

**PIT Regulations, 1992**

***POLICY ON DISCLOSURES AND INTERNAL PROCEDURE FOR PREVENTION OF INSIDER TRADING***

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

*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 ;*

*(b) the self-regulatory organisations recognised or authorised by the Board;*



- (c) the recognised stock exchanges and clearing house or corporations;
- (d) the public financial institutions as defined in section 4A of the Companies Act, 1956;
- and
- (e) the professional firms such as auditors, accountancy firms, law firms, analysts, consultants, etc., assisting or advising listed companies,
- shall frame a code of internal procedures and conduct as near thereto the Model Code specified in Schedule I of these Regulations without diluting it in any manner and ensure compliance of the same.
- (2) The entities mentioned in sub-regulation (1), shall abide by the code of Corporate Disclosure Practices as specified in Schedule II of these Regulations.
- (3) All entities mentioned in sub-regulation (1), shall adopt appropriate mechanisms and procedures to enforce the codes specified under sub-regulations (1) and (2).
- (4) Action taken by the entities mentioned in sub-regulation (1) against any person for violation of the code under sub-regulation (3) shall not preclude the Board from initiating proceedings for violation of these Regulations.

#### SCHEDULE 1

[Under regulation 12(1)]

#### PART A

### **MODEL CODE OF CONDUCT FOR PREVENTION OF INSIDER TRADING FOR LISTED COMPANIES**

**3.2-2** When the trading window is closed, the employees/ directors shall not trade in the Company's securities in such period.

#### **3.3 Pre-clearance of trades**

**3.3.1** All directors/officers/designated employees of the company and their dependents as defined by the company who intend to deal in the securities of the company (above a minimum threshold limit to be decided by the company) should pre-clear the transaction as per the pre-dealing procedure as described hereunder.

**3.3.2** An application may be made in such form as the company may notify in this regard, to the Compliance Officer indicating the estimated number of securities that the designated employee/officer/director intends to deal in, the details as to the depository with which he has a security account, the details as to the securities in such depository mode and such other details as may be required by any rule made by the company in this behalf.

**3.3.3** An undertaking shall be executed in favour of the company by such designated employee/director/officer incorporating, inter alia, the following clauses, as may be applicable:

- (a) *That the employee/director/officer does not have any access or has not received "Price Sensitive Information" upto the time of signing the undertaking.*
- (b) *That in case the employee/director/officer has access to or receives "Price Sensitive Information" after the signing of the undertaking but before the execution of the transaction he/she shall inform the Compliance Officer of the change in his position and that he/she would completely refrain from dealing in the securities of the company till the time such information becomes public.*
- (c) *That he/she has not contravened the code of conduct for prevention of insider trading as notified by the company from time to time.*
- (d) *That he/she has made a full and true disclosure in the matter.*

**4.2** *All directors/ officers/ designated employees who buy or sell any number of shares of the company shall not enter into an opposite transaction i.e. sell or buy any number of shares during the next six months following the prior transaction. All directors/ officers/ designated employees shall also not take positions in derivative transactions in the shares of the company at any time.*

*In the case of subscription in the primary market (initial public offers), the above mentioned entities shall hold their investments for a minimum period of 30 days. The holding period would commence when the securities are actually allotted.*

## **5.0 Reporting Requirements for transactions in securities**

**5.1** *All directors/officers/designated employees of the listed company shall be required to forward following details of their securities transactions including the statement of dependent family members (as defined by the company) to the Compliance Officer:*

- (a) *all holdings in securities of that company by directors/officers/designated employees at the time of joining the company;*
- (b) *periodic statement of any transactions in securities (the periodicity of reporting may be defined by the company. The company may also be free to decide whether reporting is required for trades where pre-clearance is also required); and*
- (c) *annual statement of all holdings in securities.*

**5.2** *The Compliance Officer shall maintain records of all the declarations in the appropriate form given by the directors/officers/designated employees for a minimum period of three years.*

**5.3** *The Compliance Officer shall place before the Managing Director/Chief Executive Officer or a committee specified by the company, on a monthly basis all the details of the dealing in the securities by employees/director/officer of the company and the*

*accompanying documents that such persons had executed under the pre-dealing procedure as envisaged in this code.*

**PIT Regulations, 2015**

**CHAPTER – III**

**DISCLOSURES OF TRADING BY INSIDERS**

**General provisions.**

**6. (2)** *The disclosures to be made by any person under this Chapter shall include those relating to trading by such person's immediate relatives, and by any other person for whom such person takes trading decisions.*

*NOTE: It is intended that disclosure of trades would need to be of not only those executed by the person concerned but also by the immediate relatives and of other persons for whom the person concerned takes trading decisions. These regulations are primarily aimed at preventing abuse by trading when in possession of unpublished price sensitive information and therefore, what matters is whether the person who takes trading decisions is in possession of such information rather than whether the person who has title to the trades is in such possession.*

**Disclosures by certain persons.**

**7(2) Continual Disclosures.**

*(a). Every promoter, employee and director of every company shall disclose to the company the number of such securities acquired or disposed of within two trading days of such transaction if the value of the securities traded, whether in one transaction or a series of transactions over any calendar quarter, aggregates to a traded value in excess of ten lakh rupees or such other value as may be specified;*

**SCHEDULE B**

**[See sub-regulation (1) and sub-regulation (2) of regulation 9]**

**Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading  
by Insiders**

**6.** *When the trading window is open, trading by designated persons shall be subject to preclearance by the compliance officer, if the value of the proposed trades is above such thresholds as the board of directors may stipulate. No designated person shall apply for pre-clearance of any proposed trade if such designated person is in possession of unpublished price sensitive information even if the trading window is not closed.*

**10.** *The code of conduct shall specify the period, which in any event shall not be less than six months, within which a designated person who is permitted to trade shall not execute a*

*contra trade. The compliance officer may be empowered to grant relaxation from strict application of such restriction for reasons to be recorded in writing provided that such relaxation does not violate these regulations. Should a contra trade be executed, inadvertently or otherwise, in violation of such a restriction, the profits from such trade shall be liable to be disgorged for remittance to the Board for credit to the Investor Protection and Education Fund administered by the Board under the Act.*

- k) The aforesaid alleged violations, if established, make the Noticees liable for monetary penalty under section 15HB and 15A(b) of the SEBI Act, which reads as follows:

**SEBI Act:**

**Penalty for failure to furnish information, return, etc.**

**15A.** *If any person, who is required under this Act or any rules or regulations made thereunder,—*

*(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less;*

**Penalty for contravention where no separate penalty has been provided.**

**15HB.** *Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.*

5. In response to the SCN, the Noticees filed their submissions / reply dated March 30, 2019. An opportunity of hearing was provided to the Noticees on June 3, 2019 vide notice dated May 27, 2019. Hearing on June 3, 2019 was attended by Ms. Deepika Vijay Sawhney, the Authorised Representative of the Noticees (AR). AR of the Noticees reiterated the submissions made in their reply dated March 30, 2019 and submitted that they will be submitting additional documents within a weeks time from the date of hearing. Noticees vide email dated June 10, 2019 made additional submissions.
6. The key submissions of the Noticees are summarized as below:
- (a) Mr. Ilam C Kamboj ('Noticee No.1') was employed in the capacity of company secretary cum compliance officer of Hero Motocorp Limited (hereinafter referred to as the 'Company' or 'HeroMotocorp') from sometime in 1990 to April 01, 2016. Noticee no. 1 had maintained his

own trading account with Escort Securities Limited ('ESL') since 23.02.2006. Noticee No. 1 is also the Karta of the Ilam C K.amboj HUF (hereinafter referred to as 'HUF'). It is also pertinent to mention here that the HUF also maintained a separate trading account with Escorts since 24.04.2013.

- (b) Mrs. Alka K.amboj ('Noticee No.2') is the wife of Noticee No. 1 and also has a trading account with ESL since 08.12.2005. Noticee No. 2 is a homemaker and therefore, the account has been operated by her son, Mr. Shray Kamboj.
- (c) That, Mr. Shray Kamboj is one of the Coparceners of the HUF and has been placing orders in the HUF Account and also, on behalf of his mother i.e. Noticee No. 2. Mr. Shray Kamboj is an financially independent individual who was working independently with top-tier law firms in the country during the period under investigation.
- (d) Mr. Shray Kamboj, is the son of Noticees No. 1 and 2, and was the sole person handling the trading accounts of both the HUF bearing PAN no. AAAHI5641B (hereinafter referred to as 'HUF Account') and of Noticee No. 2 bearing PAN No. AAJPK1777B. The same is further corroborated by the details submitted by ESL (in response to the mail dated 08.05.2017 from your good office) wherein the person responsible for placing orders from the HUF and Alka Account is shown as Mr. Shray Kamboj.
- (e) Noticees had no knowledge or involvement in the trades executed by Mr. Shray Kamboj from the HUF Account and from the account of Noticee No. 2. Further, the trading decisions taken by Mr. Shray Kamboj were his personal decisions based on market analysis and the Noticees did not have any participation in any of the trading decisions.
- (f) The trades in the futures/ options of the Company were all executed by, Mr. Shray Kamboj from both HUF Account and of the Noticee No. 2.

- (g) In light of the aforesaid, the Noticee no. 1 and 2 would be considered as Insiders; however, Mr. Shray Kamboj who is the son of the Noticees would not be covered under the definition of insider.
- (h) Further, Mr. Shray Kamboj would not be covered under the definition of 'immediate relative' as he is neither financially dependent nor does he take any trading decisions after consultation with the Noticees. The fact that Mr. Shray Kamboj is not an insider or an 'designated person' is further corroborated by the mail from the Company in response to the query dated 13.06.2018.
- (i) The trading in the HUF account and that of Noticee no. 2 were all carried out by Mr. Shray Kamboj. All the trades entered into by Mr. Shray Kamboj was without any involvement and knowledge of the Noticees.
- (j) The trades in the futures/ options of the Hero Motocorp were not covered under the ambit of pre-clearance under the Code of Conduct of the Company, SEBI (Prohibition of Insider Trading) Regulations, 1992 ('PIT Regulations 1992') and SEBI (Prohibition of Insider Trading) Regulations, 2015 ('PIT Regulations 2015') (collectively referred to as 'PIT Regulations'). Both the Code of Conduct of HeroMotocorp and the Model Code of Conduct as per the PIT Regulations 1992, did not permit holding any position in the derivative transactions in the shares of the Company at any time.
- (k) As per Clause 4.2, Model Code of Conduct under Part A of Schedule I of the PIT Regulations 1992, and also as per Other Restrictions, Page 6 of the Code of Conduct of the Company, there was an overall restriction on holding positions in the derivative options and hence, no director/officer/designated employees could hold any position in the derivatives.
- (l) Therefore, when there is complete restriction on holding positions in derivatives, the provisions of Para 3.2.2 and 3.3 of the Model Code of Conduct as per PIT 1992 are not applicable. However, the SCN erroneously alleges the violation of the said provisions which are not applicable for trading in derivatives. Therefore, the said clauses of

pre-clearance requirement and contra-trading would not be applicable in case of the derivatives as any sort of trading or holding of positions is completely prohibited in derivatives of the Company.

- (m) Without prejudice to the aforesaid that there was an overall restriction on trading in derivatives and therefore, Para 3.2.2 of the Model CoC is not applicable on the trades, it is quintessential to understand the requirement under Para 3.2.2 of the Model Code of Conduct prior to dealing with the alleged violation of the same by Noticee. No.1.
- (n) Firstly, it is important to point out that the restriction on trading during window closure was applicable to the Directors, Designated Employees and their dependants as evident from the clear reading of the applicable clause of the Model Code of Conduct. Hence, there was no requirement for obtaining pre-clearance by Mr. Shray Kamboj, who is not covered under the definition of 'Insider' as per the PIT Regulations and nor was a director, designated employee or dependent as per the definitions under the PIT Regulations.
- (o) The trading in the account of Noticee No. 2 and the HUF account were all executed by Mr. Shray Kamboj and the Noticees did not advice, comment or had any knowledge of the said trades which were executed in the future options of the Company.
- (p) The requirements of the Code of Conduct i.e. holding positions in derivatives was not applicable to Mr. Shray Kamboj as he was not covered under the Code of Conduct. Therefore, the trades executed by Mr. Shray Kamboj are not in violation of the Code of Conduct.
- (q) Noticee No.1 made true and correct annual disclosures regarding the total number of shares or voting rights held and the change in the shareholding or voting rights.
- (r) The Model Code of Conduct are different from that of the applicable Code of Conduct of the Company. The requirement under the Model Code of Conduct require disclosure of all securities and whereas the Code of Conduct of the Company (reproduced hereinabove) required the disclosure of the total number of shares or voting rights which

clearly highlight the importance of procuring the Code of Conduct of the Company to ascertain the violations of the Code of Conduct.

- (s) Without prejudice to the afore-submitted, it is further pertinent to note that the prescribed forms HMC5 and HMC6, require the reporting of the number of shares held at the beginning of the year, number of shares brought during the year, number of shares sold and the holding at the end of the year. However, the trading in the HUF Account, were in the futures option contracts of the Company and that no shares of the Company were actually held by Noticee No.1 or in the HUF account at any point of time.
- (t) Therefore, the Code of Conduct of the Company did not require the disclosure of the futures options contracts in the account of the HUF Account and Noticee No. 2's account, which as has been already stated were being operated/managed by Mr. Shray Kamboj. The Noticee No. 1 (because of the reasons stated above) duly filed his annual disclosure as NIL holdings.
- (u) Thus, the Noticee no. 1 filed the true and correct disclosure in accordance with the applicable CoC of the Company and hence, the Noticee did not contravene any provision of the PIT Regulations, 1992.
- (v) There was a overall ban on trading in derivatives as per the provisions of the Code of Conduct of the Company and also under the PIT Regulations 1992. However, without prejudice to the aforesaid, the requirement of obtaining pre-clearance casts the duty to obtain pre-clearance above a stipulated limit when dealing in the securities of the company.
- (w) The Code of Conduct of HeroMotocorp prescribed the minimum threshold in relation to the securities transaction and the relevant clause of the Code of Conduct of HeroMotocorp is herein reproduced below:

*'All Directors and Designated Employees and their dependents who intend to deal in the securities of the Company above a minimum threshold limit i.e. 500 shares/One lot in case of derivatives should pre-clear the transaction as per the pre-dealing procedure as described hereunder.*



*Pre-clearance shall not be necessary if the deal is from 500 or less equity shares or in case of derivatives -one lot of derivatives in a single transaction.'*

- (x) However, it is once again pertinent to reiterate that both the aforesaid provisions applied to only Directors, Designated Employees and their dependants and it has already been elucidated that Mr. Shray Kamboj does not fall under the ambit of any of the definition of 'dependents' and is neither a Director nor Designated Employee of the Company. Further, it is also to be noted that the trades in the trading account of the HUF were all executed by Mr. Shray Kamboj and hence, there was no requirement of pre-clearance in relation to those trades.
- (y) Thus, in light of the aforesaid, no violation of Para 3.3 of the Model Code of Conduct can be said to be valid against the Noticee No. 1.
- (z) The disclosures in relation to the transactions in securities were only to be made if the transaction was undertaken by the designated person and/or by the immediate relative of the designated person. And the transactions in the future contract of the Company were all executed by Mr. Shray Kamboj, who does not fall under the ambit of the definition of 'designated person' and/or 'immediate relative'.
- (aa) Further, if the obligation under Regulation 6(2) is analysed, it would be evident that the requirement was to ensure that no trading is done by person(s) with access to insider information.
- (bb) The requirement for disclosure is pertaining to trading by immediate relative(s) who trade on basis of the advice or with the help of the insider. Therefore, the said requirement is not applicable in case of the trading by Mr. Shray Kamboj, since, it has already been established in the extant reply that Mr. Shray Kamboj was a financially independent individual and that Noticee No.1 had no involvement or knowledge of the trading activity of Mr. Shray Kamboj.
- (cc) Thus, in light of all the aforementioned submissions, there was no obligation on the Noticee No. 1 to disclose the acquisition or sale of securities by Mr. Shray Kamboj as per Regulation 7(2)(a) read with Regulation 6(2) of the PIT Regulations 2015. And hence, in absence of any legal obligation, the violation of the same cannot be alleged.

- (dd) The requirement under Clause 6 of the Code of Conduct as given under Schedule B of the PIT Regulations, 2015 was same as the requirement under Para 3.2.2 of the Model Code of Conduct as per Part A of Schedule I under PIT Regulations, 1992.
- (ee) In reference to the aforesaid clause, the trading in the account of the Noticee No. 2 was done by her son, Mr. Shray Kamboj and it has already been elucidated that the requirement of pre-clearance was not needed for the trades executed by him.
- (ff) Therefore, the requirement of pre-clearance was not applicable for the trades done from the account of Noticee No.2 and thus, the violation of Clause 6 of the Code of Conduct would not stand.
- (gg) The trades were executed by Mr. Shray Kamboj who is neither the Director nor Designated Employee and hence, is not covered under the ambit of the Code of Conduct as per PIT Regulations, 2015.
- (hh) Mr. Shray Kamboj being the coparcener of the HUF had access to the HUF trading account and all the trades executed in the HUF account were without any inputs/advice of the Noticee No. 1. Similarly, the trades executed from the trading account of Noticee No.2 were independent and without any assistance of either of the Noticees and were solely executed by Mr. Shray Kamboj only. Thus, Noticee no. 2 did not violate provisions of Clause 10 of the Code of Conduct as the said clause was not applicable to the trades in the account of Noticee No. 2.
- (ii) SCN needs to be compliant with the principles of natural justice which has also been reiterated by the Hon'ble Supreme Court in the case of *Municipal Board v. State Transport Authority*, Air 1965 SC 458, in the following manner:

*'Notice does not mean just any kind of notice; it means an adequate notice as regards the details of the case against the concerned party. Any proceeding taken against a person without adequate notice to him infringes the concept of natural justice and is thus invalid.'*
- (jj) In order to understand the adequateness of a notice, attention is drawn towards the law laid down by the Hon'ble Delhi High Court in

the case of *J.M.A. Industries v. Union of India*, AIR 1980 Del 200, wherein it was held that:

*A. notice in the bare-bones language of the statute, i.e. which merely repeats the statutory language without giving any facts and other particulars, is insufficient and inadequate.*”

(kk) In light of the aforementioned case laws, SCN issued to the Noticees alleges contra trades by the Noticees when there was a complete overall ban on trading in the derivatives. Additionally, the SCN also proceeds to allege the violation of the Model CoC without perusing the CoC of the Company (which was the relevant CoC applicable to the Noticees). Therefore, the SCN is not adequate in nature and is just a mechanical reiteration of the statutory provisions and the model code of conduct which is issued in the transgression of the principles of natural justice and hence, is vitiated.

(ll) Attention is drawn towards the '*Report of the High Level Committee to review the SEBI (Prohibition of Insider Trading) Regulations, 1992 under the chairmanship of Justice N.K. Sodhi*', wherein the defences for violation of Insider Trading norms were provided and the relevant portion is reproduced below:

*(vi) the trades of the insider were made by another person authorised to so trade on the insider's behalf without reference to and without prior knowledge of the insider and that other person who traded was not in possession of the unpublished price sensitive information and appropriate and adequate arrangements were in place to ensure that these regulations are not violated'*

(mm) Therefore, the trading in the derivatives was done by Mr. Shray Kamboj who was solely acting on his own discretion and the Noticees had no reference or prior knowledge of it. The trades executed by Mr. Shray Kamboj would be in complete compliance of the PIT Regulations since there was no involvement of any insider or designated person in the said trades.

(nn) In light of all the trades being executed by a non-insider to whom the provisions of the PIT Regulations did not apply, the Noticees did not act in contravention of the Code of Conduct and the PIT Regulations thereof.

(oo) The SCN is vitiated by virtue of it being inadequate as it did not consider the non-applicability of the contra trades and pre-clearance requirement do not apply in case of derivative transactions in presence of an overall ban on holding positions in derivatives. Further, the SCN does not consider that the CoC of the Company was the one applicable to the Noticees and therefore, the alleged violation of Model CoC is therefore in derogation of the principles of natural justice.

## **CONSIDERATION OF ISSUES AND FINDINGS**

7. The issues that arise for consideration in the instant matter are:

- |                      |  |
|----------------------|--|
| <b>Issue No. I</b>   | Whether Noticee No. 1 being the Karta of Ilam C Kamboj HUF and being designated person failed to obtain pre-clearance for trading in the scrip of the company during window closure period, also entered into contra trades within a period of six months and did not report the trades executed to the company? If yes, whether the same is in violation of the provisions of Para 3.2.2, 3.3, 4.2 and 5 of Code of Conduct given in Part A of Schedule 1 read with Regulation 12 (1) of PIT Regulations? |
| <b>Issue No. II</b>  | Whether Noticee No. 2 being designated person failed to obtain pre-clearance for trading in the scrip of the company during window closure period, also entered into contra trades within a period of six months and did not report the trades executed to the company? If yes, whether the same is in violation of the provisions of Clause 6, 10 of Code of Conduct given in Schedule B under Regulation 9 of PIT Regulations 2015.  |
| <b>Issue No. III</b> | Whether the Noticee No. 1 failed to disclose the trades in the account of his wife – Noticee No. 2? If yes, whether the same is in violation of the provisions of Regulation 7(2)(a) read with regulation 6(2) of PIT Regulations?   |

**Issue No. IV** If yes, whether the failure, on the part of the Noticees would attract monetary penalty under Section 15A(b) and 15HB of the SEBI Act?

**Issue No. V** If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5 (2) of the Adjudication Rules?

**Issue No. I** **Whether Noticee No. 1 being the Karta of Ilam C Kamboj HUF and being designated person failed to obtain pre-clearance for trading in the scrip of the company during window closure period, also entered into contra trades within a period of six months and did not report the trades executed to the company? If yes, whether the same is in violation of the provisions of Para 3.2.2, 3.3, 4.2 and 5 of Code of Conduct given in Part A of Schedule 1 read with Regulation 12 (1) of PIT Regulations?**

8. I note that Noticee No. 1 was employed with Hero Motocorp Ltd in the capacity of Company Secretary cum Compliance Officer and he is the Karta of Ilam C Kamboj HUF. In the HUF account trades had taken place in both long and short positions in Hero MotoCorp futures and options resulting in a profit of Rs.6,88,881/-, as detailed in para 4c above. Further, I also note that in 21 instances, trades were carried out in the account of Ilam C Kamboj HUF during the trading window closure period i.e. during the period April 16, 2013 to April 27, 2013, July 13, 2013 to July 25, 2013 and October 12, 2013 to October 24, 2013, as given below:

Sl. No.	Date	Sec Name/ Contract	Gr Buy Vol	Gr Sell Vol	Gr Buy Value	Gr Sell Value
1	26/04/2013	HEROMOTOCO13MAYFUT	1250	250	1999018.75	409037.5
2	15/07/2013	HEROMOTOCO13JULFUT	0	125	0	214150
3	16/07/2013	HEROMOTOCO13AUGFUT	375	0	627675	0
4	18/07/2013	HEROMOTOCO13JULFUT	0	250	0	427600
5	19/07/2013	HEROMOTOCO13JULFUT	0	250	0	434443.75
6	22/07/2013	HEROMOTOCO13AUGFUT	875	0	1526406.25	0
7	22/07/2013	HEROMOTOCO13JULFUT	0	875	0	1566556.25

Sl. No.	Date	Sec Name/ Contract	Gr Buy Vol	Gr Sell Vol	Gr Buy Value	Gr Sell Value
8	23/07/2013	HEROMOTOCO13AUGFUT	2250	0	3892893.75	0
9	23/07/2013	HEROMOTOCO13JULFUT	0	1000	0	1787087.5
10	23/07/2013	HEROMOTOCO13SEPFUT	0	750	0	1281406.25
11	24/07/2013	HEROMOTOCO13SEPFUT	0	500	0	855000
12	25/07/2013	HEROMOTOCO13AUGFUT	250	6875	456200	12424700
13	25/07/2013	HEROMOTOCO13JULFUT	5625	0	10209062.5	0
14	25/07/2013	HEROMOTOCO13SEPFUT	1250	0	2199356.25	0
15	15/10/2013	HEROMOTOCO13OCTFUT	500	0	1037225	0
16	18/10/2013	HEROMOTOCO13OCTFUT	0	500	0	1045975
17	22/10/2013	HEROMOTOCO13NOVFUT	500	0	1040500	0
18	23/10/2013	HEROMOTOCO13NOVFUT	250	0	512887.5	0
19	23/10/2013	HEROMOTOCO13OCTFUT	0	750	0	1561218.75
20	24/10/2013	HEROMOTOCO13NOVFUT	250	0	521125	0
21	24/10/2013	HEROMOTOCO13OCTFUT	0	250	0	522781.25

9. I note from the KYC documents of Ilam C Khamboj HUF account which were provided to the Noticee No. 1 as Annexure B of the SCN that the Karta and All Co-parceners have given a declaration in case of HUF account that, *“we confirm that affairs of the HUF firm are carried on mainly by the Karta Shri Ilam C Kamboj on behalf and in the interests and for the benefit of all the co-parceners. We hereby authorise the Karta Shri Ilam C Kamboj on behalf of the HUF to deal on Capital Market segment (CM), Future & Options segment (F&O), Currency Derivative Segment or any other segment that may be introduced by NSE/BSE in future and the said Trading Member is hereby authorized to honor all instructions oral or written, given by him on behalf of the HUF. Shri Ilam C Kamboj is authorized to sell, purchase, transfer, endorse, negotiate documents and/or otherwise deal through ESCORTS SECURITIES LTD on behalf of the Ilam C Kamboj HUF.”*

10. The Noticee No.1 has submitted that the trades in the HUF account were carried out by his son Shray Kamboj. This has also been confirmed by the broker Escorts Securities Limited. The Noticee has further submitted that Shray Kamboj was not dependent on him and this is confirmed by Income Tax statements of Shray Kamboj submitted by the Noticee. I note that Para 3.3.1 of the Model Code of Conduct in Schedule 1 of the PIT Regulations requires *All directors/officers/designated employees of the company and their*

*dependents as defined by the company who intend to deal in the securities of the company* to pre-clear the transactions. Hence I agree that the son of Noticee No.1 was not required to pre-clear his transactions in terms of the said Code of Conduct. Having said this, I note that the Karta of the HUF account was Noticee No.1 and he was the one authorised to deal in the trading account in terms of the KYC documents.

11. In this regard, it is noted that Hon'ble Supreme Court, while discussing the position of managing member (*Karta*) and his powers in the matter of **Sushil Kumar (Sunil) & Ors. v. Ram Prakash & Ors.** (AIR 1988 SC 576), has held that, *"In a Hindu family, the karta or manager occupies a unique position. It is not as if anybody could become manager of a joint Hindu family. As a general rule, the father of a family, is alone entitled to manage the joint family property. The manager occupies a position superior to other members. He has greater rights and duties.... He is also entitled to manage the family properties. In other words, the actual possession and management of the joint family property must vest in him."* It is noted that the observations of Supreme Court in **Sushil Kumar (supra)** were also affirmed in the matter of **Subhodkumar & Ors. v. Bhagwant Namdeorao Mehetre & Ors.** (AIR 2007 SC 1324).

12. In view of the above, I am of the view that as Noticee No. 1 is the Karta of the Ilam C Kamboj HUF account, the Noticee was responsible for all transactions which were carried out from the HUF account. Therefore, being a Karta / managing member of the HUF, the Noticee cannot absolve himself from its managerial obligation of responsibility for the trades in the HUF account by stating that the trades were carried out by his son, without his knowledge.

13. The Noticee has also stated that Para 4.2 of the Model Code of Conduct in Schedule 1 of PIT Regulations specifically prohibits derivatives trades, which was also prohibited in the Company Code of Conduct which the Noticee was required to follow. The Noticee has argued that since the applicable code of conduct did not permit trading in derivatives contracts, there was no

requirement of seeking pre-clearance of trades in derivatives, and hence violations of para 3 of the Model Code of Conduct relating to trading window closure, pre-clearance, and para 4.2 relating to contra trades could not be alleged. I find this to be a specious argument as, firstly, transactions in derivatives were undertaken which are specifically prohibited in para 4.2. I further note that had pre-clearance for such trades been sought, it would have certainly been denied. Secondly, obligations in para 3 of the Model Code of Conduct relating to pre-clearance and trading window closure refer to trading in securities which includes derivatives.

14. The Noticee has also stated that the SCN is not adequate in nature and is just a mechanical reiteration of the statutory provisions and the model code of conduct which is issued in the transgression of the principles of natural justice and hence, is vitiated. In this regard, I note that the SCN is specific and detailed, giving complete details of the transactions undertaken and the provisions which are alleged to be violated. Hence, I find this contention of the Noticee to be unacceptable.
15. I further note that as Compliance Officer of the Company, it was all the more important for Noticee No.1 to be aware and informed of trading activity in the HUF account for which he was the Karta, so as to ensure that necessary compliances in terms of Code of Conduct were carried out. Hence, even if it is accepted that the trades in the HUF account were carried out by Shray Kamboj, son of Noticee No.1, the responsibility of ensuring compliance with the Code of Conduct including that of pre-clearance of trades, following trading window restrictions, not engaging in derivatives transactions, ensuring that no opposite transactions take place within 6 months and reporting of trades rests with the Noticee No.1, who was Karta of the HUF account.
16. Since the Noticee No.1 failed to ensure the necessary compliances in respect of trading in the account of Ilam C Kamboj HUF as brought out above, I find that the Noticee violated provisions of Para 3.2.2, 3.3, 4.2 and 5 of Code of



Conduct given in Part A of Schedule 1 read with Regulation 12 (1) of PIT Regulations.

**Issue No. II**      **Whether Noticee No. 2 being designated person failed to obtain pre-clearance for trading in the scrip of the company during window closure period, also entered into contra trades within a period of six months and did not report the trades executed to the company? If yes, whether the same is in violation of the provisions of Clause 6, 10 of Code of Conduct given in Schedule B under Regulation 9 of PIT Regulations 2015.**

**And**

**Issue No. III**      **Whether the Noticee No. 1 failed to disclose the trades in the account of his wife – Noticee No. 2? If yes, whether the same is in violation of the provisions of Regulation 7(2)(a) read with regulation 6(2) of PIT Regulations?**

17.I note from the SCN that Noticee No. 2 had executed trades without pre clearance and has taken both long and short positions in Hero MotoCorp futures and options and made a profit of Rs. 52,210/-. The summary of the trades is given below:-

Security Name/ Contract	Buy Value (Rs)	Sale Value (Rs)
HEROMOTOCO15NOVFUT	2071300	2077570
HEROMOTOCO15NOV2650PE	26350	66200
HEROMOTOCO15DECFUT	2614440	2620530
<b>Total</b>	<b>4712090</b>	<b>4764300</b>
<b>Total Profit</b>		<b>52210</b>

18. The details of trade carried out by Noticee No. 2 during November 19, 2015 to December 15, 2015 is given below:-

Date	Sec Name/ Contract	Gr Buy Vol	Gr Sell Vol	Gr Buy Value	Gr Sell Value
19/11/2015	HEROMOTOCO15NOV2650PE	1000	800	26350.00	52200.00
19/11/2015	HEROMOTOCO15NOVFUT	200	0	518830.00	0.00
20/11/2015	HEROMOTOCO15NOV2650PE	0	200	0.00	14000.00
20/11/2015	HEROMOTOCO15NOVFUT	600	800	1552470.00	2077570.00
03/12/2015	HEROMOTOCO15DECFUT	600	200	1603280.00	535800.00
07/12/2015	HEROMOTOCO15DECFUT	0	400	0.00	1065590.00

15/12/2015	HEROMOTOCO15DECFT	400	400	1011160.00	1019140.00
<b>TOTAL</b>				<b>4712090.00</b>	<b>4764300.00</b>

19. The details of trading window closure period as submitted by Hero Motocorp during the relevant period in 2015 are as given below:-

S. No.	Board Meeting Date	Trading Window Closure Dates (both days inclusive)	
		From	To
1.	20.10.2015	09.10.2015	22.10.2015
2.	11.02.2016	02.02.2016	13.02.2016
3.	10.03.2016	04.03.2016	12.03.2016
4.	05.05.2016	28.04.2016	07.05.2016
5.	08.08.2016	31.07.2016	10.08.2016
6.	26.10.2016	17.10.2016	28.10.2016

20. From the above I note that Noticee No. 2 has traded during November 19, 2015 to December 15, 2015 when there was no trading window closure period. Therefore, the charge of trading during window closure is not established. Noticee No. 2 has simply contended that her son Shray Kamboj has traded in her account and, since Shray Kamboj is neither director nor designated person, the obligations applicable to designated persons such as pre-clearance, trading window closure, contra trade restrictions are not applicable to trades done by him.

21. In terms of the PIT Regulations 2015, connected persons including immediate relatives are designated persons for the purpose of the Code of Conduct. Noticee No. 2 being wife of Noticee No.1 who was the Compliance Officer, is a designated person. Even if it is accepted that trades in her account were being carried out by her son, the responsibility for those trades rests with Noticee No. 2. By lending her trading account to her son Shray to trade, Noticee No. 2 cannot absolve herself from the obligations of with the Code of Conduct for trading in the securities of the company.

22. Noticee No. 2 executed trades in derivatives without seeking pre-clearance, executed contra trades within 6 months and made profit of Rs. 52,210/-. Since the Noticee No. 2 failed to ensure the necessary compliances in respect of trading in her account in the securities of Hero Motocorp, as brought out above,

I find that the Noticee violated provisions of Clause 6 and 10 of Code of Conduct given in Schedule B under Regulation 9 of PIT Regulations 2015.

23. The gross value of trades in the account of Noticee No. 2 is more than Rs. 10 lakhs. In terms of Regulation 7(2) of the PIT Regulations 2015, Noticee No.1 was required to report the transactions of Noticee No. 2, which he failed to do. Hence it is established that Noticee No. 1 has violated provisions of Regulation 7(2)(a) read with Regulation 6(2) of the PIT Regulations 2015.

**Issue No. IV      If yes, whether the failure, on the part of the Noticees would attract monetary penalty under Section 15A(b) and 15HB of the SEBI Act?**

**And**

**Issue No. V      If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act read with Rule 5 (2) of the Adjudication Rules?**

24. As it has been established that the Noticee No. 1 violated provisions of Para 3.2.2, 3.3, 4.2 and 5 of Code of Conduct given in Part A of Schedule 1 read with Regulation 12(1) of PIT Regulations and Regulation 7(2)(a) read with Regulation 6(2) of the PIT Regulations 2015, and that Noticee No. 2 violated provisions of Clause 6 and 10 of Code of Conduct given in Schedule B under Regulation 9 of PIT Regulations 2015, I find that it is a fit case for imposing monetary penalty under section 15A(b) and 15HB of the SEBI Act, which reads as under;

**SEBI Act:**

**Penalty for failure to furnish information, return, etc.**

*15A. If any person, who is required under this Act or any rules or regulations made thereunder,—*

*(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty*

*of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less;*

**Penalty for contravention where no separate penalty has been provided.**

**15HB.** *Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which may extend to one crore rupees.*

25. While determining the quantum of penalty under Section 15A(b) and 15HB of the SEBI Act, the following 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-I, 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.

26. From the available records it is observed that Noticee No. 1 had made a profit of Rs. 6,88,881.25/- and Noticee No. 2 has made a profit of Rs. 52,210/- by carrying out trades in violation of provisions cited above. No past actions / repetitive nature of default has been shown in the investigation report. I note that being Compliance Officer of the Company, it was incumbent upon Noticee No. 1 to be more than usually careful about transactions in the accounts of persons connected to him, and in ensuring strict compliance with the Code of Conduct.

27. Therefore, taking into account aforesaid factors, and considering the facts and circumstances of the case, I am of the view that a penalty of ₹8,00,000/- upon Noticee No. 1 and a penalty of ₹1,00,000/- upon Noticee No. 2 will be commensurate with the violations committed by the Noticees.

## ORDER

28. After taking into consideration all the facts and circumstances of the case, in exercise of powers conferred upon me under Section 15I (2) of the SEBI Act read with Rule 5 of the Adjudication Rules, I hereby impose the following penalty upon the Noticees as shown in the table below:

Name of the Noticee	Penalty Provisions and Violations	Penalty Amount
Ilam C Kamboj	Under section 15HB of the SEBI Act for violation of provisions of Para 3.2.2, 3.3, 4.2 and 5 of Code of Conduct given in Part A of Schedule 1 read with Regulation 12 (1) of PIT Regulations.	₹7,00,000/- (Rupees Seven Lakh only)
	Under section 15A(b) of the SEBI Act for violation of provisions of Regulation 7(2)(a) read with regulation 6(2) of PIT Regulations 2015.	₹1,00,000/- (Rupees One Lakh only)
Alka Kamboj	Under section 15HB of the SEBI Act for violation of provisions of Clause 10 of Code of Conduct given in Schedule B under Regulation 9 of PIT Regulations 2015	₹1,00,000/- (Rupees One Lakh only)
<b>Total Penalty</b>		<b>₹9,00,000/- (Rupees Nine Lakh only)</b>

29. The Noticees shall remit / pay the said amount of penalty within 45 days of receipt of this order either by way of Demand Draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, OR through online payment facility available on the SEBI website [www.sebi.gov.in](http://www.sebi.gov.in) on the following path, by clicking on the payment link

**ENFORCEMENT → Orders → Orders of AO → PAY NOW**

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

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

e) Transaction Number

31. Copies of this Adjudication Order are being sent to the Noticee and also to SEBI in terms of Rule 6 of the Adjudication Rules.

**DATE: SEPTEMBER 26, 2019**

**PLACE: MUMBAI**

**MANINDER CHEEMA**

**ADJUDICATING OFFICER**