BEFORE THE ADJUDICATING OFFICER

SECURITIES AND EXCHANGE BOARD OF INDIA

[ADJUDICATION ORDER: Order/MC/VS/2019-20/6226]

In respect of -

C. R. Rajesh Nair

[PAN: ADRPN0413A]

having address at C/o. Anil Agarwal, House No.8, Bella Vista Colony, Dona Paula, Panjim, Goa 403004

In the matter of *Sigrun Holdings Ltd.*

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") conducted an investigation into the sale of 45000 shares of Sigrun Holdings Ltd. ("**SHL**" or "**the company**") by its then Managing Director, Shri C. R. Rajesh Nair ("**the Noticee**") on May 24, 2010, before losses were reported in the quarterly result of SHL, announced on May 29, 2010.

2. Investigation revealed that the Noticee, who was Managing Director of SHL till December 4, 2010, sold 45000 shares at a price of Rs. 19.3 on May 24, 2010, before the publication of quarterly financial results for March 2010 and Annual Financial Results for FY 2009-10, on May 29, 2010 on the Bombay Stock Exchange ("BSE"). As MD of SHL at the relevant time, the Noticee was alleged to be an "insider" who sold shares of SHL while in possession of Unpublished Price Sensitive Information ("**UPSI**"), thus wrongfully avoiding losses, in contravention of provisions of the SEBI (Prohibition of Insider Trading) Regulations 1992 ("**PIT Regulations**").

APPOINTMENT OF ADJUDICATING OFFICER

3. SEBI initiated adjudication proceedings and appointed Ms. Anita Kenkare as Adjudicating Officer (hereinafter referred to as "**AO**") under Section 15-I of the SEBI Act, 1992 ("**SEBI Act**") read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter be referred to as the "**Adjudication Rules**") vide order dated November 1, 2013, to inquire into, and adjudge under Section 15G and Section 15 HB of the SEBI Act, the alleged violations of the provisions of – (A) Regulation 3 (i) of the PIT Regulations (B) Clause 3.3.1 of Part A of Schedule I of the Code of Conduct prescribed under Regulation 12 (1) of the PIT Regulations (C) Clause 4.2 of Part A of Schedule I of the Code of Conduct prescribed under Regulation 12 (1) of the PIT Regulations.

4. The Adjudicating Officer Ms. Anita Kenkare passed an order dated June 16, 2017 in the matter. The Noticee appealed against the aforementioned adjudication order before the Securities Appellate Tribunal ("**SAT**") and vide order dated July 18, 2019, SAT set aside the aforesaid adjudication order and remitted the matter to the adjudicating officer to pass a fresh order after serving the Show Cause Notice ("**SCN**") and after affording an opportunity of hearing to the Noticee. The SAT further directed the Noticee to appear before the Adjudicating Officer on August 1, 2019 and also directed the Adjudicating Officer to supply a copy of the SCN to the Noticee on the said date.

5. Vide order dated July 26, 2019, the undersigned was appointed as Adjudicating Officer ("**AO**") to inquire into and adjudge under Sections 15G and 15HB of the SEBI Act, the alleged violations of the PIT Regulations by the Noticee.

6. The appointment of the undersigned as AO was communicated vide order dated July 29, 2019.

SHOW CAUSE NOTICE, REPLY AND HEARING

7. Show Cause Notice No. EAD-65/AK/VG/27089/2014 dated September 15, 2014 (hereinafter referred to as "**SCN**"), was issued to the Noticee in terms of Rule 4 of the Adjudication Rules read with Section 15-I of the SEBI Act, to show cause as to why an inquiry should not be held and penalty not be imposed against the Noticee in terms of Section 15G and 15HB of the SEBI Act, for alleged violations of –

   (A) Regulation 3 (i) of the PIT Regulations

   (B) Clause 3.3.1 of Part A of Schedule I of the Code of Conduct prescribed under Regulation 12 (1) of the PIT Regulations

   (C) Clause 4.2 of Part A of Schedule I of the Code of Conduct prescribed under Regulation 12 (1) of the PIT Regulations.

8. The allegations levelled against the Noticee in the SCN are summarized as follows:-

   (a) The shares of M/s. Sigrun Holdings Ltd (formerly known as M/s. Geekay Finance and Leasing Company Limited) were listed on the BSE, Delhi Stock Exchange and Uttar Pradesh Stock Exchange at the relevant time.

   (b) Pursuant to investigation it was noted that the Noticee was holding the post of Managing director of SHL till December 04, 2010. The quarterly result for the quarter ended March 2010 reflecting loss made by the company was accessible to him in the last week of April 2010.

   (c) SEBI observed that the Noticee sold 45000 shares of SGL on May 24, 2010 before the adverse quarterly result of SHL was announced on May 29, 2010, thus avoiding loss.

   (d) Further, being MD of the company, the Noticee was responsible for code of conduct being in place in the company, however, it was observed that the Noticee had not sought any pre clearance from the company for trading in the shares of SHL on May 24, 2010.

   (e) It was further observed that the Noticee had entered into an opposite transaction within six months following the prior transaction.

(f) From the price volume data of SHL for the period under investigation, it was observed that the scrip opened at Rs 19.3 on May 24, 2010, touched a high of Rs 20.45 intraday and closed at Rs 19.3. Post declaration of quarterly results on May 29, 2010, the scrip opened at Rs 15.8 on May 31, 2010 and closed at Rs 15.1. It was observed that the price of the scrip continued to move downwards till June 04, 2010, when the closing price was Rs 12.4.

(g) The information relating to financial results of the company for the quarter ended March 2010 was the Unpublished Price Sensitive Information ("**UPSI**").

(h) The financial results of SHL for the year ended March 2010 were available with then MD of SHL by last week of April 2010, as admitted by the Noticee in his communication to SEBI dated March 13, 2013. Therefore the UPSI period was 'last week of April 2010 upto May 29, 2010, i.e. until the announcement of financial results at 18:51 hrs on May 29, 2010.'

(i) In terms of Regulation 2(e) of SEBI (PIT) Regulations, 1992, the Noticee was an 'insider' within the meaning of regulation 2(e) of the PIT Regulations, by virtue of occupying the position of MD of the company and as such he was reasonably expected to have access to the unpublished price sensitive information relating to the quarterly financial results of SHL. Further, as noted earlier, the Noticee has also himself admitted to being in possession of the UPSI.

(j) It was, hence, alleged that the Noticee sold 45,000 shares of SHL on May 24, 2010 while in possession and on the basis of UPSI which was available to him from the last week of April 2010. The sale of 45,000 shares of SHL by the Noticee was executed through M/s JHP Securities Private Limited (hereinafter referred to as '**JHP**') a SEBI registered Stock Broker of BSE and NSE, at a price of approximately Rs.19.30.

(k) The Noticee in his letter dated March 13, 2013 inter alia said that the reason for selling the shares on May 24 2010 was margin calls by the

broker and that he was not even informed about the trade until the broker had sold off the shares in the market. However, it is observed that shares of SHL held by the Noticee were given as margin on May 03, 2010 to JHP and by this time the Noticee was having the knowledge of quarterly results of March 2010. Further, the Noticee while giving shares of SHL to JHP towards his F&O margin on NSE was very much aware of the fact that he was having continuous debit balance with JHP and the shares given by him to JHP towards collateral could be sold by JHP in the market, in case of his default in meeting settlement and margin obligations towards his stock broker JHP. Besides, it is observed that Shri Himanshu Maniar had sent an email dated May 24, 2010 at 3:50 PM informing about the sale of 45,000 shares of SHL to one Ranu Jain and JHP had informed that *ranu.jain@sigrun.in* was the email ID registered with it as the email ID of the Noticee.

(l) Further, ledger account of the Noticee in the books of JHP during May 03, 2010 - September 20, 2010 confirms that ledger balance of the Noticee was in continuous debit (except during May 10, 2010-May 14, 2010) and that JHP had not sold any shares of SHL due to margin call on behalf of the Noticee (except the alleged sale on May 24, 2010).

(m) JHP has stated that they had sufficient margin from the Noticee on May 24, 2010, i.e. the date of sale of the shares. JHP also stated that the value of securities available in the clients account towards collateral was Rs. 6,90,37,587.75 against margin requirement of Rs. 1,63,20,507.63 as on 24th May, 2010. However, there was a MTM debit of Rs. 1,15,82,197.97 in F&O ledger towards which the abovementioned shares were sold.

(n) During the course of the trading session, the Noticee informed JHP that he had made necessary arrangements for funds and that JHP would receive payment the very next day i.e. 25th May 2010. Noticee had made RTGS of Rs. 1,00,00,000 on 25th May 2010 towards balance debit in F&O segment.

(o) By this time, sale orders to the tune of 45,000 shares were executed and unexecuted orders were deleted from the trading system. Necessary trade confirmations and contract notes were sent to the client on 24th May, 2010.

(p) Considering that Rs. 8,68,500 (45,000 X Rs. 19.30) was recovered from the sale of shares, and after accounting for the RTGS of Rs. 1,00,00,000 on May 25, 2010 towards balance debit in F&O segment, there still remained a balance of Rs. 7,13,697/- .

(q) Upon being asked to explain how the balance margin was received from the Noticee, and to submit documentary evidence of receiving intimation from the Noticee on May 24, 2010 that he had made necessary arrangements for funds, JHP stated that they recovered part amount by way of sale of 45000 shares of SHL, the Noticee arranged funds to the tune of Rs. 1 crore, and there was a nominal MTM debit of Rs. 7,19,000/- against which JHP had collateral deposit of more than Rs. 6 crores. JHP further submitted that that they had recovered the debit balance upto May 18, 2010 and thereafter the Noticee had suffered the loss of Rs. 92.33 lakhs on May 27, 2010 for which the Noticee had made another RTGS of Rs. 1 crore on 9th June 2010 towards MTM debit. JHP also stated that he Noticee is a high networth person, trading regularly with JHP and that JHP maintained a very cordial relationship with the Noticee. JHP has inter alia further stated that they relied on the words of the Noticee and had not insisted on any written intimation.

(r) In view of the above facts, it appeared highly unlikely that the 45000 shares of SHL were sold without the knowledge of the Noticee. A perusal of the ledger account of the Noticee in the books of JHP over a period from May 03, 2010 to September 20, 2010 revealed that JHP was regularly allowing the Noticee to maintain large debit balances in the account over Rs. 1 crore for long periods extending to even more than 10-15 days. Noticee while giving shares of SHL to JHP towards his F&O margin was very much aware of the fact that he was having continuous debit balance with JHP and the shares given by him to JHP towards

collateral could be sold by JHP in the market, in case of his default in meeting settlement and margin obligations towards his stock broker JHP.

(s) The reply of JHP that it deleted the unexecuted orders from the trading system after the Noticee informed JHP that he had made necessary arrangements for funds, is again not consistent with the fact that after deleting Order placed for 25,000 shares at 12:55:18, JHP had again entered two orders for 50,000 and 25,000 shares at 13:05:29 and 13:06:51 respectively.

(t) In terms of the Code of Conduct under PIT Regulations, 1992, all directors/officers/designated employees of 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 their transaction as per the pre-dealing procedure. The Noticee being the MD of SHL was under an obligation to comply with the said provision of the PIT Regulations, 1992 and seek pre-clearance of trades from the compliance officer of SHL. SHL vide its letter dated March 07, 2013 *inter alia* had informed SEBI that there are no records evidencing pre-clearance sought from the company by the Noticee before trading in the scrip SHL on May 24, 2010. Information was also sought from the Noticee if pre-clearance of trades was obtained by him for the trading on May 24, 2010 in the scrip in terms of the Code of Conduct as per the PIT Regulations. The Noticee vide his email to SEBI dated March 13, 2013 has admitted that he had not obtained pre clearance from SHL for his trading on May 24,2010. Since he was maintaining continuous debit balance with JHP, shares given as margin to JHP were vulnerable to be sold in the market by the stock broker JHP even during UPSI period, and the Noticee should have procured pre- clearance from the compliance officer of SHL before giving the shares to JHP towards margins.

(u) In view of the above, the Noticee allegedly violated Clause 3.3.1 of the Model Code of Conduct in Part A of Schedule I of the PIT Regulations.

(v) As per Clause 4.2 of the Code of Conduct prescribed under Part A of Schedule 1 under Regulation 12(1) of PIT Regulations, director of a 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 transactions. The Noticee had purchased 1,00,000 shares of SHL on February 05, 2010 and he had sold shares of SHL during the next six month from this purchase in the following manner:-

S.No	Date	Number of Shares sold	Number of Trades
1	12 March 2010	75,712	137
2	16 March 2010	70,000	49
3	23 March 2010	5,000	18
4	25 March 2010	94,700	102
5	29 March 2010	4,96,597	1
6	30 March 2010	94,298	12
7	24 May 2010	45,000	43
Total			362

(w) Noticee, being the MD of SHL had entered into opposite transaction on 362 occasions during six months following the prior transaction.

9. In view of the above, it was alleged that the Noticee had violated provisions of -

(a) Regulation 3 (i) of the PIT Regulations

(b) Clauses 3.3.1 of the Model Code of Conduct in Part A, Schedule I of the PIT Regulations

(c) Clause 4.2 of the Model Code of Conduct in Part A, Schedule I of the PIT Regulations

10. In terms of the directions contained in the order dated July 18, 2019 passed by the Hon'ble SAT in Appeal No. 327 of 2017, the Noticee was served a copy of the SCN alongwith its 14 Annexures by handing the same across in person during his personal appearance before the undersigned on August 1, 2019. The Noticee's current address, e-mail id and phone number were also confirmed to enable prompt service of documents/communications during the course of the present proceedings. The Noticee undertook to respond to the allegations contained in the SCN within 14 days from receipt of the SCN on August 1, 2019.

11. Vide e-mail dated August 13, 2019, the Noticee sought an additional 14 days to respond to the SCN, and vide e-mail dated August 30, 2019, the Noticee informed of unexpected demise of his father and sought further extension of time to file reply in the matter.

12. Vide Hearing Notice dated September 9, 2019, the Noticee was informed regarding opportunity of personal hearing being granted to him on September 24, 2019, also advising the Noticee to submit his reply to the SCN by September 24, 2019. Vide e-mail dated September 23, 2019, the Noticee sought inspection of all documents pertaining to the SCN, including those collected by the Investigating Authority during the course of the investigation. Through the same e-mail, the Noticee also submitted a reply dated September 23, 2019, containing submissions which are reproduced below for reference:-

    (a) The Noticee is an Indian National and former Managing Director of Sigrun Holdings Limited (formerly known as Gee Kay Finance and Leasing Company Limited) ("Company"). The Noticee was appointed as Director of Sigrun Holdings Limited on September 2, 2009 and Managing Director on October 29, 2009 and has resigned from the post of Managing Director and Director from December 4, 2010.

    (b) Sigrun Holdings Limited (formerly, Gee Kay Finance and Leasing Company Limited) is a public limited company and its shares are listed on BSE Limited.

    (c) The Noticee intimated to SEBI vide letter dated December 2010 about his resignation from Sigrun Holdings Ltd.

(d) The Noticee thereafter filed a Civil suit before the Civil Judge, Senior Division, Agra, bearing Suit No.164 of 2011 seeking damages and declaration that his resignation from the companies be declared as null and void.

(e) By letter dated 15th April 2011 by the Noticee's advocates, SEBI was intimated about certain violations

(f) There was also a writ petition filed by the Noticee at the Bombay high Court bearing WP/1969/2011 which was for a direction to SEBI

(g) The Noticee had also filed a Company Petition bearing No. 105 (ND)/11 before the Company Law Board, New Delhi.

(h) In September 2011, to deter the Noticee from prosecuting legal proceedings adopted by the Noticee, in September 2011, Noticee came to know from a news article in the daily Mumbai Mirror that a false and frivolous F.I.R. has been lodged against the Noticee and his wife. Noticee thereafter filed a petition for quashing of the said FIR being Criminal Application No. 1294/2011.

(i) Noticee was made to withdraw all the petitions filed by the Noticee i.e the Civil Suit at Agra, the writ petition at Mumbai against SEBI and the CLB proceeding at Delhi under the deed of settlement in December 2011

(j) In October 2012, Noticee had filed two Applications before the Hon'ble High Court of Mumbai bearing Nos. CAL/637/2012 and CAL/638/2012 for setting aside the order of the sanction for de-merger and for initiating action under section 340 for filing false documents before the Hon'ble Court.

(k) Dated 21 February 2013 vide an Email to the Noticee from Mr Sahil Malik, Noticee was asked certain details to which a reply was provided on 13th March 2013

(l) Further, a Show Cause was issued on 15th September 2015 the basis of the replies provided by the Noticee in the above mentioned E-mail and

an adjudication order was passed against the Noticee (ex-parte) on June 16, 2017.

(m) Aggrieved by the said adjudication order the Noticee preferred an Appeal before the Hon'ble SAT, which was pleased to quash the order dated June 16 2017 and remitted the matter to the adjudicating officer to pass fresh order after serving the show cause notice and affording an opportunity of hearing the appellant.

(n) JHP securities had without reference to the Noticee sold the said 45000 shares of SHL and this is also evident from the statement of JHP securities. Furthermore SEBI has the power and the authority to summon for all such documents and records from any department and if SEBI had perused the call details of JHP securities or even of Noticee it would be very evident that there was no communication between the broker and Noticee prior to them selling the shares.

(o) If the Noticee were to sell the shares on the basis of UPSI, why would he sell only 45000 shares which was less than one percent of the shares held by the Noticee, and furthermore, why would he wait till May 24, 2010 for the sale when it had been specifically informed by the Noticee that he was in knowledge of the results in the last week of April.

(p) The sale was effected only on one day i.e. May 24, 2010, and by JHP Securities who by their own admission accepted that the sale had been carried out by the broker without instruction from the Noticee to cover the margin.

(q) Maintaining a very cordial relation does not mean that JHP Securities was not enforcing the margins or their charges. A cordial relation in a commercial dealing is normal just like in a bank between the borrower and the bank. With JHP broking there were many instances where JHP securities to enforce their margins had sold off Noticee's positions in the Futures and options market without even referring to him.

(r) The Noticee was trading in the futures and options market very regularly. JHP being a broker where the Noticee had placed security over a value of 6 crores, used to provide the Noticee time to settle his margins which was normally the case. However, for what reasons they had sold 45,000 shares without any communication with the Noticee prior to selling, is unknown to the Noticee.

(s) The outstanding balance to JHP was much lower than the value of the securities provided to them and due to the cordial relations the Noticee never expected them to sell the shares.

(t) JHP securities being a SEBI registered Stock Broker is well aware of the regulations of SEBI and was well aware that the Noticee was the Managing Director of SHL. There was no communication to the Noticee prior to JHP selling the shares of SHL, which had been placed on record. SEBI using its vast powers could call for the call record Data of JHP securities or even the Noticee's to ascertain this.

(u) The allegation that the company made a loss during the year was unfounded as the company had made a profit. The financial reportings done with BSE clearly shows that the company had achieved profits during the year and was now in a much better position than was earlier. Furthermore, it was evident that the company which was in losses till 31-03-2009 was now making profits and hence the annual results was a positive development for the company.

(v) There is no evidence of alleged insider trading as it means that the trades executed should be motivated by the information in the possession of the insider. It is now well settled that mere suspicions cannot take the place of evidence. If Noticee was to act on the alleged UPSI, he would not have held on to the shares till end of May, keeping in mind that according to the charge in the SCN the alleged UPSI started in the last week of April 2010.

(w) Since the sale of shares were executed by JHP securities without instructions from Noticee, no charge can be made against him for

violation of Regulation 3 of Insider Trading Regulations. The trades were independent of the corporate announcements and were never induced / driven by the said corporate announcement as the shares were sold by JHP securities without reference to the Noticee.

(x) The Noticee's cost of acquisition and holding has also not been considered while computing his alleged gains.

(y) The Noticee had not traded on the basis of the alleged UPSI. The prohibition contained in Regulation 3 applies only when an insider trades or deals in securities on the basis of any unpublished price sensitive information and not otherwise.

(z) The reason for the Noticee's sale of shares by JHP securities had no nexus whatsoever with the alleged UPSI.

(aa) An insider who is proven to be in possession of unpublished price sensitive information is presumed to have traded on the basis of the same. The presumption is rebuttable and it is the conduct of the insider as a whole that will inform the inference of what was the insider's state of mind, when he traded. Evidence for insider trading will invariably be circumstantial. However, it being a serious charge, even the circumstantial evidence in question must inexorably point to the guilt of the Noticee i.e. there should be no conflicting evidence that is incompatible with the finding of guilt. The test is to examine what a reasonable person in the Noticee's position at the relevant time, acting reasonably, would have done. In other words, one would need to demonstrate whether the Noticee's conduct is consistent with the reasonable conduct of a person.

(bb) In the order passed in the matter of Dilip Pendse vs SEBI (SAT Appeal No 80 of 2009) vide which the Hon'ble SAT , in context of Insider trading, SAT has *inter alia* held that:-

"The charge of insider trading is one of the most serious charges in relation to the securities market and having regard to the gravity of this

wrong doing, higher must be the preponderance of Probabilities in establishing the same. In Mousam Singha Roy v. State of West Bengal (2003) 12 SCC 377, the learned judges of the Supreme Court in the context of the administration of criminal justice observed that, "It is also a settled principle of criminal jurisprudence that the more serious the offence, the stricter the degree of proof, since a higher degree of assurance is required to convict the accused."

This principle applies to civil cases as well where the charge is to be established not beyond reasonable doubt but on the preponderance of probabilities. The measure of proof in civil or criminal cases is not an absolute standard and within each standard there are degrees of probability. In Hornal v. Neuberger Products Ltd.(1956) 3 All E.R.970 Hodson, L.J. observed as under.

"Just as in civil cases the balance of probability may be more readily tilted in one case than in another, so in criminal cases proof beyond reasonable doubt may more readily be attained in some cases than in others, "

We are also tempted to refer to what Denning, L.J. observed in Baler v. Bater (1950) 2 All E.R. 458 wherein he was resolving the difference of opinion between two Lord Justices regarding the standard of proof required in a matrimonial case. This is what he said.,

"It is true that by our law there is a higher standard of proof in criminal cases than in civil cases, but this is subject to the qualification that there is no absolute standard in either case. In criminal cases the charge must be proved beyond reasonable doubt, but there may be degrees of proof within that standard. Many great judges have said that, in proportion as the crime is enormous, so ought the proof to be clear. So also in civil cases. The case may be proved by a preponderance of probability, but there may be degrees of probability within that standard. The degree depends on the subject-matter. A civil court, when considering a charge of fraud, will naturally require a higher degree of probability than that

which it would require if considering whether negligence were established. It does not adopt so high a degree as a criminal court, even when it is considering a charge of a criminal nature, but still it does require a degree of probability which is commensurate with the occasion."

In the light of the aforesaid principles on degree of proof, we have carefully gone through the impugned order and the material on the record and find that the whole time member has miserably failed to establish the charge of insider trading against the appellant with the required degree of probability necessary to establish such a serious charge".

(cc) The second charge in the show cause notice has been that there is a failure to Obtain Pre-Clearance for the impugned sale of shares. The model code of conduct for Sigrun Holdings Limited did not require pre clearance for sale of shares if the total number of shares did not exceed 1% of the total shares of the company. Furthermore, it is very clear from the earlier submissions that the sale of shares have been done without instructions by the Noticee and has been done purely by JHP securities and hence the sale of shares though the Noticee was actioned by someone other than the Noticee and the Noticee had no control over their decision and hence the requirement to Obtain Pre- Clearance was not required to be taken by the Noticee and it should be noted that there was not any violation of the model code of conduct by the Noticee.

(dd) The Third Allegation in the Show Cause Notice has been that the Noticee had purchased 1,00,000 shares on February 5th 2010 and sold shares between 12th March 2010 until 24th May 2010 which was in violation of Clause 4.2 of the Code of Conduct. Firstly the above transaction has been done by oversight and was not a deliberate intention of trying to violate any provisions of any regulation nor make any unfair gains. An evaluation of the purchase prices of the shares purchased by the Noticee and sold by the Noticee would clearly

demonstrate that the Noticee have only lost a lot of money and not made any unlawful gains from the sales and purchase of shares of SHL.

(ee) It has been alleged that the Noticee had purchased one lakh shares and sold a total of 8,81,000 shares. The Noticee had been holding shares in SHL even prior to November 19, 2008 which is the date on which SEBI had amended the provisions. The total number of sales sold by the Noticee does not exceed the shares held by the Noticee on November 19, 2008. The shares alleged to have been sold by the Noticee are from the shares held by him as on November 19, 2008 it is impossible to sell 8,81,000 shares against a purchase of 1,00,000 shares and furthermore it has to be seen in the light that the sales of shares have caused tremendous loss to the Noticee and this act was not done with a deliberate intention to violate any act or regulation.

(ff) While balancing the probabilities in the instant case, the Noticee submitted that the time honoured principle of "presumption of innocence of the person charged till proved guilty" be kept in mind.

13. Vide letter dated September 24, 2019, the Noticee was informed of opportunity for inspection of originals of all relevant and relied upon documents viz. Annexures 1 to 14 of the SCN, to be availed within one week from receipt of the said letter/e-mail. An opportunity to inspect documents was granted to the Noticee on September 27, 2019 at 2:30 p.m. at SEBI's premises. However, the same was not availed by the Noticee and no further communication in this regard was received from the Noticee. Accordingly, a Hearing Notice dated November 4, 2019 was issued to the Noticee, granting an opportunity of personal hearing on November 20, 2019. During the hearing, the Noticee appeared in person and reiterated the submissions made earlier vide letter dated September 23, 2019. The Noticee also sought a copy of the Investigation Report based on which the SCN was issued. Relevant extractS of the investigation report were provided to the Noticee on December 9, 2019 by email.

14. In the light of the allegations contained in the SCN, the Noticee's submissions dated September 23, 2019, the submissions made during the hearing conducted on November 20, 2019 and relevant material available on record, I hereby proceed to decide the case on merits.

CONSIDERATION OF ISSUES AND FINDINGS

15. The issues arising for consideration in the instant proceedings before me are:-

I. Whether the Noticee has violated provisions of -

a) Regulation 3 (i) of the PIT Regulations

b) Clauses 3.3.1 of the Model Code of Conduct in Part A, Schedule I of the PIT Regulations

c) Clause 4.2 of the Model Code of Conduct in Part A, Schedule I of the PIT Regulations

II. If yes, whether the Noticee is liable for imposition of monetary penalty under Sections 15G and 15 HB of the SEBI Act?

III. If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15 J of the SEBI Act read with Rule 5 (2) of the Adjudication Rules?

ISSUE I. Whether the Noticee violated provisions of –

a) Regulation 3 (i) of the PIT Regulations

16. The relevant legal provisions are reproduced for reference as follows:-

SEBI (Prohibition of Insider Trading) Regulations, 1992

"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;

17. The term "insider" has been defined in regulations 2 (e) read with regulation 2 (c) of the PIT Regulations which state:-

Regulation 2 (e) of the PIT Regulations -

'"Insider" means any person who,

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

(ii) has received or has had access to such unpublished price sensitive information.'

In terms of regulation 2 (c) (i) a connected person means any person who -

"(*i) is a director, as defined in clause (13) of section 2 of the Companies Act, 1956 (1 of 1956), of a company, or is deemed to be a director of that company by virtue of sub-clause (10) of section 307 of that Act or…*"

18. The Noticee has not contested that at the relevant time during the investigation period, the Noticee, being the CMD of the company, was an "insider" and a "connected person" in terms of regulation 2 (c) and (e), respectively, of the PIT Regulations. Therefore, the next question to be resolved is whether the Noticee was in possession of unpublished price sensitive information when he sold shares of SHL on May 24, 2010.

19. Regulation 2 (ha) of the PIT Regulations defines "price sensitive information" to mean "*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;"

20. Accordingly, it is clear that the quarterly financial results of SHL for the quarter ended March 2010 constituted price sensitive information ("**PSI**") in terms of the Explanation to Regulation 2 (ha) of the PIT Regulations. Further, in his e-mail dated March 13, 2013 to SEBI, the Noticee himself submitted that the results for the year ended March 2010 were available to the Noticee by the last week of April 2010. Therefore, at the time of sale of 45000 shares of the Noticee on May 24, 2010, the Noticee was undisputedly in possession of unpublished price sensitive information ("**UPSI**") regarding SHL.

21. However, regarding the nature of the UPSI and its expected impact on the scrip price of SHL, the Noticee has contended that since SHL had made a profit for the FY 2009-10, and that this was a better performance than the net loss incurred by the company in FY 2008-09, the annual results of the company for FY 2009-10 were actually a positive development, and that the allegation in the SCN regarding adverse financial results announced on May 29, 2010 was unfounded. In this regard, a perusal of the financial statement of SHL for FY 2009-10 provided at Annexure 3 of SCN reveals that the audited financial results on a consolidated basis for the year ended 31.03.2010 showed a net profit of Rs. 172.86 lakhs, and a loss of Rs. 138.93 lakhs for the quarter ended 31.03.2010. Similarly, the standalone financial results of SHL indicated profits of Rs. 21.57 lakhs for the year ended 31.03.2010 and a loss of Rs. 16.92 lakhs for the quarter ended 31.03.2010. Compared to a loss of Rs. 20.16 lakhs during the previous financial year ended

31.03.2009,and a loss of Rs. 18.83 lakhs for the corresponding quarter of the previous year ended 31.03.2009, the financial results for the FY 2009-10 and even for the quarter ended 31.03.2010 appear to indicate an improvement over the previous year. I find that while the quarterly and annual financial results were certainly price sensitive information ("**PSI**") likely to have materially affected the price of securities of company in terms of the PIT Regulations, the actual and expected impact of the said PSI cannot be termed as negative. Therefore, I find merit in the contention of the Noticee with respect to the nature of the UPSI being positive, and that the said UPSI could not be reasonably expected to have caused fall in the scrip price or prompted sale of shares to avoid losses.

22. Even in terms of actual impact of the UPSI on the scrip price of SHL, it is noteworthy that the price of the scrip of SHL had been on a downward trend since the beginning of March 2010, from a price of Rs.49.45 on March 09, 2010, to around Rs.20 on May 21, 2010 and further down to around Rs.15 on May 31, 2010, after publication of UPSI (financial results), on a downward trend till June 4, 2010. Subsequently, the price of the scrip recovered to Rs. 28.05 on June 29, 2010. The scrip price movement does not appear to have moved solely on account of the PSI, before and after the publication of the results. Therefore, no negative impact on the price of the scrip of SHL specifically attributable to the publication of quarterly and annual financial results can be identified from the material on record. The impact of the corporate announcements of May 29, 2010 on the scrip of SHL as described in para. 4 of the SCN needs to be viewed in this context. I also find merit in the submission of the Noticee that in a case of insider trading, a shareholder desirous of avoiding losses would have sold shares much sooner after coming into possession of any adverse UPSI about the company, particularly given the downward trend of the scrip during that period. I find that when the PSI came into existence in the last week of April, as per the SCN, the price of the scrip was between Rs.35 to Rs.37. However, the Noticee did not make any sales till May 24, 2010. As stated in the SCN, the Noticee's 45000 shares worth Rs. 8,68,500/- were sold on May 24, 2010 by his broker, JHP Securities, for meeting margin obligation of the Noticee in the Futures and Options segment.

23. The Noticee has further contended that 45000 shares were less than one percent of the shares of SHL held by the Noticee at the relevant time. A perusal of shareholding pattern of SHL for the fourth quarter ended March 2010 as filed with the BSE shows that the Rajesh Nair Family Trust held 75,78,020 shares of SHL, constituting 1.42 percent of the total shareholding of SHL at that point of time. Further, the Noticee himself is disclosed to have held 53,19,066 shares of SHL at the end of quarter ended March 2010, amounting to 0.99% of the total shareholding of SHL as per the company's filing with BSE regarding shareholding of securities of persons belonging to "Promoter and Promoter Group". Therefore, taking a holistic view of the facts of this case, the probability that a promoter with individual shareholding of more than 53 lakh shares of a company, would sell only 45000 shares upon coming into possession of UPSI expected to cause a fall in the price of the scrip of the company, is low.

24. The allegation of insider trading levelled against the Noticee in the SCN rests on one other important determination – that while in possession of UPSI, the Noticee sold 45000 shares of SHL as a part of a scheme involving indirect sale through his broker in the guise of the Noticee's broker meeting margin requirements. The SCN has alleged that shares of SHL held by the Noticee were given as margin to his broker, JHP, on May 3, 2010, after the Noticee had already come into possession of the UPSI. This fact has not been denied by the Noticee. Further, the SCN alleges that the Noticee knew that he had continuous debit balance with JHP, and that shares given by him to JHP as collateral could be sold at anytime in the market. JHP's transaction statement for transactions conducted in the Noticee's demat account from April 1, 2010 to September 30, 2010 show that 52,07,566 shares were credited in the demat account of the Noticee on May 4, 2010 for margin requirements, and that shares had been debited from his account/sold on account of margin calls related to his NSE Futures account on May 24, 2010 (45000 shares) and September 9, 2010 (111928 shares). The ledger statement of the Noticee for his "Capital-BSE" and "Derivatives-NSE" - related transactions with JHP for May 1, 2010 to September 30, 2010 show that funds had been transferred from his BSE account to meet margin obligations on NSE's Derivatives segment on May 5, 6 and 24, 2010, July 5, 2010, August 30, 2010 and September 20, 2010. Therefore, it is seen that it was not uncommon for

JHP to have sold shares of the Noticee to meet margin requirements in respect of the Noticee's transactions on the NSE Futures and Options segment. Apart from May 24, 2010, funds had been transferred from the Noticee's BSE account to meet his margin obligations on the NSE F&O segment on May 5 and 6, 2010 as well, which were also during the period when the Noticee is alleged to have been in possession of UPSI. However, only the funds transferred on May 24, 2010 have been alleged to be on account of insider trading by the Noticee. Thus, the facts indicate that JHP had been selling shares placed by the Noticee as margin with the broker, to meet margin requirements of the Noticee on NSE-F&O. Therefore, I find that the statement contained in the SCN that JHP had not sold any shares of SHL due to margin call on behalf of the Noticee except the alleged sale on May 24, 2010 is not corroborated by the ledger account statement of the Noticee. I also note that the fact that JHP had informed the Noticee vide e-mail dated May 24, 2010 at 3:50 p.m. regarding the sale of 45000 shares of SHL, does not establish that the Noticee had instructed its broker prior to the transaction, to carry out the sale. The SCN further questions the genuineness of the sale of 45000 shares by JHP as an authentic broking transaction, unconnected to the Noticee's intent to sell SHL shares, by alleging that JHP's submission regarding placement of sell orders for meeting margin requirements on May 24, 2010 and subsequent deletion of remaining orders upon confirmation from the Noticee that the remaining amount of margin requirement would be transferred the next day, is not credible since it had placed two orders for a total of 75000 shares even after deletion of earlier orders. Upon perusal of the order logs for May 24, 2010 for the Noticee in the scrip of SHL provided at Annexure 6 of the SCN, it is seen that trades had been executed in respect of a total of 45000 shares of SHL by 12:45:07 p.m. There are no records or logs available on record to determine whether the said trades were executed at the actual behest of the Noticee.

25. As per information submitted by JHP, it had sold the said 45000 shares for an amount of Rs. 8,68,500/-, as the client had an MTM margin shortfall to the extent of Rs. 1,15,82,197.97/- in the F&O ledger on NSE, and had given the SHL shares to the broker as collateral for the F&O margin. Further, JHP has submitted during investigation that once the Noticee informed the broker during the trading session that he had made necessary arrangements for funds and that JHP would receive

the funds the next day, the Noticee deleted the unexecuted orders from the system. It is noted from the order logs that barring two orders placed at 1:05 p.m., i.e. twenty minutes from the last successfully executed trade for 327 shares at 12:45 pm, all remaining unexecuted orders appear to have been deleted from the system at 2:47 p.m. Further, there is evidence on record that the Noticee transferred Rs.1,00,00,000/- to JHP on May 25, 2010, thus corroborating JHP's submission that sometime during the trading session on May 24, 2010 the Noticee had indeed intimated the broker of the Noticee's intent to make good the margin shortfall by the next day, leading to a halt of sale of Noticee's SHL shares to meet MTM margin requirements.

26. This set of facts also indicates that the Noticee effectively halted the sale of his SHL shares by JHP to meet margin requirements by communicating an intent to, and actually meeting, most of the remaining margin shortfall by the next day. This appears contrary to the assertion in the SCN that the Noticee traded in the shares of SHL pursuant to a plan to sell shares of SHL to avoid losses which could have accrued later in week on May 29, 2010 upon publication of the UPSI. Further, the next sale of shares by JHP to meet margin shortfall requirements on NSE-F&O was on September 1, 2010 i.e. a sale of 111928 SHL shares, and this took place much after the UPSI had become public. These sale events allegedly executed indirectly through a broker are too disparate to constitute a mechanism to carry out insider trading. This is because the desired outcome i.e. sale of shares at a price unaffected by the UPSI before the UPSI becomes public, in the garb of meeting margin requirements which in turn depend on transactions in the F&O segment and the quantum of shortfall in the F&O segment, etc. is not entirely within the control of the client/Noticee. It is one thing to believe that price of a scrip would fall (even though in this case the UPSI was actually positive) and hence to use the said shares as collateral in risky transactions in the F&O segment, and another to actually deal in securities when in possession of UPSI i.e. indulge in insider trading. Hence, I find that the material on record is not convincing enough to indicate a reasonable probability that the Noticee used the margin shortfall mechanism to execute sale of shares of SHL during the UPSI period for avoiding losses.

27. I further note that as per the SCN, the Noticee had purchased 1,00,000 shares of SHL on February 5, 2010, and then on 7 separate occasions in 362 trades executed between March 12, 2010 and May 24, 2010, sold a total of 8,81,307 SHL shares including the 45000 shares sold while in possession of UPSI. Therefore, I note that the Noticee had been selling shares of SHL even before having come into possession of the UPSI, lending credence to the Noticee's contention that the sale of 45000 SHL shares of the Noticee was not motivated by UPSI, but was actually a sale of shares in order to meet margin shortfall requirements in the ordinary course of business of the broker. In the facts of the present case, JHP has maintained that they were in touch with the Noticee regarding margin requirements, and as per details at Annexure 11 to the SCN, when there was "no confirmation from the client for pay-in of MTM loss" the broker's risk-management team placed sale orders of shares to recover the debit amount. However, upon information received from the client during the trading session regarding arrangement for funds to meet margin requirements, the sale of shares was halted. This conduct of the Noticee and broker does not reflect an intent on the part of the Noticee to have minimised losses by allowing the maximum number of shares to be sold by the broker at a presumably favourable price pre-publication of UPSI. The fact that the Noticee followed through on the purported fund arrangement and transferred Rs. 1 crore to the broker the next day on May 25, 2010, is evidenced by bank account statements on record. Other than the fact that no written evidence of all communication regarding the margin call/intimation and related client instructions is available in respect of the impugned sale of 45000 shares, I find nothing on record to seriously question the fact that the 45000 SHL shares of the Noticee were sold by JHP on May 24, 2010 as part of regular risk management during the discharge of regular broking functions.

28. I also note that Clause 2. of the Agreement between JHP and the Noticee setting out the rights and obligations of client and broker indicates that the broker retained a certain degree of discretion in setting up client's exposure limits, depending on "market conditions" and "risk perceptions". Therefore, concluding that the client was responsible for a related violation such as insider trading, based on the fact that the broker in his discretion granted the client some leeway in meeting margin obligations, which appears within the legal regime applicable at the relevant time,

appears far-fetched.I note that the case made out against the Noticee in the SCN rests primarily on the statements made by JHP and the Noticee to SEBI during investigation. I further note that a copy of the Model Code of Conduct of SHL for the relevant period applicable to transactions executed in 2009-10 is not available on record. In terms of the decision of the Hon'ble SAT in the case of *Rajiv B. Gandhi v. SEBI*, once an insider trades while in possession of UPSI, a rebuttable presumption of having traded on the basis of the said UPSI arises, but if the insider is able to provide reasonable justification or explanation for the said trades, it is possible to rebut the presumption and the burden of proof in this regard is on the insider. In the instant case, I find that the demat and ledger statement of the Noticee for the relevant period corroborate the position that JHP had been selling SHL shares of the Noticee to meet margin requirements on other occasions as well, apart from the impugned sale of 45000 shares on May 24, 2010. Further, in the context of the factual matrix of this case – the quantum of overall shareholding of the Noticee at the time of the alleged insider trade/sale of SHL shares to avoid losses, the fact that the UPSI constituted positive news not expected to affect scrip price negatively, scrip price recovery shortly after the announcement of results, and the general downward trajectory of SHL's scrip price much preceding the date when the UPSI came into existence – I find no reason to disbelieve the Noticee and his broker's contention that the shares of SHL were sold to meet MTM margin requirements of the Noticee in the NSE-F&O segment. Therefore, I am of the considered opinion that the sale of 45000 SHL shares belonging to the Noticee by his broker did not appear to be part of an elaborately designed scheme carried out with the help of JHP to dispose shares at a favourable price prior to publication of UPSI, and thus did not constitute violation of Regulation 3 (i) of the PIT Regulations.

Pre-clearance of trades

29. With respect to the allegation contained in the SCN that the Noticee had traded in shares of SHL on May 24, 2010 without obtaining pre-clearance of the trades in accordance with Clause 3.3.1 of the Model Code of Conduct for Prevention of Insider Trading in Part A of Schedule I of the PIT Regulations, it is noted that the

said provision required the Noticee as a director of SHL who intended to deal in SHL shares, to have pre-cleared the transaction before dealing in SHL shares, as per prescribed procedure and in terms of rules made by the company in this regard.

30. The Noticee has submitted in his reply dated September 23, 2019 that the Model Code of Conduct for SHL at the relevant time did not require pre-clearance for sale of shares if the total number of shares do not exceed 1% of the total shares of the company. While recognising the company and its management's (including the Noticee) discretion to determine the minimum threshold limit above which the pre-clearance obligation was attracted in terms of Clause 3.3.1 of the Model Code, this submission cannot be solely relied on to determine the Noticee's liability with respect to not having obtained pre-clearance for sale of 45000 SHL shares, since a copy of the Code of Conduct as it existed in 2010 has not been made available by the Noticee or SEBI.

31. However, given the findings in preceding paragraphs that the sale of 45000 shares by JHP was triggered by a margin shortfall, and did not constitute insider trading by the Noticee in terms of Regulation 3 (i) of the PIT Regulations, it cannot be held that the Noticee planned to make the sale or made a decision to make the sale of 45000 shares. When the decision to sell is made by a third party and is contingent upon an external event, the obligation regarding pre-clearance of such sale of shares cannot be placed on the Noticee. Further, the language of the provisions in the Model Code of Conduct make it clear that a director/officer/designated employee of the company/their dependents need to submit an undertaking regarding access to PSI (Clause 3.3.3), and shall execute their order in respect of securities of the company within one week after the approval of the pre-clearance is given (Clause 4). These provisions (Clause 3.3.2) presume that a director/employee intends to execute a specific transaction in shares of the company, is aware of the particulars of the transaction such as estimated number of securities intended to be dealt in, and has control over the execution of the trades. Since this was not the case with the sale of shares of SHL by JHP due to MTM margin requirements in the NSE-F&O for the Noticee, the provisions of

Clause 3.3.3 of the Model Code of Conduct cannot be stated to have been applicable to the Noticee in respect of sale of the 45000 shares.

Counter position by the Noticee

32. The SCN has alleged that the Noticee purchased 1,00,000 shares of SHL on February 5, 2010 and sold a total of 8,81,307 SHL shares on seven occasions through 362 trades executed on March 12th, 16th, 23rd, 25th, 29th, 30th, 2010 and on May 24th, 2010. Therefore, contrary to the provision of Clause 4.2 of the Model Code of Conduct in Part A of Schedule I to the PIT Regulations, the Noticee *entered into an opposite transaction* i.e. sold SHL shares *during the next 6 months following the prior transaction* on February 5, 2010.

33. The Noticee has argued that the provision came into effect on November 19, 2008, and that the 8,81,307 shares sold by him were acquired prior to November 19, 2008. Be that as it may, I find that the language of Clause 4.2 is very clear in stating that directors who buy any number of shares shall not enter into an opposite transaction during next six months following prior transaction. The Noticee did enter into opposite transactions within about 35 days of the prior transaction. Hence I find that the Noticee violated Clause 4.2 of the Model Code of Conduct in Part A of Schedule I to the PIT Regulations read with Regulation 12(1) of the PIT Regulations.

ISSUE II **If yes, whether the Noticee is liable for imposition of monetary penalty under Sections 15G and 15 HB of the SEBI Act?**

and

ISSUE III **If yes, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15 J of the SEBI Act read with Rule 5 (2) of the Adjudication Rules?**

34. As it has been established that the Noticee violated Clause 4.2 of the Model Code of Conduct in Part A of Schedule I to the PIT Regulations read with Regulation

12(1) of the PIT Regulations, I am of the view that Noticee is liable for imposition of monetary penalty under Section 15HB of the SEBI Act.

35. The applicable provisions are reproduced below for reference:-

SEBI Act

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 shall not be less than one lakh rupees but which may extend to one crore rupees."*

36. While determining the quantum of penalty under Sections 15HB of the SEBI Act, the following factors stipulated in Section 15J of the SEBI Act, have to be given due regard:-

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.

37. I find that there is nothing on record to show the amount of disproportionate gain or unfair advantage made by the Noticee or the amount of loss caused to investors as a result of the counter trades carried out by the Noticee. With regard to repetitive nature of the default, I note that the Noticee has been continuously selling his shares during the period, except for one buy transaction. Hence, the one buy transaction can be seen to be the single instance of counter trade against mainly sale transactions.

38. Therefore, taking into account the facts and circumstances of this matter, I am of the view that a penalty of Rs. 2,00,000/- will be commensurate with the violation committed by the Noticee.

ORDER

39. After taking into consideration all the facts and circumstances of the case, in exercise of powers conferred upon me under Section 15-I of the SEBI Act read with Rule 5 of the Adjudication Rules, After taking into consideration all the facts and circumstances of the case, in exercise of powers conferred upon me under Section 23J of the SEBI Act read with Rule 5 (2) of the Adjudication Rules, I hereby impose a penalty of Rs.2,00,000 (Rs. Two Lakhs only) upon the Noticee

40. 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* on the following path, by clicking on the payment link.:-

ENFORCEMENT → Orders → Orders of AO → PAY NOW

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

a) Name and PAN of the Noticee
b) Name of the case / matter
c) Purpose of Payment –Payment of penalty under AO proceedings
d) Bank Name and Account Number
e) Transaction Number

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

MANINDER CHEEMA

Digitally signed by MANINDER CHEEMA
Date: 2019.12.24 17:36:36 +05'30'

Date: December 24, 2019 **Maninder Cheema**

Place: Mumbai **(Adjudicating Officer)**