

BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
ADJUDICATION ORDER NO. EAD-7/BD /NR/2019-20/6665

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

In respect of:

K R Sasiprabhu
(PAN: AANPS0661A)
J-15, Jangpura Extension
New Delhi – 110014.

In the matter of SpiceJet Ltd.,

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") conducted an investigation in the scrip of SpiceJet Ltd., (*hereinafter referred to as the "Company"*) to ascertain any possible violation of the provisions of the SEBI Act and SEBI (Prohibition of Insider Trading) Regulations, 2015 (*hereinafter referred to as "PIT Regulations"*) during the period January 6, 2016 and February 8, 2016 (*hereinafter referred to as "Investigation Period" / "IP"*), by certain entities. The Investigation was also conducted to ascertain whether requisite compliances with respect to SEBI (PIT) Regulations, 2015 had been observed by SpiceJet and its Officials involved for preparation of quarterly results for the quarter ended December 2015
2. It was observed that SpiceJet on January 22, 2016 at 03:27 p.m. announced financial results for the quarter ended December 2015 wherein the company reported net profit of ₹ 238.39 crore as compared to the profit of ₹ 23.77 crore for the previous quarter September 2015 and net loss of ₹ 275.02 crore for the same quarter previous year i.e. December 2014. The increase in the net profit was

around 902.90% as compared to the net profit for the previous quarter ended September 2015.

3. The chronological events related to financial results for the quarter ended December 31, 2015 are tabulated as below:

Sl. No.	Date	Nature of discussion with stakeholders (phone / meetings/ approvals etc.)
1	6-Jan-16	Finance and Accounts Department received the provisional details from respective user departments
2	8-Jan-16	Provisional details considered in books of accounts by finance and Accounts Department
3	11-Jan-16	Draft financials results were prepared by Finance & Accounts Department and shared with Statutory Auditors
4	19-Jan-16 to 21-Jan-16	Statutory Auditors shared various revised version of draft financial results with Finance & Accounts Department and final version was shared on January 21, 2016.
5	21-Jan-16	Final version of financial results was shared with members of Board.
6	22-Jan-16 03:27 pm	Public Announcement gets updated on the websites of BSE

4. The definition of ‘unpublished price sensitive information’ as prescribed under Regulation 2(1)(n) of SEBI (PIT) Regulations, 2015 is as follows:

"unpublished price sensitive information" means any information relating to a company or its securities, directly or indirectly, that is not generally available which upon becoming generally available, is likely to materially affect the price of the securities and shall, ordinarily including but not restricted to, information relating to the following: –

- i. *financial results*
- ii. *dividends*
- iii. *change in capital structure*
- iv. *mergers, de-mergers, acquisitions, delistings, disposals and expansion of business and such other transactions*
- v. *changes in key managerial personnel; and*
- vi. *material events in accordance with the listing agreement*

5. From the chronology of events as tabulated in para 3 above, information relating to financial results was a Price Sensitive Information (PSI), which came into existence on January 6, 2016, when the Finance and Accounts Department started receiving provisional details from respective user departments. The

Company informed BSE Limited (hereinafter referred to as “BSE”) of the PSI i.e., financial results on January 22, 2016 at 03:27 PM. Therefore, the period from January 6 to 22, 2016 is considered as the period of UPSI (*unpublished price sensitive information*).

6. In terms of Regulation 2(1)(g) of SEBI (PIT) Regulations, 2015, “insider” means any person who is:
- A connected person, or
 - in possession of or having access to unpublished price sensitive information
7. The Company vide its letter dated October 04, 2018 and M/s S.R. Batliboi & Associates LLP, the Company’s statutory auditor vide email dated November 03, 2018, provided the list of following persons who were involved in the discussions and were aware of the financial results for the quarter ended December, 2015 till the date of public announcement. As the said financial results were PSI and hence the following persons were in possession of the PSI, prior to the public announcement and thus, were “insiders” as per Regulation 2(1)(g) of SEBI (PIT) Regulations, 2015.

Organization	Name of Director/Officer/Employees/Other Persons	
SpiceJet Limited	Ajay Singh	Chandan Sand
	Shiwani Singh	Jitendra Kushwah
	K R Sasiprabhu	Sushil Gupta
	Kiran Koteswar	Shreejesh Harindranath
	Vipin Gupta	Megha Chadha
	Sunil Maurya	
M/s S. R. Batliboi & Associates LLP	Vinay Gunasekhar	Prasanna Srinivasan
	Jeswant Vimalchand	Mrithyunjay N
	Aravind Krishnan	Aniruddh Sankaran
	Sunil Bhumralkar	

8. Upon examination of trading details of the above persons, it was observed that the K R Sasiprabhu, Independent Director, Speciejet Ltd., (*hereinafter referred to as the “Noticee”*) had traded in the scrip of SpiceJet during the UPSI period i.e., January 6, 2016 and January 22, 2016.

9. It is observed that the Noticee being an “insider” as stated under Regulation 2 (1) (g) of the SEBI (PIT) Regulations, 2015, traded in the scrip of SpiceJet by purchasing 2,000 shares on January 7, 2016. The Noticee being an Independent Director in the Company was an insider and was privy to the UPSI on January 7, 2016 i.e., the day when he purchased 2,000 shares.
10. Therefore, it is alleged that the Noticee by trading in the scrip of SpiceJet while in possession of UPSI, had violated the provisions of Regulation 4 (1) of SEBI (PIT) Regulations, 2015 and Section 12 A (d) and 12 A (e) of SEBI Act, 1992.

APPOINTMENT OF ADJUDICATION OFFICER

11. Based on the findings of the investigation, SEBI initiated Adjudication proceedings against the Noticee and appointed the undersigned as the Adjudicating Officer vide Order dated March 5, 2019 (*communicated vide Order dated March 28, 2019*) under Section 19 of SEBI Act read with Sub-section (1) of Section 15-I of the SEBI Act, 1992 and Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as “**SEBI Adjudication Rules**”) to inquire into and adjudge under Section 15G(i) of SEBI Act for the alleged violation of the provisions of SEBI (PFUTP) Regulations by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

12. A common Show Cause Notice (SCN) bearing ref. no., EAD-7/BJD/NJMR/25850/2019 dated September 30, 2019 was issued to the Noticee, under Rule 4(1) of the SEBI Adjudication Rules to show cause as to why an inquiry should not be held and penalty be not imposed under Section 15G(i) of the SEBI Act, for the violations alleged to have been committed by him.
13. It is pertinent to mention that the said common SCN was issued to the Noticee along with Shreejesh Harindranath (*Noticee 2*) and Sandeep AC (*Noticee 3*), for the alleged violation of the provisions of SEBI (PIT) Regulations. I note that the

Noticees 2 and 3 filed an application for settlement under the provisions of SEBI (Settlement Proceedings) Regulations, 2018. In the instant case, as the settlement applications filed by Noticee 2 and 3 are pending before SEBI, I am proceeding further in the matter of K R Sasiprabhu (*Noticee 1 as per SCN*), as there is no bar to keep the current proceedings against the Noticee in abeyance till disposal of settlement applications. The Adjudication proceedings against Noticee 2 and 3 would be dealt appropriately, based on the outcome of the settlement proceedings.

14. The Noticee vide Vakalatnama dated October 10, 2019 authorized Mr. Sandeep Parekh, Advocate along with Finsec Law Advisors (*hereinafter referred to as "Authorised Representative" / "AR"*) to file, obtain, return of documents, plead, appear and act on his behalf. The AR of the Noticee vide email dated October 12, 2019 sought inspection of documents and information that were relied upon for issuance of the SCN. Vide email dated October 14, 2019 the Noticee was informed to carry out the inspection of documents and information by October 22, 2019 and thereafter to furnish reply by October 31, 2019. I note from the records that the AR carried out inspection of documents on November 5, 2019. Thereafter, the AR vide letter dated November 6, 2019 sought additional documents, which were provided to it vide letter dated December 5, 2019. The AR vide letter dated December 6, 2019 furnished reply on behalf of the Noticee to the charges alleged in the SCN, which are summarized hereunder:

(a) *Appointed as an independent director of SpiceJet Ltd with effect from December 01, 2015. On January 07, 2016, Noticee No. 1 had purchased 2,000 shares of SpiceJet ("**2000 SpiceJet Shares**"). On January 15, 2016, the then VP (Legal) & Company Secretary of SpiceJet ("**Company Secretary**") through an email invited Noticee No. 1 to attend the board meeting of SpiceJet scheduled on January 22, 2016 inter alia to consider and approve the unaudited financial results of SpiceJet for the quarter ended December 31, 2015 ("**Q3FY16 Financial Results**").*

(b) *It is submitted that prior to January 15, 2016, Noticee No. 1 was not involved in any discussions/ privy to any information related to the Q3FY16 Financial Results. On January 21, 2016, the Company Secretary through an email had sent a copy of the unaudited financial results to Noticee No. 1 for perusal and discussion in the board meeting to be held on the next day. That was the first*

time Noticee No. 1 was given any document or information in relation to the Q3FY16 Financial Results of the Company. On January 22, 2016 the board of directors of SpiceJet reviewed and approved the Q3FY16 Financial Results and the same was uploaded on the website of BSE Ltd. at 03.27 pm on the same day. Subsequently, after serving as an independent director of SpiceJet to the best of his capabilities for approximately 2.5 years, Noticee No. 1 resigned from the directorship of SpiceJet on May 09, 2018. In light of the above facts, it is respectfully submitted that even though on January 07, 2016, Noticee No. 1 did not possess or have access to any UPSI related to SpiceJet or its securities, the Notice under reply alleged that Noticee No. 1 had indulged in insider trading by purchasing the 2000 SpiceJet Shares on January 07, 2016, which is wholly untrue

- (c) During SEBI's investigation period, Noticee No. 1 was neither involved in the day to day affairs of SpiceJet nor was he a member of the F&A Department which was involved in the preparation of the Q3FY16 Financial Results. On January 15, 2016, through an email Noticee No. 1 was invited to attend the board meeting of SpiceJet scheduled on January 22, 2016, to inter alia consider and approve the Q3FY16 Financial Results. In the said email the agenda along with notes thereon, setting out the business to be transacted at the board meeting was shared with Noticee No. 1. It is submitted that this was the first time that Noticee No. 1 was provided with any information related to Q3FY16 Financial Results. Further, it was only on January 21, 2016, that Noticee No. 1 was provided with a copy of the draft Q3FY16 Financial Results from the Company Secretary (i.e. 1 day prior to the board meeting scheduled on January 22, 2016). A copy of the email dated January 21, 2016 addressed from the Company Secretary to Noticee No. 1 is attached herewith. Therefore, on January 07, 2016, when Noticee No. 1 purchased the 2000 SpiceJet Shares, he did not possess or have access to any UPSI related to SpiceJet or its securities. However, even though it was impossible for Noticee No. 1 to possess or have access to any UPSI related to the Q3FY16 Financial Results on January 07, 2016, SEBI without any evidence has erroneously presumed that Noticee No. 1 had purchased the 2000 SpiceJet Shares while in possession of UPSI related to SpiceJet.
- (d) Under the securities law, an insider is prohibited from trading in securities of a company when in possession of UPSI related to the company or its securities. Further, it is also pertinent to highlight that to bring a charge of insider trading on a Noticee, SEBI must at the outset demonstrate that the Noticee had traded in shares of a company when he was in possession of UPSI. It is submitted that the charge of insider trading cannot be imposed on a Noticee if he traded in the securities of a company without possessing any UPSI related to a company or its securities.

- (e) *It is submitted that it is a well-established position of securities law that to impose a charge of insider trading, the obligation rests on SEBI to establish that Noticee No. 1 had purchased the 2000 SpiceJet Shares while in possession of USPI related to the Q3FY16 Financial Results. With respect to the issue of burden of proof, in the matter of **Navneet Publication India Ltd.**, the AO had held that “To prove the charges of insider trading it is not only essential to prove the relationship / connection between insiders but also that insider was in possession of USPI...”*
- (f) *It is submitted that in the present matter SEBI has proceeded on the basis that since Noticee No. 1 was an independent director of SpiceJet during the USPI Period, he was an ‘insider’ who may reasonably be said to be in possession of USPI. Based on this presumption and without relying upon any concrete evidence, SEBI has alleged that Noticee No. 1 had indulged in insider trading on January 07, 2016. It is submitted that though Noticee No. 1 may have satisfied the technical definition of an ‘insider’ at the relevant period, Noticee No. 1 did not possess or have access to any USPI related to SpiceJet or its securities prior to January 21, 2016. Further, it is submitted that SEBI has not placed on record any evidence such as calls or emails or other communication between Noticee No. 1 and the members of the F&A Department or any other department of SpiceJet to prove that Noticee No. 1 was aware of/provided USPI related to Q3FY16 Financial Results prior to purchasing the 2000 SpiceJet Shares. In the present matter, SEBI has failed to provide any specific evidence to suggest that Noticee No. 1 possessed any actual or real USPI in relation to the Q3FY Financial Results prior to the purchase of the 2000 SpiceJet Shares. Noticee No. 1 knew personally none of the other Noticees nor had he ever discussed/communicated with any of them at any point of time. In fact, based on the evidence placed on record in the Notice it can be demonstrated that Noticee No.1 did not possess any USPI in relation to the Q3FY16 Financial Results prior to the trading undertaken by him on January 07, 2016.*
- (g) *It is submitted that SEBI on an incorrect analysis of the information shared by SpiceJet and their statutory auditor - M/s S.R. Batliboi & Associates LLP (“**Statutory Auditor**”) wrongly concluded that Noticee No. 1 was privy to USPI prior to purchase of the 2000 SpiceJet Shares. In the Notice, SEBI has relied upon communications received from SpiceJet and the Statutory Auditor to conclude the Notice No. 1 along with others “...were involved in the discussions and were aware of the financial results for the quarter ended December 2015 till the date of public announcement.”*
- (h) *It is submitted that pursuant to a perusal of SpiceJet’s letter dated October 04, 2018 addressed to SEBI, it becomes evident that Noticee No. 1 acquired*

access to information related to the Q3FY16 Financial Results only on January 21, 2016, i.e. 14 days after Noticee No. 1 had purchased the 2000 SpiceJet Shares. SpiceJet vide letter dated October 4, 2018, in response to SEBI's queries, had provided information about the different individuals/ entities who were aware of the Q3FY16 Financial Results prior to the public announcement on January 22, 2016 and the date on which they were intimated/acquired information about the same. In the said letter it is specifically mentioned that Noticee No. 1 had acquired UPSI in relation to the Q3FY16 Financial Results on January 21, 2016. The relevant excerpt in relation to Noticee No. 1 is as follows:

“INFORMATION ABOUT THE ENTITIES WHO WERE AWARE OF THE AFORESAID ANNOUNCEMENT IN THE BELOW FORMAT:

Name	Designation/ association	Address	PAN	<u>Date of intimation/acquisition of information</u>
[...]	[...]	[...]	[...]	[...]
R. Sasiprabhu	Director	[...]	[...]	<u>21-Jan16</u>
[...]	[...]	[...]	[...]	[...]

...

- (i) Further, in their letter dated March 04, 2016, the management of SpiceJet had informed BSE Ltd. that on January 06, 2016, only the F&A Department had received price sensitive information from respective user departments of SpiceJet for the preparation of the Q3FY16 Financial Results. It is pertinent to note that in the Notice no other evidence has been placed on record to claim that any other department of SpiceJet had access to information relevant for the preparation of the Q3FY16 Financial Results on January 06, 2016 and 07, 2016. It is also reiterated that Noticee No. 1 was not a member of the F&A Department and he did not have access to/ was unaware of any PSI related to the Q3FY16 Financial Results prior to January 21, 2016.
- (j) It is further submitted that the then Company Secretary through an email dated January 15, 2016, had invited Noticee No. 1 to attend the board meeting of SpiceJet scheduled on January 22, 2016, to consider and approve inter alia, the Q3FY16 Financial Results. In the said email only the agenda along with notes thereon, setting out the business to be transacted at the board meeting was shared with Noticee No. 1. It is submitted that no PSI related to SpiceJet was shared with the Noticee No. 1 by the Company Secretary on January 15, 2016. Further, Noticee No. 1 was informed that the trading window for dealing in the scrip of SpiceJet would be closed from January 15, 2016, till January 24, 2016 (end of the day).
- (k) Pursuant to a joint reading of SpiceJet's letters dated March 04, 2016, and October 04, 2018, it becomes evident that from January 11, 2016 till January

20, 2016 information related to Q3FY16 Financial Results was exchanged between the F&A Department and the Statutory Auditor. It is submitted that Noticee No. 1 was not a member of F&A Department or privy to any discussions between the F&A Department and the Statutory Auditor. In light of the above it is evident that as information related to the Q3FY16 Financial Results was confidential in nature it was shared with only a limited number of individuals/departments/entities on a need to know basis.

- (l) Thereafter, as mentioned by SpiceJet in its letter dated March 04, 2016 Noticee No. 1 was provided PSI related to the Q3FY16 Financial Results along with the other directors of SpiceJet only on January 21, 2016, by the Company Secretary. It is submitted that Noticee No. 1 was provided with a copy of the draft Q3FY16 Financial Results on January 21, 2016, i.e. a day prior the board meeting scheduled on January 22, 2016. On January 22, 2016, the board of directors of SpiceJet reviewed and approved the Q3FY16 Financial Results and the same was disclosed on the website of BSE Ltd. at 03.27 pm on January 22, 2016. Further SpiceJet through an email dated December 05, 2019, addressed to Noticee No. 1 has confirmed that no UPSI in relation to the Q3FY16 Financial Results was shared with Noticee No. 1 prior to January 21, 2016. The relevant excerpts of the said email are as follows:

“b. As per the records of the Company, the notice of the Board Meeting to be held on January 22, 2016 was sent on January 15, 2016 to all the directors of the Company and the draft financial results for the quarter ended December 31, 2015 were shared with the directors on January 21, 2016 for their review and observation. Accordingly, as per the records of the Company no unpublished price sensitive information was shared with you prior to January 21, 2016.”

- (m) A chronology of events is provided herein below to demonstrate that when Noticee No. 1 purchased the 2000 SpiceJet Shares on January 07, 2016, he did not possess any USPI related to the Q3FY16 Financial Results:

Date	Particulars
December 01, 2015	The board of directors of SpiceJet approved the appointment of Noticee No. 1 as an independent director of SpiceJet. A copy of the outcome of the relevant board meeting held on December 01, 2015 was shared on the website of BSE Ltd. on December 02, 2015.
January 06, 2016	F&A Department of SpiceJet received the provision details from respective user departments of SpiceJet to prepare the Q3FY16 Financial Results. No UPSI related to the Q3FY16 Financial Results was shared with Noticee No. 1.
January 07, 2016	Noticee No. 1 sold 2000 SpiceJet Shares without any possession of UPSI related to the Q3FY16 Financial Results.
January 11, 2016	Draft financials results prepared by the F&A Department were shared with the Statutory Auditor.

January 15, 2016	The Company Secretary through an email invited Noticee No. 1 to attend the board meeting of SpiceJet scheduled on January 22, 2016, to consider and approve the Q3FY16 Financial Results. Further, Noticee No. 1 was informed that the trading window for dealing in the scrip of SpiceJet would be closed from January 15, 2016, till January 24, 2016 (end of the day).
January 19, 2016, to January 21, 2016	The Statutory Auditor shared various revised versions of the draft financial results with the F&A Department and the final version was shared on January 21, 2016.
January 21, 2016	The Company Secretary shared the draft Q3FY16 Financial Results with Noticee No. 1 and the other directors of SpiceJet.
January 22, 2016	Q3FY16 Financial Results were considered and approved by the board of directors of SpiceJet and the same was disclosed on the website of BSE Ltd. at 3.27 pm.
May 09, 2018	Noticee No. 1 resigned from the directorship of SpiceJet.

- (n) *In light of the above facts, it is submitted that SEBI had erred in presuming that Noticee No. 1 was in possession of UPSI when he had purchased the 2000 SpiceJet Shares merely on the ground that he was an independent director of SpiceJet during the UPSI Period. It is reiterated that Noticee No. 1 was appointed as an independent director of SpiceJet only on December 01, 2015. Further, Noticee No. 1 was neither engaged in the day to day management of the Company nor was he a member of the F&A Department of SpiceJet. It is also pertinent to note that as provided in SpiceJet's letter dated October 04, 2018, prior to January 21, 2016, UPSI related to Q3FY16 Financial Results was shared and discussed on a need to know basis among only a limited number of individuals from the F&A Department and the Statutory Auditor. Therefore, Noticee No. 1 was not in a position nor could he be reasonably expected to directly or indirectly, access any UPSI related to the Q3FY16 Financial Results of SpiceJet. It is submitted that Noticee No. 1 had purchased the 2000 SpiceJet Shares in a bonafide manner without the possession of any UPSI related to the Q3FY16 Financial Results. Further, Noticee No. 1's decision to trade was not influenced/based on any UPSI related to the Q3FY16 Financial Results. It is submitted that Noticee No. 1 independently decided to purchase the 2000 SpiceJet Shares in January 2016 based on newspaper reports (publicly available information).*
- (o) *It is submitted that Noticee No. 1 did not possess or have access to any UPSI prior to January 21, 2016, and therefore, SEBI cannot hold Noticee No. 1 liable for violation of the provisions of the PIT Regulations 2015 and the SEBI Act. There are several instances wherein the Courts and SEBI have passed orders in favour of Noticees when SEBI has failed to demonstrate that the Noticees had traded in securities of a company while in possession of UPSI.*
- (p) *The Noticee would like to place reliance on the Order of Hon'ble SAT and Ld. Adjudicating Officer, in the following matters, in its defence.*

- *Hon'ble SAT Orders in the matter of Reliance Petroinvestments Ltd., Vs SEBI, Emami Ltd., & Ors., Mrs. Chandrakala Vs Adjudicating Officer, SEBI*
- *Ld. Adjudicating Officer Orders in the matter of Reliance Petroinvestments Ltd.,*

(q) *In light of the submissions made hereinbefore in this Reply, Noticee No. 1 would like to reiterate that the allegations against Noticee No. 1 with respect to the commission of insider trading on January 07, 2016 are based merely on conjectures and surmises. Noticee No. 1 has been alleged to have violated Regulation 4 (1) of the PIT Regulations, 2015 and section 12 A (d) and 12 A (e) of the SEBI Act simply on the grounds that he was an independent director of SpiceJet during the UPSI Period and on account of a misinterpretation of the information shared by SpiceJet and the Statutory Auditor with SEBI*

15. In the interest of natural justice and in terms of Rule 4 (3) of SEBI Adjudication Rules, an opportunity of personal hearing was granted to the Noticee on December 19, 2019, which was communicated to the AR vide email dated December 12, 2019. The AR vide letter dated December 16, 2019 requested for adjournment of personal hearing to any date after January 7, 2020, due to non-availability of Legal Counsel. The request made by the AR was acceded to and accordingly, the hearing was adjourned to January 8, 2020, which was communicated to the AR vide email dated December 18, 2019. The AR along with the Noticee appeared before me on the scheduled date of hearing i.e., January 8, 2020 and reiterated the submissions made by the Noticee vide letter dated December 6, 2019.

CONSIDERATION OF ISSUES

16. I have taken into consideration the facts and material available on record. I observe that the allegation levelled against the Noticee is that he had traded in the scrip of SpiceJet while in possession of UPSI and thereby violated the provisions of Regulation 4 (1) of SEBI (PIT) Regulations, 2015 and Section 12 A (d) and 12 A (e) of SEBI Act, 1992. After perusal of the material available on record, I have the following issues for consideration, viz.,

- I. Whether the Noticee has violated the provisions of Regulation 4 (1) of SEBI (PIT) Regulations, 2015 and Section 12 A (d) and 12 A (e) of SEBI Act, 1992?*
- II. Does the violation, if any, attract monetary penalty under Section 15G(i) of SEBI Act.?*
- III. If so, what would be the monetary penalty that can be imposed taking into consideration the factors mentioned in Section 15J of SEBI Act?*

ISSUE-I: Whether the Noticee has violated the provisions of Regulation 4 (1) of SEBI (PIT) Regulations, 2015 and Section 12 A (d) and 12 A (e) of SEBI Act, 1992?

17. Before moving forward, it is pertinent to refer to the provisions of Regulation 4 (1) of SEBI (PIT) Regulations, 2015 and Section 12 A (d) and 12 A (e) of SEBI Act, 1992 alleged to have been violated by the Noticee, which reads as under:

Regulation 4 (1) of SEBI (PIT) Regulations, 2015

No insider shall trade in securities that are listed or proposed to be listed on a stock exchange when in possession of unpublished price sensitive information.

Section 12 A (d) of SEBI Act

No person shall directly or indirectly engage in insider trading

Section 12 A (e) of SEBI Act

No person shall directly or indirectly 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

18. In order to examine charges as alleged, I consider it pertinent to ascertain following

- a. Whether the Noticee was an Insider?
- b. Whether Noticee was in possession of UPSI?

c. Whether Noticee dealt on the basis of UPIS or not?

19. I note that the Noticee has been appointed as the independent director of SpiceJet on December 1, 2015 and resigned from the same in the month of May 2018. Further, it is not in dispute that the Noticee had bought 2000 shares of SpiceJet on January 7, 2016, the date which falls within the aforesaid period of him holding the position of an independent director of SpiceJet. From the same, it is imperative that the Noticee was an insider when he carried out the aforesaid purchase of shares by virtue of him being an independent director in terms of the provisions of Regulation 2 (1) (g) of SEBI (PIT) Regulations, 2015.

20. Having noted that the Noticee was an insider as above, I find it pertinent to examine the information connected with the charge of instant proceedings whether if the same constituted an Unpublished price sensitive information (UPSI). In this regard, I note that the Regulation 2(1)(n) of the SEBI (PIT) Regulations, 2015 defines "unpublished price sensitive information", which reads as follows:

“Definitions

2(1) "(n) " unpublished price sensitive information " means any information, relating to a company or its securities, directly or indirectly , that is not generally available which upon becoming generally available, is likely to materially affect the price of the securities and shall, ordinarily including but not restricted to, information relating to the following: -

- (i) financial results;
- (ii)”

21. Therefore, as specifically stated under the aforesaid provision 2 (1) (n) of SEBI (PIT) Regulations, 2015 declaration of financial results by the Company is a “unpublished price sensitive information” which I note is of the nature that is not generally available and upon becoming generally available, is likely to materially affect the price of the securities. Further, from the chronological events relating to financial results for the quarter ended December 31, 2015, I note that on January 6, 2016, Finance and Accounts Department (F & A Department) received the provisional details from respective user departments. Thereafter, upon various

processes involved in finalising the financials, final version of financial results was shared with the members of the Board (*including the Noticee*) on January 21, 2016. Consequent upon approval of financial results of the Company by the Board of Directors on January 22, 2016, a public announcement on financial results were disseminated on the website of BSE. Accordingly, I note that the period of UPSI was from January 6, 2016 to January 22, 2016.

22. Therefore, as noted from the above, that fact that during the UPSI period, the Noticee admittedly being an insider purchased 2000 shares of the Company on January 7, 2016 i.e. just a day after the UPSI coming into existence warrants a suspicion over the said trades carried out by him. In this regard, I proceed further to examine the facts and record brought before me to ascertain if the Noticee was in possession of UPSI when he carried out the aforesaid trades.

23. It is the submission of the Noticee that, by virtue of his position and role as member of Board, he would not be directly involved in day to day activities of company. His awareness and involvement with the UPSI would begin only from the day and time when information is received either in the form of agenda papers or any other mode (including oral) of communication received prior to Board Meetings which forms basis for decisions taken by Board Meeting. At this juncture, I find it pertinent to note the provision of Section 149(12) of the Companies Act, 2013 which states as under:

12) *Notwithstanding anything contained in this Act,—*
(i) *an independent director;*&
(ii) *a non-executive director not being promoter or key managerial personnel, shall be held liable, only in respect of such acts of omission or commission by a company which had occurred with his knowledge, attributable through Board processes, and with his consent or connivance or where he had not acted diligently.*

24. I note that that aforesaid provision specifically stipulates that an Independent Director and a Non-Executive Director shall be liable for any action or omission only if the occurrence of the same involve the knowledge through the board

process and with his consent or connivance or where he had not acted diligently. Reading from the same, I am of the opinion that there is a specific requirement of evidence to show the communication of UPSI to an independent director who has been charged with the allegation trading based on UPSI. As in the instant case, where the Noticee is an Independent Director, I am of the opinion that merely on the basis of the fact that Noticee is an insider and had traded prior to declaration of financial results is not sufficient for concluding the guilt of him. I note that the material evidence needs to be looked into if the same establishes the communication of UPSI to the Noticee before the trades are carried out by him.

25. In this regard, I proceed further to examine in detail the chronology of events involved with the UPSI in the instant case. Firstly, as already noted above, the Noticee was appointed as an Independent Director of SpiceJet on December 1, 2015 and had resigned from the same in the month of May 2018. From the submissions of the Noticee, it is noted that the F&A Department was involved in the preparation of the financial results for the quarter ended December 2015. However, it is noted that the Noticee was neither involved in the day to day affairs of SpiceJet nor was in line of communication / reporting with F&A Department. As already noted, the UPSI relating to financial results for the quarter ended December 2015 came into existence from January 6, 2016 whereas the Noticee bought 2000 shares of SpiceJet on January 7, 2016. In this regard, I note pursuant to the appointment of the Noticee as an Independent Director of SpiceJet a month before the UPSI period, he attended the Board meeting of SpiceJet for the first time on January 22, 2016, the date on which the Board approved the financial results, which is the UPSI with respect to the charges levelled against the Noticee. Subsequent to the said board meeting on January 22, 2016, the financial results were disseminated on the website of BSE by SpiceJet.

26. With respect to the events pertaining to the processing of the financial results, I note from the correspondence dated March 4, 2016 and October 4, 2018 submitted by SpiceJet to the Investigating Authority, that on January 11, 2016 draft financial results were prepared by Finance & Accounts Department, which was shared with the Statutory Auditors. During the period January 19 & 21, 2016,

Statutory Auditors shared various revised version of draft financial results with Finance & Accounts Department. The final version of financial results was shared with the members of the Board. I note from the sequence events from January 11 to 21, 2016 i.e., from the date of preparation of draft financial results till the date of sharing of final version of financial results with the members of the Board, the Officials of the Company and Statutory Auditor were present and privy to the discussion held therein.

27. Further, I note from the records that the Company Secretary of SpiceJet vide email dated January 15, 2016 had communicated to all the board members of the proposed board meeting to be held on January 22, 2016 along with the agenda for the meeting. Vide the said email, the members of the Board were informed of closure of trading window till January 24, 2016. It is the submission of the Noticee that his first involvement with the chronology of events leading to the declaration of financial results of SpiceJet was only when he received the aforesaid communication dated January 15, 2016 and the specific details of financial results became known to him only on the date of the board meeting i.e. on January 22, 2016. In this regard, I peruse the replies furnished by SpiceJet to the Investigating Authority, wherein the Company had stated that amongst members of the Board and Officials of the Company, the Noticee was aware of the public announcement on financial results of the Company, on January 21, 2016 i.e., the date on which the Company Secretary had shared the draft unaudited financial results for the third quarter ended December 31, 2015, to the board members which is in corroboration with the submission of the Noticee.

28. Further, with regard to the aforesaid, I also note that the Noticee, pursuant to receipt of SCN had sent an email to the Company on November 28, 2019 seeking the factual position with reference to the following queries raised by him, for which the Company replied vide email dated December 5, 2019, which are reproduced hereunder:

(a) Is it a practice and policy of the Company (SpiceJet Ltd.,) to share the quarterly provisional financial results with all the Directors of the Company including the

Independent Directors as soon as they are received at the concerned department of the Company?

Reply of the Company: *As per the prevalent practice and laid down procedures, the financial results of the Company are shared with the Directors at the time of convening of the Board meeting for the purpose of approving the results of the Company.*

(b) As a matter of fact, whether any PSI relating to Q3FY16 had been shared with Mr. K R Sasiprabhu, Independent Director on 6 to 7 January 6, 2016?

Reply of the Company: *As per the records of the Company, the notice of the Board meeting to be held on January 22, 2016 was sent on January 15, 2016 to all the Directors of the Company and draft financial results for the quarter ended December 31, 2015 were shared with the Directors on January 21, 2016 for their review and observation. Accordingly, as per the records of the Company, no UPSI was shared with you prior to January 21, 2016.*

29. From all the above, the evidence placed on record before me support the contention of the Noticee that the knowledge with respect to the UPSI was communicated to him only on January 15, 2016 and not prior to that. In spite of the facts that the trade was carried out during the UPSI period by the insider, i.e. Noticee one day after the UPSI came into existence which led to a reasonable suspicion over the nature of such buy trades from the Noticee, I note that there has not been any evidence brought on record before me to prove that the UPSI was communicated to the Noticee before the date of his trades i.e. January 7, 2016 or that the Noticee had the knowledge by any means of the UPSI as on the said date of his trade.

30. Having observed as above, I find it pertinent to note the following observation of Hon'ble Securities Apellate Tribunal (SAT) in the case of Dilip S. Pendse vs. Securities and Exchange Board of India [Appeal no. 80 of 2009 decided on November 19, 2009] –

“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.."

31. In the facts and circumstance of the case and referring to my findings in the preceding paragraphs, though the Noticee has been concluded to be an insiders and has traded during the period of UPSI, there has been no material available on record to show that the UPSI was in access by him as on the date of his trade. The submission of the Noticee is that it was a bona-fide trade where he independently bought 2,000 shares of SpiceJet valuing ₹ 1,66,000/- on January 7, 2016 and such decision to invest in the shares of SpiceJet was based on the market trend and newspaper reports and clearly not based on the UPSI to which he did not have access as on the said date of trade. Agreeing with the Noticees' submission and the observation of Hon'ble SAT as cited above, the charge of insider trading being of a serious nature and there needs to be a higher degree of proof for the preponderance of probability having regard to the gravity of the charge, I am of the opinion that a benefit of doubt is warranted towards the Noticee for the lack of any evidence to show the communication of UPSI before his trade date. In view of the same, I am inclined to accept the submission of the Noticee that he came to know of the proposed board meeting and details of financial results on January 15, 2016 and January 21, 2016 respectively and that he traded in the scrip much before he came to know of the proposed board meeting and financial results.
32. In view of all the above, I conclude that the charge against the Noticee that he had traded in the scrip of SpiceJet while in possession of UPSI, does not stand established.

33. Further, considering that the alleged violation against the Noticee does not stand established, I note that Issues II and III does not merit any consideration.

ORDER

34. Accordingly, taking into account the aforesaid findings and in exercise of powers conferred upon me under Section 15I of SEBI Act read with Rule 5 of the SEBI Adjudication Rules, the Adjudication proceedings initiated s against the Noticee i.e., K R Sasiprabhu vide SCN dated September 30, 2019 stands disposed of without any penalty.

35. In terms of rule 6 of the SEBI Adjudication Rules, copies of this order are sent to the Noticee and also to SEBI.

Date: January 31, 2020

B J DILIP

Place: Mumbai

ADJUDICATING OFFICER