

WTM/ AB /EFD - I/DRA-1/ 25 /2018-19

SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: ANANTA BARUA, WHOLE TIME MEMBER
ORDER

Under Sections 11(1), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992 in the matter of insider trading in the shares of Jagran Prakashan Limited

In respect of: -

Noticee No.	Name of the Noticees	PAN
1	Mr. Amit Jaiswal	AEQPJ6841J
2	Ms. Mansi Jaiswal	AOHPM4432M

The aforesaid entities are hereinafter referred to by their respective names/serial numbers or collectively as “the Noticees”.

Background:

1. Securities and Exchange Board of India (hereinafter referred to as “SEBI”) had conducted an investigation in the matter relating to the trading activity of certain entities in the scrip of Jagran Prakashan Limited (hereinafter referred to as “JPL / Company”) for the period August 01, 2009 to October 31, 2009 (hereinafter referred as “investigation period / IP”) to ascertain whether there were any violation of the provisions of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as “SEBI Act”) and Rules and Regulations made thereunder. SEBI has observed that Mr. Amit Jaiswal and Ms. Mansi Jaiswal had traded in the shares of the Company during the investigation period, while in possession of unpublished price sensitive information (hereinafter referred to as “UPSI”) and made unlawful gains in the process.

2. SEBI has passed an ad-interim ex-parte order dated November 20, 2015 impounding the alleged illegal gains of Rs. 10,41,005/- made by the Noticees with a direction to the Noticees not to dispose of or alienate any of their assets/ properties/ securities till the aforesaid amount is credited into an escrow account. The aforesaid impounded amount was deposited by the Noticees as directed on December 21, 2015.

Show Cause Notice, Reply and Personal Hearing:

3. Upon completion of investigation, a Show Cause Notice (hereinafter referred to as, 'SCN') dated July 25, 2017 providing the findings of SEBI's investigation was issued to both the Noticees whereby copies of the following documents were enclosed as annexures.

Annexure no.	Particulars
1	JPL letter dated July 02, 2009 bearing the subject 'Disclosure as per Regulation 13 of SEBI (Prohibition of Insider Trading) Regulations, 1992 and as per Regulation 7 of SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997'
2	Letter dated May 14, 2012 received by SEBI from Kanchan Properties Limited
3	Details of trades of Mr. Amit Jaiswal, Ms. Mansi Jaiswal and Kanchan Properties Limited in the scrip of JPL

4. The SCN called upon the Noticees to show cause as to why directions under sections 11(4)(d) and 11B of the of the SEBI Act should not be issued against them to disgorge the wrongful gain made along with the interest earned thereon for the alleged violations under section 12A (d) and (e) of the SEBI Act and Regulation 3 (i) and (ii) of SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter referred to as "PIT Regulations") read with Regulation 12 of SEBI (Prohibition of Insider Trading) Regulations, 2015. The Noticees were also advised to submit their replies, if any, within 21 days of receipt of the SCN.
5. Vide letter dated October 09, 2017, Mr. Amit Jaiswal, Noticee no. 1 submitted his reply. Ms. Mansi Jaiswal filed her reply vide letter dated October 27, 2017. In compliance with the principles of natural justice the Noticees were granted an opportunity of hearing on December 10, 2018 when the authorized representatives of the Noticees appeared before me

and made their submissions. The Noticees also filed their written submissions on December 12, 2018.

Consideration of SCN, reply and submissions:

6. The SCN has alleged that the Noticees have traded in the shares of JPL during the investigation period while in possession of the below mentioned UPSI relating to JPL thereby violating Section 12A (d) and (e) of the SEBI Act read with Regulation 3 of PIT Regulations:
- (i) Declaration of interim dividend of Rs. 2/- per share for FY 2009 – 10.
 - (ii) Financial results of JPL for the quarter ended September 30, 2009.
 - (iii) Decision of Kanchan Properties Limited (hereinafter referred to as “Kanchan”), an associate company of JPL to sell shares of JPL through stock exchanges to raise approximately Rs. 40-42 crores.

Declaration of interim dividend of Rs. 2/- per share for FY 2009 – 10

7. The chronology of events as regards the declaration of interim dividend by JPL during the investigation period is as under:

Sr No	Date	Activity
1	Oct 14, 2009	Date when agenda proposing interim dividend of Rs. 2/- by JPL for FY 2009-10 was prepared.
2	Oct 15, 2009	Date when agenda proposing interim dividend of Rs. 2/- by JPL for FY 2009-10 was circulated to the Board of JPL
3	Oct 27, 2009	The date of Board meeting of JPL when this interim dividend proposal was discussed
4	Oct 27, 2009	Date of Board meeting of JPL when this interim dividend proposal was approved
5	Oct 27, 2009 13:43(BSE) 13:54(NSE)	Board of Directors of JPL declared interim dividend of Rs. 2/- per equity share

8. In terms of Regulation 2(ha) of the PIT Regulations, PSI means:

(2) (ha) “price sensitive information” means any information which relates directly or indirectly to a company and which if published is likely to materially affect the price of securities of company. Explanation.—The following shall be deemed to be price sensitive information :—

- (i) periodical financial results of the company;
- (ii) intended declaration of dividends (both interim and final);
- (iii) issue of securities or buy-back of securities;
- (iv) any major expansion plans or execution of new projects.
- (v) amalgamation, mergers or takeovers;
- (vi) disposal of the whole or substantial part of the undertaking;
- (vii) and significant changes in policies, plans or operations of the company;

As per the definition of ‘price sensitive information’, intended declaration of dividends, both interim and final is deemed to be price sensitive information.

9. The Company, JPL in its letter dated March 25, 2015 informed SEBI that Mr. Amit Jaiswal was involved in the preparation and circulation of the agenda to the board of directors of JPL for its meeting to be held on October 27, 2009 which included the agenda proposing the interim dividend of Rs. 2/- for FY 2009 – 10. The Board of Directors in its meeting on October 27, 2009 discussed and approved the declaration of interim dividend of Rs. 2/-. On October 27, 2009 press release regarding a corporate announcement of the board’s decision was made public at 13:43 hours at BSE and 13:54 hours at NSE.

10. However, Mr. Amit Jaiswal in his reply dated October 09, 2017 has stated that the draft of agenda proposing interim dividend was prepared in late evening of October 14, 2009 and next day i.e. October 15, 2009 after compilation and finalization was circulated to Board and Audit Committee members. The Noticee has also stated that JPL had also informed BSE and NSE on October 15, 2009 at 11:56 hours and 11:58 hours respectively about the Board Meeting to be held on October 27, 2010 to consider inter alia the declaration of interim dividend for FY 2009-10. BSE and NSE confirmed that it had received the board meeting intimation from JPL on October 15, 2009 regarding declaration of interim dividend for FY

2009 - 10. According to the Noticee, the rate of interim dividend i.e. Rs. 2/- was not known to him and the information came into existence only on October 27, 2009 i.e. the date of the board meeting when the dividend was declared in the board meeting held on the same day and was made public on the same day. The Noticee has also furnished certain extracts stated to be from the agenda of the said meeting dated October 27, 2009 without any supporting documentary proof. The relevant Agenda items for the meeting held on October 27, 2009 as provided by the Noticee is as under:

“Agenda: Item no. 5

To recommend declaration of Interim Dividend for the financial year 2009 -10.

The Audit Committee shall consider the matter relating to declaration of interim dividend for the financial year 2009 -10 and recommend it to the Board of Directors”.

“Agenda: Item no. 10:

To consider, discuss and declare interim dividend for the financial year 2009 -10.

The Board shall consider and discuss the matter relating to declaration of interim dividend for the financial year 2009 -10 and to fix the record date, if payment of interim dividend is approved.”

11. In the absence of documentary proof such as agenda papers in relation to Agenda Item no. 5 and 10 of the said board meeting of JPL, it is difficult to rely only on the above extracts of Agenda Items produced by the Noticee, Mr. Amit Jaiswal. Even otherwise the aforesaid extract does not speak that the board of directors of JPL shall fix the quantum of interim dividend. I note that the Company in its letter dated October 25, 2015 which was signed by the Noticee Mr. Amit Jaiswal himself in his capacity as Company Secretary has informed SEBI that on October 14, 2009 the agenda proposing the interim dividend including the amount of dividend i.e. Rs. 2/- for FY 2009 – 10, was prepared. In this regard, the Noticee Mr. Amit Jaiswal now contends that the said information was provided due to error in filling the table provided by SEBI in its summons. According to the Noticee, SEBI had sent summons dated March 23, 2015 with two tables containing activities, leaving dates to be filled in by the Company. The Company had filled the dates and submitted the table without

altering activity side of the table. I am not inclined to accept the said contention of the Noticee as the aforesaid information was provided by the Company, JPL. A listed company or its compliance officer is expected to exercise reasonable care while providing information to a regulator, particularly in response to Summons. If the quantum of interim dividend was not included in the Agenda Item, the company could have specifically mentioned the date in the letter dated October 25, 2015. The Noticee cannot now claim that the information provided was due to error. I observe that the Noticee is now camouflaging the information provided to SEBI by the Company as an error to avoid the consequences of this proceedings. Based on the records before me, I note that the Noticee no. 1 was involved in preparing the agenda item for declaring the interim dividend of Rs. 2/- on October 14, 2009 which was the date when the UPSI came into existence. The stock exchanges were informed on October 15, 2009 only relating to the proposal to discuss the declaration of interim dividend for FY 2009 – 10, and the amount of interim dividend i.e. Rs. 2/- was made public only after the meeting of board of directors of JPL on October 27, 2009. Thus, I note that the UPSI came into existence on October 14, 2009 and Mr. Amit Jaiswal was privy to the aforesaid UPSI of interim declaration including the rate of interim dividend i.e. Rs 2/- per share between October 14, 2009 and October 27, 2009 13:43 hours, 2009. Therefore, I am inclined to accept the allegations in the SCN against the Noticee in this regard.

Financial results of JPL for the quarter ended September 30, 2009

12. The SCN alleges that the Noticee No.1 was privy to the 2nd UPSI namely, financial results for the quarter ended September 30, 2009 from the period October 15, 2009 to October 27, 2009. The chronology of events leading to declaration of financial results by JPL for the quarter ended September 30, 2009 during the investigation period is as under:

Sl.No.	Date	Activity
1	Oct 15, 2009	Date when the agenda of financial results for September 2009 quarter was circulated to the Audit Committee and Board of JPL.
2	Oct 27, 2009	Date of meeting of Audit Committee and the Board of JPL when the financial results for September 2009 quarter was held
3	Oct 27, 2009	Date of approval by Audit Committee and the Board of the financial results for September 2009 quarter
4	Oct 27, 2009 14:07(BSE) Oct 28, 2009	Press release issued by JPL on Financial Results for September 2009 quarter

	14:25(NSE)	
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13. Noticee in his reply dated October 09, 2017 has stated that the agenda circulated to the Audit Committee and the board of directors contained an item that Audit Committee and the Board shall consider the financial results and no financial results were circulated in advance. The Noticee has also produced an extract of the agenda item which is as under:

“Agenda: Item no. 9

To take on record Un-audited Financial Results in terms of Clause 41 of the Listing Agreement.

MD/ CEO/CFO Certificate on the unaudited financial results for the quarter ended September 30, 2009 as required under Clause 41 of the Listing Agreement shall be placed at the time of meeting for taking on record.

In terms of Clause 41 of the Listing Agreement, Un-audited Financial Results for the quarter ended 30th September, 2009 shall be placed before the Board for discussion, review and taking on record.”

He has further stated that since the agenda item regarding financial results was made public on October 15, 2009 (communicated to BSE at 11:56 hours and NSE at 11:58 hours) there was no UPSI from October 15, 2009. He further corroborated the same by relying on email of JPL dated March 26, 2015 wherein SEBI was informed that Mr. Amit Jaiswal was involved in the activity of preparing the agenda for the said quarterly financial results of JPL, however, he was not involved in preparing/ finalizing the quarterly financial results. JPL has also stated that only the agenda of financial results for September 2009 quarter was circulated to the Audit Committee and Board of JPL on October 15, 2009, and not the exact financial results. The Noticee is therefore contending that the UPSI came into existence only on October 27, 2009 when the financial results were considered by the Audit Committee and Board of Directors of JPL. I note that the aforesaid reply was provided by the Noticee on behalf of the Company, in his capacity as Company Secretary & Compliance Officer of JPL. Therefore, in the absence of evidence showing the involvement of Noticee no. 1 in preparing the financial results or having access to the same before the Board Meeting on October 27, 2009, it is not possible to conclude that the Noticee no. 1 was privy to the 2nd PSI. Accordingly, the charge against the Noticee to this extent is disposed of without any directions.

Decision of Kanchan Properties Limited to sell shares of JPL to raise Rs. 40-42 crores

14. The third PSI allegedly in the possession of the noticees is the decision of Kanchan Properties Limited (hereinafter referred to as “Kanchan”) to sell shares of JPL through stock exchanges to raise approximately Rs. 40-42 crore. Kanchan is an associate company of JPL. The Board of Kanchan in its meeting held on September 01, 2009, decided to sell shares of JPL in the open market through stock exchanges at price ranging between Rs. 105 – Rs. 115 to raise approximately Rs. 40-42 crore through a board resolution which is reproduced as under:

“TO SELL THE SHARES OF JAGRAN PRAKASHAN LIMITED:

The Chairman informed the Board that in order to raise funds for the repayment of loan IL&FS Financial Services Limited, the management has decided to sell the shares of Jagran Prakashan Limited in the open market through stock exchange. After brief discussions, the Board passed the following resolution:

“RESOLVED THAT the Company be and is hereby authorized to sell the shares of Jagran Prakashan Limited in the open market through stock exchange at the price ranging between Rs. 105 to Rs. 115 and to raise approximately Rs. 40-42 crores, for the purpose of repayment of loan raised from IL&FS Financial Services Limited.

RESOLVED FURTHER THAT the Yogendra Mohan Gupta, Mahendra Mohan Gupta, Devendra Mohan Gupta and Shailendra Mohan Gupta, Directors of the Company be and are hereby severally authorized to do all such acts, deeds, things, matters necessary or incidental thereto.”

15. Kanchan instructed SPFL Securities Limited to sell approximately 40 lakh shares over a period of 3-4 weeks. Kanchan is part of the Promoter & Promoter Group as disclosed by JPL to NSE vide letter dated July 02, 2009. The SCN has alleged that such decision of sale of substantial quantity of shares by Promoter /Promoter Group entity would impact the scrip price of the company. The average daily trade volume on NSE during the investigation period was only 3,34,471. Therefore, the decision of Kanchan to sell about 40 lakh shares of JPL is a material Price Sensitive Information.
16. Mr. Amit Jaiswal in his reply dated October 09, 2017 has denied participation in the meetings of Kanchan. The decision of the board of Kanchan to sell the shares was not known to him.

I note that in its letter dated March 03, 2015, Kanchan has stated that Mr. Shailendra Mohan Gupta, director of Kanchan who attended the board meeting of Kanchan held on September 01, 2009 communicated the proceedings and decisions of the board meeting to Mr. Amit Jaiswal. I also note that minutes of the said board meeting were recorded by Mr. Amit Jaiswal as documentation support staff. Therefore, I note that Mr. Amit Jaiswal was privy to the said UPSI. It has been further stated by Mr. Amit Jaiswal in his reply that the minutes on the points of sale of shares are very broad, general and does not mention even the quantity/ number of shares proposed to be sold and without these relevant details the said decision was lacking in elements of price sensitivity. As per the certified copy of the minutes of the said Board Meeting, resolution was passed by board of Kanchan to sell the shares of JPL in the open market through stock exchanges at the price ranging between Rs. 105/- to Rs. 115/- to raise approximately Rs. 40-42 Crore. Therefore, I am unable to accept the contention of the Noticee that the resolution is broad and is lacking price sensitivity. The Noticee was aware of the price range of Rs. 105/- to Rs. 115/- and the amount to be raised i.e. Rs. 40-42 Crore, therefore, approximate number of shares to be sold by Kanchan can be calculated by him.

17. In addition to the Noticee being the documentation support staff for Kanchan, it can be seen from Kanchan's letter dated October 10, 2014 which stated that Mr. Amit Jaiswal knew the directors of Kanchan and assisted in Registrar of Companies filings of Kanchan on request of its directors and received reimbursements of Rs. 900/- and Rs. 612/- towards payments made by him by personal credit cards for Kanchan's filing fees. Mr. Amit Jaiswal vide letter dated November 03, 2014 confirmed his involvement in RoC filings of Kanchan acknowledging that Directors of Kanchan were personally known to him and that he was paid the said reimbursements.
18. I note that Kanchan's decision to sell shares of JPL were in fact communicated to Mr. Amit Jaiswal by Mr. Shailendra Gupta, director of Kanchan and Mr. Amit Jaiswal also had access to said UPSI as he recorded the minutes of the meeting where the said decision was taken. Therefore, I note that Mr. Amit Jaiswal was privy to the UPSI of Kanchan's decision to sell shares of JPL in the open market through stock exchanges at price ranging between Rs. 105 – Rs. 115 to raise approximately Rs. 40-42 crore

19. The Noticee in his reply has also stated that even SEBI (Substantial Acquisition of Shares and Takeover) Regulations (hereinafter referred to as “SAST Regulations”) and SEBI (Prohibition of Insider Trading) Regulations applicable at the relevant point of time for period under investigation do not consider selling less than 2% shares by promoter or promoter group as PSI thereby mandating any disclosure under the said Regulations. Therefore, Kanchan’s decision to sell shares which is less than 2% of paid up equity shares cannot fall within the ambit of PSI. I note that that disclosure requirements under the SAST Regulations and PIT Regulations are mandatory disclosures applicable uniformly to all the listed companies. These disclosure requirements are ensuring transparency and to enable investors to take informed decisions. The SAST and PIT Regulations do not state that trades below 2% will not be PSI. I also note that investigation has observed that the average daily trade volume on NSE during the investigation period was only 3,34,471. On the other hand, Kanchan was going to sell 40 lakh shares over a period of 3 – 4 weeks. Further, decision of an associate company like Kanchan which was also part of the promoter group to sell substantial quantity of shares would impact the price of the scrip of JPL. Therefore, I note that Kanchan’s decision to sell 40 lakh shares of JPL held by it was price sensitive information for the market.
20. In her reply dated October 27, 2017, Ms. Mansi Jaiswal, Noticee no. 2 has filed a similar response as that of Mr. Amit Jaiswal, and the same have been dealt with in the preceding paragraphs.
21. I note that Regulation 2(e) of PIT Regulations defines “insider” as: (i) “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 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.” A “connected person” is defined under Regulation 2 (c) of PIT Regulations as a person who “occupies the position as an officer or an employee of the company or holds a position involving a professional or business relationship between himself and the company whether temporary or permanent and who may reasonably be expected to have an access to unpublished price sensitive information in relation to that company.” As per his reply dated October 09, 2017, Mr. Amit Jaiswal has been working with

JPL as a Company Secretary/ Compliance Officer since April 01, 2003. JPL in its letter dated December 11, 2014 has informed that Mr. Amit Jaiswal is the Company Secretary/ Compliance Officer of JPL. Further, the Company vide letter dated March 25, 2015, signed by Mr. Amit Jaiswal himself in his capacity as Company Secretary of JPL, has informed that the Noticee, Mr. Amit Jaiswal was involved in the activity of preparing the agenda of JPL proposing interim dividend of Rs. 2/- for FY 2009 – 10. Therefore, Mr. Amit Jaiswal can be said to be a connected person as he is an employee of JPL and had access to the UPSI as per Regulation 2(e) of the PIT Regulations. Mrs. Mansi Jaiswal is the wife of Mr. Amit Jaiswal who as discussed above is a connected person. Regulation 2 (h) of the PIT Regulations states that a relative of a connected person is a person deemed to be a connected person. The PIT Regulations refers to the definition of ‘relative’ under the Companies Act, 1956 which defines ‘relative’ under section 6 [now section 2(77) of the new Companies Act, 2013 read with rule 4 of the Companies (specification of definition details) Rules, 2014)], and includes ‘wife’. Therefore, I note that Ms. Mansi Jaiswal being the wife of Mr. Amit Jaiswal, a connected person is a ‘person deemed to be connected person’.

22. As noted above, Mr. Amit Jaiswal is a connected person. I also note that due to his involvement in (a) preparing the agenda proposing interim dividend of Rs. 2/- and (b) preparing the minutes of board meeting of Kanchan wherein the resolution to sell substantial shares of JPL held by it was discussed, Noticee no. 1, Mr. Amit Jaiswal is and reasonably expected to have access to the UPSI. Ms. Mansi Jaiswal being the wife of Mr. Amit Jaiswal is a ‘person deemed to be connected person’ is reasonably expected to have an access to UPSI. Therefore, I note that both Noticees, Mr. Amit Jaiswal and Ms. Mansi Jaiswal fall under the definition of ‘insider’ under the PIT Regulations.

Trades of Noticees while in possession of UPSI

23. The date-wise trades of Shri Amit Jaiswal and Ms. Mansi Jaiswal in the scrip of JPL during investigation period is as follows:

Table 1					
Shri Amit Jaiswal			Ms. Mansi		
Date	Total Buy Qty	Total Sell Qty	Date	Total Buy Qty	Total Sell Qty
10.08.2009	0	500	26.08.2009	200	0
11.08.2009	0	800	27.08.2009	50	50
24.08.2009	0	75	31.08.2009	100	100
02.09.2009	200	0	01.09.2009	300	100
03.09.2009	200	200	02.09.2009	300	300
10.09.2009	1000	1200	03.09.2009	200	200
14.09.2009	500	500	10.09.2009	2300	2600
16.09.2009	500	500	11.09.2009	300	300
24.09.2009	1000	1000	14.09.2009	100	0
29.09.2009	11000	11000	16.09.2009	200	200
30.09.2009	4000	4000	17.09.2009	100	100
08.10.2009	2000	2000	18.09.2009	200	200
09.10.2009	4000	4000	23.09.2009	1300	1500
12.10.2009	2000	2000	24.09.2009	1600	1600
14.10.2009	2150	2150	25.09.2009	200	200
16.10.2009	20674	20674	29.09.2009	19400	19400
23.10.2009	1000	0	30.09.2009	6200	6200
26.10.2009	500	500	01.10.2009	700	700
27.10.2009	4000	0	05.10.2009	400	400
28.10.2009	1000	0	06.10.2009	500	500
29.10.2009	1000	1000	07.10.2009	500	500
30.10.2009	3000	2000	08.10.2009	5100	5100
Total	59724	54099	09.10.2009	35500	35500
			12.10.2009	16000	16000
			14.10.2009	29685	29685
			15.10.2009	47830	47830
			16.10.2009	168586	168586
			20.10.2009	6783	6783
			21.10.2009	112973	112973
			22.10.2009	2500	0
			23.10.2009	4500	500
			29.10.2009	0	1050
			30.10.2009	0	500
			Total	464607	459657
Note: The dates in bold are the days when Kanchan had also traded					

24. Trades by Mr. Amit Jaiswal and Ms. Mansi in the scrip of JPL while in possession of PSI

relating to sell decision of Kanchan is as follows:

Table 2						
Mr. Amit Jaiswal				Ms. Mansi Jaiswal		
Date	Total Buy Qty	From Kanchan	% Matching	Total Buy Qty	From Kanchan	% Matching
10.09.2009	1000	0	0	2300	931	40%
23.09.2009	0	0	0	1300	1300	100%
24.09.2009	1000	940	94.00%	1600	1260	79%
29.09.2009	11000	8000	72.72%	19400	19300	99%
30.09.2009	4000	4000	100.00%	6200	6200	100%
09.10.2009	4000	4000	100.00%	35500	34498	97%
12.10.2009	2000	2000	100%	16000	16000	100%
14.10.2009	2150	0	0	29685	29084	98%
15.10.2009	0	0	0	47830	47830	100%
16.10.2009	20674	15674	75.81%	168586	156827	93%
21.10.2009	0	0	0	112973	109218	97%
Total	45824	34614	75.53%	441374	422448	95.71%

25. From the above, I note that a high trading activity in the scrip of JPL by Mr. Amit Jaiswal and Ms. Mansi Jaiswal is observed only on the 11 days when Kanchan has traded. I note that the high percentage of matching of the buy trades of the noticees with the sell trades of Kanchan indicates that the noticees have utilized the information pertaining to the sell decision of Kanchan and made profits on the 11 days on NSE.
26. The Noticees in their respective replies have submitted that only on the days when Kanchan has traded questions have been raised on their trading. In this regard, I note that during investigation period, at NSE, the buy trades by Mr. Amit Jaiswal that matched against sell trades of Kanchan were 34,614 shares and matched against the rest of the market were 25,110 shares. The buy trades of Ms. Mansi matched against sell trades of Kanchan during the investigation period were for 4,22,448 shares and matched against the rest of the market were for 42,159 shares. Therefore, substantial trading by the Noticees is seen on the days when Kanchan has traded. Therefore, I am not inclined to accept the said contention of the Noticees.
27. From trades of Mr. Amit Jaiswal and Ms. Mansi during investigation period, following are

trades conducted by them, on NSE, during UPSI period of declaration of interim dividend of Rs. 2/- per share for FY 2009-10 and declaration of financial results for the quarter ended September 30, 2009:

Table 3						
Shri Amit Jaiswal				Ms Mansi		
Date	Total Buy Qty	Total Sell Qty		Date	Total Buy Qty	Total Sell Qty
14.10.2009	2150	2150		14.10.2009	29685	29685
16.10.2009	20674	20674		15.10.2009	47830	47830
23.10.2009	1000	0		16.10.2009	168586	168586
26.10.2009	500	500		20.10.2009	6783	6783
27.10.2009	4000	0		21.10.2009	112973	112973
				22.10.2009	2500	0
				23.10.2009	4500	500
Total	28324	23324		Total	372857	366357

28. Ms. Mansi Jaiswal has contended that she has traded separately through her broker and met her obligations independent of Mr. Amit Jaiswal. I note that on perusing the trading data of Ms. Mansi Jaiswal, it is observed that Ms. Mansi Jaiswal has traded on all the days on which Ms. Amit Jaiswal has traded. Furthermore, Table 2 shows that trades of Ms. Mansi Jaiswal have 95.71 % matched with the sell trades of Kanchan. Without knowledge of the fact that Kanchan is selling the shares of JPL, it would not have been possible for Ms. Mansi Jaiswal to match the trades of Kanchan. Therefore, I am not inclined to accept the contention of Ms. Mansi Jaiswal.
29. The Noticees have also made submissions as regards the applicability of section 15G of the SEBI Act. The proceedings before me are not under Chapter VI A of the SEBI Act, therefore, I am not dealing with the same here.
30. I note that the SCN has alleged that the Noticees have traded during the investigation period while in possession of the aforesaid UPSI thereby violating Section 12A (d) and (e) of the SEBI Act read with Regulation 3 of PIT Regulations which read as under:

SEBI Act:

12A. No person shall directly or indirectly—

(d) engage in insider trading;

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

PIT Regulations

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

3. No insider shall—

(i) either on his own behalf or on behalf of any other person, deal in securities of a company listed on any stock exchange when in possession of any unpublished price sensitive information; or

(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:

Provided that nothing contained above shall be applicable to any communication required in the ordinary course of business or profession or employment or under any law.

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

31. Regulation 3 (i) of the PIT Regulations is attracted if the person was an “insider” and had dealt in securities “when in possession” of UPSI. It has been held that Mr. Amit Jaiswal and Ms. Mansi Jaiswal are insiders for the purpose of the PIT Regulations. It has also been shown based on the trading data that the Noticees have dealt in shares when in possession of the UPSI of declaration of interim dividend of Rs. 2/- by JPL and sale of substantial shares of JPL held by Kanchan. In view of the above, I note that Mr. Amit Jaiswal and Ms. Mansi Jaiswal have traded in the scrip of JPL while in possession aforementioned 2 UPSI i.e. declaration of interim dividend of Rs. 2/- and sale of shares of JPL held by Kanchan.

32. The Noticees in their reply have stated that the trades done during the investigation period were neither based on PSI, nor does the nature of trade done indicate that they were remotely connected with PSI. In this regard, I find it pertinent to note the order of Hon'ble SAT in the matter of *Rajiv B. Gandhi and Ors. v. SEBI* (Appeal No. 50 of 2007 decided on May 9, 2008) wherein it was alleged that Mr. Rajiv B. Gandhi was the company secretary and chief financial officer of Wockhardt Limited and had access to the price sensitive information pertaining to the financial position of the company and that the other two appellants were his wife and sister and they were all insiders within the meaning of regulation 2(3) read with 2(c) of the regulations. The Hon'ble SAT in this case observed the following:

"We are of the considered opinion that if an insider trades or deals in securities of a listed company, it would be presumed that he traded on the basis of the unpublished price sensitive information in his possession unless he establishes to the contrary. Facts necessary to establish the contrary being especially within the knowledge of the insider, the burden of proving those facts is upon him. The presumption that arises is rebuttable and the onus would be on the insider to show that he did not trade on the basis of the unpublished price sensitive information and that he traded on some other basis. He shall have to furnish some reasonable or plausible explanation of the basis on which he traded. If he can do that, the onus shall stand discharged or else the charge shall stand established. Let us illustrate to explain what we mean. If an insider who sold the shares were to plead that he wanted to raise funds to meet an emergency in his family say, marriage of his daughter or bypass surgery of a close relation and could establish that fact, it would be reasonable to hold that even though he was in possession of unpublished price sensitive information, the motive of the trade was to meet the emergency. He would not be guilty of the charge of insider trading."

33. Therefore, I find that the Noticees have dealt in the shares of JPL while in possession of UPSI which has resulted in the violation of Regulation 3(i) and (ii) of SEBI (Prohibition of Insider Trading) Regulations, 1992 read with Regulation 12 of SEBI (Prohibition of Insider Trading) Regulations, 2015 and Section 12A (d) & (e) of SEBI Act by Mr. Amit Jaiswal and Regulation 3(i) of SEBI (Prohibition of Insider Trading) Regulations, 1992 read with Regulation 12 of SEBI (Prohibition of Insider Trading) Regulations, 2015 and Section 12A (d) & (e) of SEBI Act by Ms. Mansi Jaiswal.

34. SEBI vide its ad-interim ex-parte order dated November 20, 2015 directed impounding alleged illegal gains of Rs. 10,41,005/- made by the Noticees which was derived as under:

Trades of Mr. Amit Jaiswal							
Date	Sell Qty	Avg Sell Price (in Rs.)	Buy Qty	Avg Buy Price (in Rs.)	Opening Price (in Rs.)	Closing Price on 27.10.2009 (in Rs)	Gain (in Rs.)
10.09.2009	1200	106.11	1000	105.10	103.00	115.40	1632
24.09.2009	1000	108.26	1000	106.99	105.00		1270
29.09.2009	11000	107.41	11000	105.14	106.20		24970
30.09.2009	4000	106.49	4000	105.05	104.45		5760
09.10.2009	4000	106.80	4000	105.05	107.10		7000
12.10.2009	2000	106.00	2000	105.05	104.8		1900
14.10.2009	2150	107.00	2150	106.24	107.85		1634
16.10.2009	20674	110.74	20674	109.77	110.00		20053
23.10.2009	0	NA	1000	113.64	106.00		1760
26.10.2009	500	120.00	500	115.50	115.00		2250
27.10.2009	0	NA	4000	118.86	119.35		NA
Total	46,524		51,324				68,229

Trades of Ms. Mansi Jaiswal							
Date	Sell Qty	Avg Sell Price (in Rs.)	Buy Qty	Avg Buy Price (in Rs.)	Opening Price (in Rs.)	Closing Price on 27.10.2009 (in Rs)	Gain (in Rs.)
10.09.2009	2600	107.12	2300	105.19	103.00	115.40	5675
23.09.2009	1500	114.15	1300	108.05	103.00		10160
24.09.2009	1600	107.83	1600	106.99	105.00		1344
29.09.2009	19400	106.97	19400	105.06	106.20		37054
30.09.2009	6200	106.59	6200	105.24	104.45		8370
09.10.2009	35500	106.74	35500	105.26	107.10		52540
12.10.2009	16000	106.10	16000	105.05	104.8		16800
14.10.2009	29685	107.01	29685	106.00	107.85		29981.85
15.10.2009	47830	107.67	47830	106.43	106.80		59309.2
16.10.2009	168586	110.43	168586	109.53	110.00		151727.4
21.10.2009	112973	113.65	112973	112.23	113.70		160421.7
22.10.2009	0	NA	2500	115.27	111.75		325
23.10.2009	500	114.65	4500	116.12	106.00		NA
Total	442374		448374				533708

Note: Method adopted to compute unlawful gains under various scenarios is as detailed below:

1. When sell quantity equals buy quantity on the trading day. Accordingly, Profits made = (Avg Sell Price – Avg. Buy Price) X Trade qty

2. When Buy Quantity > Sell Quantity and the UPSI got published: Accordingly, Profits made = (Avg Sell Price – Avg. Buy Price) X Sell qty + Excess of Buy qty over sell qty X (Closing Price on day of UPSI become public– Avg Buy Price)

3. When Sell Quantity > Buy Quantity and the PSI did not get published: Accordingly, Profits made = Qty of shares sold X Avg sell price – qty of shares bought X Avg buy price + qty of excess shares X Opening price of shares on that day

Therefore, the total gains made by the two noticees was derived as under:

Entity Name	PAN	Gain (Amount in Rs.)	Interest 12% p.a.*	Total (Amount in Rs.)
Amit Jaiswal	AEQPJ6841J	68,229	49,914	1,18,143
Mansi	AOHPM4432M	5,33,708	3,89,154	9,22,862
Total		6,01,937	4,39,068	10,41,005

*Interest calculated on unlawful gains from 10/09/2009 till 10/11/2015

35. In their written submissions dated December 10, 2018, the Noticees have submitted that the Adjudicating Officer (hereinafter referred to as “AO”) vide order dated November 27, 2017 having levied penalty SEBI is now precluded from imposing disgorgement direction. I note that the proceedings under section 11 & 11B and Chapter VIA of the SEBI Act are two distinct proceedings, and the consequences of both the proceedings is different. In this regard, it pertinent to note the observations of the Hon’ble Securities Appellate Tribunal (hereinafter referred to as “SAT”) in *Shailesh Jhaveri v. SEBI* (Appeal no. 72 of 2012, decided on October 04, 2012) which are as under:

“The Act itself permits adjudication proceedings under Chapter VIA of the Act, issue of directions under Sections 11 and 11B of the Act and prosecution under Section 23 of the Act for violating provisions of the Act or the rules made thereunder.”

36. The Noticees have also relied on the observations of the Hon’ble Supreme Court of India in *Excel Crop Care Ltd. v. Competition Commission of India* (2017(6) SCALE 241) with respect to the doctrine of proportionality. Based on the said doctrine, the Noticees contended that as per the AO order dated November 27, 2017 a penalty of Rs. 45,51,005/- was levied as against the finding of unlawful gain of Rs. 31,615.85 on the Noticees. In this connection, I note that the Hon’ble Supreme Court in the aforesaid judgment observed that the doctrine of proportionality is a result oriented test as it examines the result of the law. The proportionality achieves balancing between two interests: harm caused to the society by the

infringer which gives justification for penalizing the infringer on the one hand and the right of the infringer in not suffering the punishment which may be disproportionate to the seriousness of the act. I note that a distinction needs to be drawn with respect to direction to disgorge the wrongful gains and imposition of monetary penalty by the Adjudicating Officer of SEBI. The Noticees have also argued that penalty levied by the AO is disproportionate. In this connection I note that the AO order is not subject matter of contest under this proceedings and there is a separate remedy available to the Noticees under the SEBI Act. I find that the Noticees have already accepted the AO order and paid the penalty. The Noticees are estopped from challenging the same before me. I, further, note that the SCN dated July 25, 2017 deals with only disgorgement. Disgorgement is not a punishment. The Hon'ble SAT in *Shri Shadilal Chopra v. SEBI* (Appeal no. 201 of 2009, decided on December 02, 2009) has observed that "*Disgorgement is the forced giving up of profits obtained by illegal or unethical acts. It is a repayment of ill-gotten gains that is imposed on wrong doers. It is a monetary equitable remedy that is designed to prevent a wrong doer from unjustly enriching himself as a result of his illegal conduct.*" Therefore, I am unable to accept the said contention of the Noticees.

37. The Noticees have also stated that assuming SEBI wants to impose disgorgement, the wrongful gain of Rs. 31,615.85 arrived by the AO in the order dated November 27, 2017 (based on the finding that UPSI was between October 14, 2009 to October 15, 2009) ought to be considered for the purpose of disgorgement also. In this connection, I note that as explained above in paras 8 to 11 & 14 to 20, the period of UPSI commences from September 01, 2009 and ends on October 27, 2009. Therefore, all the trades done by the Noticees during the said UPSI period are required to be considered for the purpose of disgorgement. Therefore, I am unable to accept the argument of the Noticees.
38. In view of the above, I find that Mr. Amit Jaiswal has violated of Regulation 3(i) and (ii) of SEBI (Prohibition of Insider Trading) Regulations, 1992 read with Regulation 12 of SEBI (Prohibition of Insider Trading) Regulations, 2015 and Section 12A (d) & (e) of SEBI Act and Ms. Mansi Jaiswal has violated Regulation 3(i) of SEBI (Prohibition of Insider Trading) Regulations, 1992 read with Regulation 12 of SEBI (Prohibition of Insider Trading) Regulations, 2015 and Section 12A (d) & (e) of SEBI Act.

39. Taking into consideration that the SCN dated July 25, 2017 was issued for disgorgement of the wrongful gain made along with the interest earned thereon I come to the finding that the Noticees are liable to disgorge the entire amount i.e. Rs. 10, 41,005/- impounded vide ad-interim ex-parte order dated November 20, 2015.

ORDER & DIRECTIONS

40. In view of the above, I, in exercise of the powers conferred upon me under section 19 read with sections 11(1), 11(4) and 11B of the Securities and Exchange Board of India Act, 1992, hereby direct that an amount of Rs. 10,41,005/- impounded by SEBI vide order dated November 20, 2015 from Noticee no. 1 and 2 shall be disgorged and credited to the Investor Protection and Education Fund established by the Board under Securities and Exchange Board of India (Investor Protection and Education Fund) Regulations, 2009.

41. This order shall come into force with immediate effect.

Date: March 14, 2019

Place: Mumbai

Sd/-

ANANTA BARUA

WHOLE TIME MEMBER