BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
[ADJUDICATION ORDER NO. EAD-12/ AO/SM/101-108/2017]

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

In respect of:

1. M/s. Syncom Healthcare Ltd (PAN: AAKCS3247G)
2. Mr. Ajay Bankda (PAN: ADHPB2851J)
3. Ms. Jyoti Bankda (PAN: ADHPB2855N)
4. Mr. J P Bagaria (PAN: AAEPB0276F)
5. Mr. J C Paliwal (PAN: AFYPP3780M)
6. Mr. Atul Thapliyal (PAN: AAWPT5187D)
7. Mr. Naveen Sood (PAN: AEXPS9104G)
8. Mr. Subash Chandra Gupta (PAN:AGKPG7678J)

In the matter of M/s. Syncom Healthcare Ltd

Facts of the case:

1. Securities and Exchange Board of India ("SEBI") had conducted an investigation in the scrip of Syncom Healthcare Ltd ("SHL") based on the complaint received from All Gujarat Investor Protection Trust ("AGIPT") for possible violation of the provisions of the Securities and Exchange Board of India Act, 1992 ('Act') and various Rules and Regulations made thereunder during the investigation period from February 15, 2010 to March 31, 2010 (hereinafter referred to as the 'IP').
2. SHL is listed at Bombay Stock Exchange Limited ('**BSE**') and National Stock Exchange of India Ltd ("NSE").

   Corporate Announcements
3. SHL during IP made the following Corporate announcements and its impact on the price and volume of the scrip of SHL on BSE was as under:

<table>
<tr><th>S.No</th><th>Date and Time</th><th>Announcement/News</th><th>Price Impact/Shares Traded</th><th>Remarks</th></tr>
<tr><td>1</td><td>March 08, 2010 (Mon) at 11:35:00</td><td>Syncom is entering in an MOU with M/s Advanced Techno Lab, based in Congo who will undertake product marketing activities.</td><td>05/03/10 (Fri)
<table><tr><td>O</td><td>H</td><td>L</td><td>C</td></tr><tr><td>112</td><td>113.9</td><td>109.3</td><td>111.2</td></tr></table>No. of shares traded: 28,26,274

08/03/2010
<table><tr><td>O</td><td>H</td><td>L</td><td>C</td></tr><tr><td>113</td><td>116.7</td><td>111.8</td><td>115.75</td></tr></table>No. of shares traded: 26,01,683</td><td>The scrip on March 08, 2010 closed above 4.09% of the previous day (05/03/2010) closing price.</td></tr>
<tr><td>2</td><td>March 29, 2010 (Mon) at 12:37:00</td><td>In addition to the existing tie ups with Ranbaxy Labs Ltd., Wockhardt Ltd., Piramal Healthcare Ltd., Lupin Pharma etc., Company is entering into agreement with Mumbai based Kilitch Drugs Ltd.</td><td>29/03/10
<table><tr><td>O</td><td>H</td><td>L</td><td>C</td></tr><tr><td>135</td><td>135</td><td>119.65</td><td>129.5</td></tr></table>No. of shares traded: 81,20,681

30/03/10
<table><tr><td>O</td><td>H</td><td>L</td><td>C</td></tr><tr><td>129.5</td><td>136.4</td><td>128.45</td><td>133.7</td></tr></table>No. of shares traded: 31,99,190</td><td>The scrip on March 30, 2010 closed above 3.24% of the previous day (29/03/2010) closing price.</td></tr>
</table>

Similar price movement in the scrip was observed on NSE.

4. SHL made corporate announcement on March 08, 2010 at 11:33:00 and 11:35:00 on NSE and BSE respectively about *entering into an MOU with M/s Advanced Techno Lab* who will undertake product marketing activities in Congo, Africa and expected growth of top line from 25% to 30% to approx Rs. 90 cores in next financial year.

4.1 Chronology of events relating to MOU with Advanced Techno Lab:

Date	Persons involved	Event
March 08, 2010	Shriraj Ramchandani (Advanced Technolab) and Pratik Bankda (Syncom)	Company received letter from Advanced Technolab, Congo showing interest to buy products and requesting for quotations
		Corporate Announcement was disclosed on BSE (at 11:35:00) and NSE (at 11:33:00).
March 18, 2010	Shriraj Ramchandani,	Quotations sent to Advanced Technolab

March 26 - 27, 2010	Nikhil Roy (Advanced Technolab) and Pratik Bankda (Syncom)	Revised quotations sent by Syncom to Advanced Technolab based on the discussions with Advanced Technolab
April 07, 2010	Shriraj Ramchandani (Advanced Technolab) and Pratik Bankda (Syncom), JC Paliwal (Company Secretary & VP Finance of Syncom)	Discussions with Advanced Technolab representative. Syncom requesting security in form of Letter of Credit for 60% of order value and Cheque for 40% of order value.
April 12, 2010		Advanced Technolab informed that providing Letter of Credit was not suitable to them and called off the deal.

4.2 With regard to the aforesaid corporate announcement following was observed:

(i) SHL made an announcement to exchanges considering the information as material and price sensitive

(ii) SHL in its announcement stated that it expects top line increase of 25% to 30% due to this MOU

(iii) SHL extending its business to foreign country i.e., Republic of Congo.

4.3 In view of the above, Corporate announcement with regard to Entering into MOU with Advanced Techno lab was a price sensitive information ("PSI") under Clause (vii) – Significant changes in policies, plans or operations of the company under Explanation of Regulation 2(ha) of SEBI (Prohibition of Insider Trading) Regulations, 1992 ("PIT Regulations, 1992").

4.4 However, the said MOU had not been executed and SHL vides its e-mail dated October 09, 2014 confirmed that no disclosure with regard to failure of entering into MOU was made to the exchange.. . Hence, it was alleged that SHL, Board of Directors (excluding independent directors) and Company secretary/Compliance officer during the relevant period i.e. as on April 12, 2010 had violated Clause 2.0 of Schedule II – Code of Corporate Disclosures for Prevention of Insider Trading prescribed under Regulation 12(2) of PIT Regulations, 1992..

5. <u>SHL agreement with Kilitch Drugs:</u> With regard to the Corporate Announcement made by SHL on March 29, 2010, it was observed from the agreement provided by SHL (vide e-mail dated January 7, 2015) that although SHL had entered into the agreement with Kilitch Drugs Limited on March 17, 2010, it made corporate announcement as "it is entering into

an agreement" on March 29, 2010 i.e.. Thus it was alleged that Corporate Announcement put by SHL was not true. Therefore, SHL misled the public by the aforesaid corporate announcement. The agreement was signed by J P Bageria, Non-Executive Director. Hence, it was alleged that SHL, Board of Directors (excluding independent directors) and Compliance officers during the relevant period had violated Section 12A(c) of the Act read with Regulations 3(d), 4(1), 4(2)(f) and 4(2)(r) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 ("FUTP Regulations").

6. **Code of Conduct:**

6.1 SHL vide Letter dated March 10, 2014 submitted the Code of Conduct for Prevention of Insider Trading. From the analysis of code of conduct, following was observed and hence thereby alleged:

(i) From clause II of TITLE, COMMENCEMENT AND EXTENT, it was observed that adopted code of conduct came into force on April 1, 2010.

(ii) Clause 1.3, sub-clause (d) of clause 3.2-3, Clauses 3.2-5, 3.2-6, 3.3-1, 3.3-2, 3.3-3, 4.1 and 4.2 of Part A – Model Code of Conduct for Prevention of Insider Trading for Listed Companies specified in Schedule I under Regulation 12(1) of SEBI(Prohibition of Insider Trading) Regulations, 1992 were not incorporated in the Code of Conduct framed by the SHL which was violation of Regulations 12(1) and 12(3) of SEBI (PIT) Regulations, 1992.

6.2 Hence, it was alleged that there was no code of conduct for Prevention of Insider Trading in force during February 15, 2010 (Listing Day) to March 31, 2010. Further, code of conduct adopted by SHL which came into force from April 01, 2010 was not as near thereto Code of Conduct prescribed by SEBI under its SEBI (PIT) Regulations, 1992. Further, vide Letter dated September 16, 2014, SHL confirmed that code of conduct which was adopted on February 6, 2010 had come into force from April 01, 2010 and provisions which were not adopted as mentioned above were adopted from September 16, 2014.

6.3 The details of the non-independent directors and compliance officers of SHL during February 15, 2010 to September 16, 2014, as follows:

S. No.	Name	Designation	Period
1	Ajay Bankda	Chairman & Managing Director	FY 2009 – FY 2014
2	Jyoti Bankda	Whole Time Director	FY 2009 – FY 2010
3	J P Bagaria	Non – Executive Director	FY 2009 – FY 2014

4	J C Paliwal	Compliance Officer	FY 2009 – May 24, 2012
5	Atul Thapliyal	Compliance Officer	July 12, 2012 – Sep 01, 2012
6	Naveen Sood	Compliance Officer	Sep 01, 2012 – March 22, 2013
7	Subash Chandra Gupta	Compliance Officer	March 22, 2013 – Aug 30, 2014
8	J.C. Paliwal	Compliance Officer	w.e.f. Aug 30, 2014

6.4 In view of the above, it was alleged that Board of Directors (excluding independent directors) and Compliance Officers of SHL during February 15, 2010 to September 16, 2014 had violated Regulations 12(1) and 12(3) read with Clause 1.2 of Part A of Schedule I of the PIT Regulations, 1992.

7. *In this order wherever SEBI (Prohibition of Insider Trading) Regulations, 1992 ("PIT Regulations, 1992") is mentioned it should be referred to as PIT Regulations, 1992 read with Regulation 12 of SEBI (Prohibition of Insider Trading) Regulations, 2015.*

Appointment of Adjudicating Officer

8. SEBI had initiated adjudication proceedings against the entities viz.., SHL, Ajay Bankda ("Ajay"), Jyoti bankda("Jyoti"), J P Bagaria (Bagaria") and J C Paliwal ("Paliwal") (referred to as **"Entities-1"**) and SHL, Ajay, Jyoti, Bagaria Paliwal, Atul Thapliyal ("Atul"), Naveen Sood ("Naveen") and Subash Chandra Gupta ("Gupta") (collectively referred to as **"Entities -2"**) and appointed Shri Prasad Jagadale as Adjudicating Officer vide order dated April 24, 2015 under Section 15 I of the Act read with Rule 3 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (hereinafter referred to as 'Rules') to inquire into and adjudge under Sections 15HA and 15 HB of the Act for the alleged violation of the provisions of law by Entities-1 and to inquire into and adjudge under Sections 15 HB of the Act for the alleged violation of the provisions of law by Entities-2. Pursuant to the transfer of the case, I have been appointed as Adjudicating Officer (AO), vide order dated May 18, 2017.

Show Cause Notice, Reply and Personal Hearing

Syncom Healthcare Ltd (SHL)

9. SHL was issued SCN on December 29, 2015 for its above stated violations. Vide said SCN, SHL was show caused as to why inquiry should not be held and penalty should not

be imposed under sections 15HA and 15HB of the Act. However, the SCN was returned undelivered. Subsequently, attempts had been made to serve the SCN to the alternate addresses available but could not be served. As per the principle of natural justice, an opportunity of hearing in terms of rule 4(7) of the Rules was granted on February 29, 2016 by forwarding the copy of SCN by email to VP-Finance of SHL. In response, SHL vide letter dated February 23, 2016 acknowledged the receipt of SCN and requested for grant of 15 days' time to reply to SCN and to postpone the hearing to a future date. SCNs of Naveen and Gupta were also sent to SHL as they were employed with SHL. However, SHL informed that Naveen and Gupta had resigned from the services of SHL and hence SHL could not accept the SCN and hearing notice on their behalf.

10. In response to SCN, SHL vide letter dated June 03, 2016, inter-alia made the following submissions:

10.1 SHL requested to drop the proceedings since the investigation/SCN was carried out on the complaint made by AGIPT which is not a recognised investor association of SEBI as claimed in the SCN as per the list of recognised investor associations of SEBI as on April 25, 2016.

10.2 The announcement was made on March 29, 2010 upon signing the agreement even though the agreement is dated March 17, 2010 which was not corrected due to oversight.

10.3 With regard to impact of price of the scrip on the corporate announcement made with regard to Kilitch Drugs Ltd, had a negative impact and the price of SHL was in tandem with the BSE healthcare Index.

10.4 Further, as far as the words "it is entering into an agreement" are concerned, SHL submitted that they we were entering into agreement and the agreement was entered into in and around March 29, 2010 without any malafide intention to make such announcement.

10.5 With regard to corporate announcement on March 08, 2010 i.e, "Syncom is entering in a MOU with M/s.Advanced Techno Lab, based in Congo" it is submitted that marginal increase in the price due to the said corporate announcement is testimony of the fact that the alleged price sensitive information was not significant and did not have any impact on the price. Further, there was an increase of around 1% in the BSE Healthcare Index on March 08,2010 compared to closing BSE Healthcare index on March 05, 2010 and which clearly show that there was

virtually no increase in price of the scrip prior to and after the corporate announcement although BSE Healthcare Index had shown positive signs.

10.6 With regard to alleged violation that code of conduct was not adopted immediately after listing, it is submitted and denied that there was no code of conduct for prevention of insider trading in force during February 15, 2010 to March 31, 2010 and further code of conduct was adopted immediately after listing i.e., on April 01, 2010. In the title of the code of conduct, it has been mentioned that code of conduct came into force on April 1, 2010, however, this code of conduct is part of our DNA we have been following this code of conduct even prior to the date of listing and none of our directors, promoters, or KMPS have traded in the scrip of SHL while in possession of unpublished price sensitive information. It is submitted that from SEBI's own case that no violation of code of conduct has taken place, none of our employees including directors, promoters and KMPs were following the code even prior to date of listing.

10.7 With regard to the allegation that non-adoption of code of conduct as near thereto model code of conduct specified in Schedule I of PIT Regulations, 1992 it is submitted that SHL has not diluted any clause of code of conduct and reiterate that our conduct contains all important clauses which have been specified under Regulation 12(1) of these by PIT Regulations, 1992 and deny that SHL or any of its directors or promoter or KMPs have violated Regulation 12(1) and 12(3) of PIT Regulations since we have followed all the clauses of code of conduct as stipulated under Schedule I of PIT Regulations. Further, the code of conduct was prepared by our company secretary/compliance officer and the same was adopted by the Board of Directors and went by the advice of the company secretary/ compliance officer at that point of time.

10.8 With regard to alleged violation of Section 12A(c) of SEBI Act read with Regulation 3(d), 4(1), 4(2)(f) & 4 (2) (r) of FUTP Regulations; Regulation 12(1) and 12(3) read with clause 1.2 of Part of Schedule I of PIT Regulations and Regulation 12(2) read with clause 2.0 of Schedule II of PIT Regulations, it is humbly submitted that SHL or any of its directors or promoters of KMPs has not dealt in the shares of SHL, not carried out any act which would act as fraud or deceit on any person, published or causing to publish any report which was not true, has not planted any news which induced any person to deal and has followed all the clauses contained in code of

conduct of PIT Regulations in letter and in spirit from the time the company was not even listed.

10.9 With regard to alleged violation of Regulation 4(2)(f) of FUTP Regulations, we strongly contend that this regulation is attracted when a person "prior to or in the course of dealing in securities" and it is own case that SHL and its directors/ promoters/ KMPs have not dealt in the securities of SHL either prior to or after giving out any corporate announcement.

10.10 Further, attention is drawn to case laws in support of the claim that charge of fraud is a serious charge and in absence of any convincing evidence such charge cannot be made.

10.11 With regard to imposition of penalty under section 15HA and 15HB, referred to case laws in support that penalty imposed must be commensurate with the gravity of the misconduct and that any penalty disproportionate to the gravity of the misconduct would be violative of Art. 14 of the constitution. Since the charges against SHL and its directors, promoters have not been established, it is kindly requested not to levy any penalty and to drop the current proceedings.

11. Accordingly, an opportunity of personal hearing was granted on July 22, 2016 vide notice dated June 30, 2016. The said hearing was attended by the Authorised representative who had made oral submissions which were part of the reply submitted earlier. Pursuant to the appointment of undersigned as AO, another opportunity of personal hearing was granted on October 9, 2017 and the same was attended by the authorised representative who had made oral submissions which were part of the reply submitted earlier.

Paliwal (Compliance Officer)

12. Paliwal was issued SCN on December 29, 2015 for his above stated violations. Vide said SCN, Paliwal was show caused as to why inquiry should not be held and penalty should not be imposed under sections 15HA and 15HB of the Act. However, the SCN was returned undelivered. Subsequently, attempts had been made to serve the SCN through SHL and the same was served on him. In response, Paliwal vide his letter dated February 16,2016 acknowledged the receipt of SCN and sought for 30 days' time to respond and sent his reply vide letter dated July 18, 2016 which are similar in contents to that of the reply of SHL and hence not reproduced.

13. In the interest of natural justice, an opportunity of personal hearing was granted by erstwhile AO on July 22, 2016 vide notice dated June 30, 2016. The said hearing was attended by the Authorised representative who had made oral submissions which were part of the reply submitted earlier. Pursuant to the appointment of the undersigned as AO, another opportunity of personal hearing was granted on October 9, 2017 and the same was attended by the authorised representative who had made oral submissions which were part of the reply submitted earlier.

Ajay (Chairman and Managing Director)

14. Ajay was issued SCN on December 29, 2015 for his above stated violations. Vide said SCN, Ajay was show caused as to why inquiry should not be held and penalty should not be imposed under sections 15HA and 15HB of the Act. However, the SCN was returned undelivered. Subsequently, attempts had been made to serve the SCN through SHL and the same was served on him. In response, SHL on behalf of Ajay vide its letter dated February 16,2016 acknowledged the receipt of SCN and sought for 30 days' time to respond. Pursuant to the letter, Ajay sent his reply vide letter dated July 15, 2016 while denying the allegations levelled against him stated that he adopted the submissions made by SHL vide letter dated June 3,2016 and the said letter of SHL may be treated as final submission from his side in respect of notice dated December 29, 2015.

15. In the interest of natural justice, an opportunity of personal hearing was granted by erstwhile AO on July 22, 2016 vide notice dated June 30, 2016. The said hearing was attended by the Authorised representative who had made oral submissions which were part of the reply submitted earlier. Pursuant to the appointment of the undersigned as AO, another opportunity of personal hearing was granted on October 9, 2017 and the same was attended by the authorised representative who had made oral submissions which were part of the reply submitted earlier.

Jyoti (Whole Time Director)

16. Jyoti was issued SCN on December 29, 2015 for her above stated violations. Vide said SCN, Jyoti was show caused as to why inquiry should not be held and penalty should not be imposed under sections 15HA and 15HB of the Act. However, the SCN was returned undelivered. Subsequently, attempts had been made to serve the SCN through SHL and the same was served on her. In response, SHL on behalf of Jyoti vide its letter dated February 16,2016 acknowledged the receipt of SCN and sought for 30 days' time to respond. Pursuant to the letter, Jyoti sent his reply vide letter dated July 15, 2016 while denying the allegations levelled against her stated that she adopted the submissions made

by SHL vide letter dated June 3,2016 and the said letter of SHL may be treated as final submission from her side in respect of notice dated December 29, 2015.

17. In the interest of natural justice, an opportunity of personal hearing was granted by erstwhile AO on July 22, 2016 vide notice dated June 30, 2016. The said hearing was attended by the Authorised representative who had made oral submissions which were part of the reply submitted earlier. Pursuant to the appointment of the undersigned as AO, another opportunity of personal hearing was granted on October 9, 2017 and the same was attended by the authorised representative who had made oral submissions which were part of the reply submitted earlier.

Bagaria (Non-Executive Director)

18. Bagaria was issued SCN on December 29, 2015 for his above stated violations. Vide said SCN, Bagaria was show caused as to why inquiry should not be held and penalty should not be imposed under sections 15HA and 15HB of the Act. However, the SCN was returned undelivered. Subsequently, attempts had been made to serve the SCN through SHL and the same was served on him. In response, SHL on behalf of Bagaria vide its letter dated February 16, 2016 acknowledged the receipt of SCN and sought for 30 days' time to respond. Pursuant to the letter, Bagaria sent his reply vide letter dated July 15, 2016 while denying the allegations levelled against him stated that he adopted the submissions made by SHL vide letter dated June 3,2016 and the said letter of SHL may be treated as final submission from his side in respect of notice dated December 29, 2015. Further, he stated that he being the non-executive director not involved in day-to-day affairs of SHL and depended upon the professional expertise of the secretarial staff and other directors of SHL and he did not have any reason to doubt the prudence of the directors and other secretarial staff of SHL in carrying out their duties diligently, with professional expertise and in compliance with various Acts, rules and regulations.

19. In the interest of natural justice, an opportunity of personal hearing was granted by erstwhile AO on July 22, 2016 vide notice dated June 30, 2016. The said hearing was attended by the Authorised representative who had made oral submissions which were part of the reply submitted earlier. Pursuant to the appointment of the undersigned as AO, another opportunity of personal hearing was granted on October 9, 2017 and the same was attended by the authorised representative who had made oral submissions which were part of the reply submitted earlier.

Naveen (Compliance Officer)

20. Naveen was issued SCN on December 29, 2015 for his above stated violations. Vide said SCN, Naveen was show caused as to why inquiry should not be held and penalty should not be imposed under sections 15HB of the Act. However, the SCN was returned undelivered. Subsequently, attempts had been made to deliver the SCN to alternate address and the same was served as per postal records. In response, Naveen vide his letter dated February 6, 2016 stated that he was with SHL as a compliance officer for a short time i.e., September 1, 2012 to March 22, 2013. Further, the code of conduct was adopted by SHL in the year 2010 itself and once a document had been adopted in the past by a company, the incumbent compliance officer does not in the normal course revisit the same in the very beginning of his tenure, unless some lacuna is pointed out or the company is required to work on that document again for some reason. Hence, he could not review the document to find whether the code of conduct was compliant with the Regulations or not and the same code of conduct adopted prior to my tenure continued to prevail. Hence, requested not to penalise him for a technical oversight which would be harsh in the circumstances of the case and to drop the proceedings.

21. In the interest of natural justice, an opportunity of personal hearing was granted by erstwhile AO on February 29, 2016 vide notice dated February 18, 2016. In response, Naveen vide his letter dated February 24, 2016 reiterated submissions made vide his letter dated February 6, 2016 and requested for adjournment of the hearing. Further he had stated that if the adjournment is not possible, his previous letter may be taken as his submissions. Accordingly, another opportunity of hearing was granted by the erstwhile AO on July 22, 2016. Even though the said notice was served on him as per postal records, he didn't attend the hearing. Pursuant to the appointment of the undersigned as AO, another opportunity of personal hearing was granted on October 9, 2017 and the same was delivered as per postal records but he didn't attend the hearing.

22. Having satisfied with the attempts made by SEBI and the submissions made by Naveen vide his letter dated February 18, 2016, I am proceeding further on the matter based on the material available on record.

Gupta (Compliance Officer)

23. Gupta was issued SCN on December 29, 2015 for his above stated violations. Vide said SCN, Gupta was show caused as to why inquiry should not be held and penalty should not be imposed under sections 15HB of the Act. However, the SCN was returned

undelivered. Subsequently, attempts had been made to deliver the SCN to alternate address and also by way of email viz sc_gupta71@rediffmail.com and the SCN was served on him via email (with digital signature).

24. In the interest of natural justice, an opportunity of personal hearing was granted by erstwhile AO on February 26, 2016 vide notice dated February 18, 2016 but the same was returned undelivered. Pursuant to the appointment of the undersigned as AO, another opportunity of personal hearing was granted on October 9, 2017 and the same was returned undelivered. Pursuant to the postal address provided by Gupta vide email dated September 19, 2017, an another opportunity of personal hearing was granted on October 3, 2017 by forwarding a copy of SCN vide notice dated September 19, 2017 and the same was served on him as per postal records. Gupta attended the hearing on the said date and submitted that he had left SHL on December 15, 2013 and as he was unaware of the provisions of PIT Regulations and hence, he could not ensure compliance of the same.

Consideration of Issues, Evidence and Findings

25. I have carefully perused the charges levelled against the entities in the SCN and written and oral submissions made in response to SCN and all the documents available on record. In the instant matter, the following issues arise for consideration and determination:

26. **(a) Whether the Entities-1 have violated Regulation 12(2) read with clause 2.0 of Schedule II of PIT Regulation, 1992, and Section 12A(c) of the Act read with Regulations 3(d), 4(1), 4(2)(f) and 4(2)(r) of FUTP Regulations? and**
(b) Whether Entities-2 have violated Regulations 12(1) and 12(3) read with clause 1.2 of PART A of Schedule I of PIT Regulation, 1992?

27. **Does the violation, if any, on the part of**

27.1 Entities-1 attract monetary penalty under Section 15 HA and 15 HB of the Act? and

27.2 Entities -2 attract monetary penalty under Section 15 HB of the Act?

28. **If so, what would be the quantum of monetary penalty that can be imposed on the entities taking into consideration the factors mentioned in Section 15J of the Act?**

29. Before proceeding further, I would like to refer to the relevant provisions of the SEBI Act, PIT Regulations, 1992, PIT Regulations, 2015 and FUTP Regulations. The provisions referred above are reproduced as under:

SEBI Act, 1992

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

12A. No person shall directly or indirectly—

(a) ….

(b) ….

(c) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person, in connection with the issue, dealing in securities which are listed or proposed to be listed on a recognised stock exchange, in contravention of the provisions of this Act or the rules or the regulations made thereunder;

SEBI (PIT) Regulation, 1992:-

CHAPTER IV

POLICY ON DISCLOSURES AND INTERNAL PROCEDURE

FOR PREVENTION OF INSIDER TRADING

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

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

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

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

(c) the recognised stock exchanges and clearing house or corporations;

(d) the public financial institutions as defined in section 4A of the Companies Act, 1956; and

(e) the professional firms such as auditors, accountancy firms, law firms, analysts, consultants, etc., assisting or advising listed companies, shall frame a code of internal procedures and conduct as near thereto the Model Code specified in Schedule I of these Regulations without diluting it in any manner and ensure compliance of the same.

(2) The entities mentioned in sub-regulation (1), shall abide by the code of Corporate Disclosure Practices as specified in Schedule II of these Regulations.

(3) All entities mentioned in sub-regulation (1), shall adopt appropriate mechanisms and procedures to enforce the codes specified under sub-regulations (1) and (2).

(4) Action taken by the entities mentioned in sub-regulation (1) against any person for violation of the code under sub-regulation (3) shall not preclude the Board from initiating proceedings for violation of these Regulations.

Schedule I of SEBI (PIT) Regulation, 1992:-

SCHEDULE I

[Under regulation 12(1)]

PART A

MODEL CODE OF CONDUCT FOR PREVENTION OF NSIDER TRADING FOR LISTED COMPANIES

INSIDER TRADING FOR LISTED COMPANIES

1.0 Compliance Officer

1.1 The listed company has appointed a Compliance Officer senior level employee who shall report to the Managing Director/Chief Executive Officer.

1.2 The compliance officer shall be responsible for setting forth policies, procedures, monitoring adherence to the rules for the preservation of "Price Sensitive Information", pre-clearing; of designated employees' and their dependents' trades (directly or through respective department heads as decided by the company), monitoring of trades and the implementation of the code of conduct under the overall supervision of the Board of the listed company.

Explanation : For the purpose of this Schedule, the term 'designated employee' shall include :—

(i) officers comprising the top three tiers of the company management;

(ii) the employees designated by the company to whom these trading restrictions shall be applicable, keeping in mind the objectives of this code of conduct.

SCHEDULE II

[Under regulation 12(2)]

CODE OF CORPORTAE DISCLOSURES PRACTICES FOR PREVENTION OF INSIDER TRADING

1.0 Corporate Disclosure Policy

1.1 To ensure timely and adequate disclosure of price sensitive information, the following norms shall be followed by listed companies:—

2.0 Prompt disclosure of price sensitive information

2.1 Price sensitive information shall be given by listed companies to stock exchanges and disseminated on a continuous and immediate basis.

2.2 Listed companies may also consider ways of supplementing information released to stock exchanges by improving Investor access to their public announcements.

Regulation 12 of SEBI (PIT) Regulation, 2015:-

Repeal and Savings.

12. (1) The Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 are hereby repealed.

(2) Notwithstanding such repeal,—

(a) the previous operation of the repealed regulations or anything duly done or suffered thereunder, any right, privilege, obligation or liability acquired, accrued or incurred under the repealed regulations, any penalty, forfeiture or punishment incurred in respect of any offence committed against the repealed regulations, or any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid, shall remain unaffected as if the repealed regulations had never been repealed; and

(b) anything done or any action taken or purported to have been done or taken including any adjudication, enquiry or investigation commenced or show-cause notice issued under the repealed regulations prior to such repeal, shall be deemed to have been done or taken under the corresponding provisions of these regulations;

(3) After the repeal of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992, any reference thereto in any other regulations made, guidelines or circulars issued thereunder by the Board shall be deemed to be a reference to the corresponding provisions of these regulations.

FUTP Regulations

3. Prohibition of certain dealings in securities

No person shall directly or indirectly-

(a) buy, sell or otherwise deal in securities in a fraudulent manner;

(b) use or employ, in connection with issue, purchase or sale of any security listed or proposed to be listed in a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of the Act or the rules or the regulations made there under;

(c) employ any device, scheme or artifice to defraud in connection with dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange;

(d) engage in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with any dealing in or issue of securities which are listed or proposed to be listed on a recognized stock exchange in contravention of the provisions of the Act or the rules and the regulations made thereunder.

4. Prohibition of manipulative, fraudulent and unfair trade practices

(1) Without prejudice to the provisions of regulation 3, no person shall indulge in a fraudulent or an unfair trade practice in securities.

(2) Dealing in securities shall be deemed to be a fraudulent or an unfair trade practice if it involves fraud and may include all or any of the following, namely:-

(a)…

(b)…

(c)…..

(d)..

(e)…

(f) publishing or causing to publish or reporting or causing to report by a person dealing in securities any information which is not true or which he does not believe to be true prior to or in the course of dealing in securities;

(g)…

..

…

(r) planting false or misleading news which may induce sale or purchase of securities

Findings

30. On perusal of the records, replies of the entities and other materials available before me, I find the following:

30.1 Ajay, Jyoti, Bagaria and Paliwal had adopted the reply filed by SHL and hence I consider the reply of SHL also as the reply of Ajay, Jyoti, Bagaria and Paliwal.

30.2 SHL has contended that it was provided only with the extracts of the investigation report and have not been provided with full copy of the investigation report as is compulsory under the principles of natural justice and established principles of legal jurisprudence. In this context, it becomes necessary to quote the judgment of the Hon'ble Securities Appellate Tribunal, in the case of Mayrose Capfin Private Limited V/s. Securities and Exchange Board of India (Appeal No. 20 of 2012) dated March 30, 2012,

"The principles of natural justice require that the inquiry officer should make available such document and material to the delinquent on which reliance is being placed in the inquiry. It is not necessary for the inquiry officer to make available all the material that might have been collected during the course of investigation, but, has not been relied upon for proving charge against the delinquent. No prejudice can, therefore, be said to have been caused to the appellant on this count".

30.3 I further rely on the findings of Hon'ble Supreme Court in the matter of Chandrama Tiwari vs. Union of India (AIR 1988 SC 117),

"*It is not necessary that each and every document must be supplied to the delinquent government servant facing charges; instead only material and relevant documents are necessary to be supplied to him. If a document even though mentioned in the Memo of charges is not relevant to the charges or if it is not referred to or relied upon by the enquiry officer or the punishing authority in holding the charges proved against the government servant, no exception can be taken to the validity of the proceedings or the order passed on the ground of non-supply of the copy of the order. If a document is not used against the party charged, the ground of violation of principles of natural justice cannot be successfully raised. Violation of the principles of natural justice arises only when a document, a copy of which may not have been supplied to the party charged, is used in recording findings of guilt against him*." In view of the above quoted case laws, I am of the opinion Principal of justice has been followed in the matter as I find all the information and documents relied by me had been provided to SHL, I will now move to the facts of the case.

30.4 The main allegations levelled against SHL and others were

i) Admittedly, the code of conduct adopted by SHL on February 06, 2010 was effective from April 01,2010 and hence no code of conduct was in force from February 15, 2010 (listing day) to March 31, 2010.

ii) Code of conduct adopted by SHL does not contain clause 1.3, sub-clause (d) of clause 3.2-3, clauses 3.2-5, 3.2-6, 3.3-1, 3.3-2, 3.3-3, 4.1 and 4.2 of Part A – Model code of conduct for prevention of insider trading for listed companies specified in Schedule 1 under Regulation 12(1) of PIT Regulations, 1992.

My observation

The above allegations were casted on Entities 1 upon analysis of the code of conduct submitted by SHL vide its letter dated March 10, 2014. SHL in its reply to SCN had said that it was adopting the code of conduct even before listing but had not proved beyond doubt with documentary proof to that effect. SHL in its letter dated March 10, 2014 has itself mentioned that the effective date of PIT Code was April 01, 2010. Further, with regard to clauses referred to SCN as not adopted in specific, SHL had claimed that it had followed all the clauses of code of conduct as stipulated under Schedule I of PIT Regulations. Once again, without demonstrating with any substantial proof in support, contention of SHL that SEBI's own case that none of the directors or promoters have traded in the scirp of SHL during the investigation period, could not alleviate the allegation since SHL and others were booked for non-adoption of code of conduct for period from the date of listing until April 01, 2010 and also for non-adoption as near thereto model code of conduct and not for any other violation under PIT Regulations.

The submissions made by Naveen and Gupta that they were ignorant about non-adoption of code of conduct and non-adoption code of conduct as near thereto the model code of conduct since the code of conduct was adopted prior to their joining could not absolve them from their responsibility cast under PIT Regulations . Hence, I conclude that Entities-2 (SHL, its executive directors and Compliance officers) have violated Regulations 12(1) and 12(3) read with Clause 1.2 of Part A of Schedule 1 of PIT Regulations, 1992 and liable for penalty.

With regard to Bagaria,, I give him the benefit of doubt as he was the non-executive director in SHL.

30.5 SHL has also contended by referring to various cases laws that fraud is a serious charge and in absence of any convincing evidence such charge cannot be made.

My Observation

The meaning of fraud according to FUTP Regulations is as detailed below:

"fraud" includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce another person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss, and shall also include-

(1) a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment;
(2) a suggestion as to a fact which is not true by one who does not believe it to be true;
(3) an active concealment of a fact by a person having knowledge or belief of the fact;
(4) a promise made without any intention of performing it;
(5) a representation made in a reckless and careless manner whether it be true or false;
(6) any such act or omission as any other law specifically declares to be fraudulent,
(7) Deceptive behavior by a person depriving another of informed consent or full participation,
(8) a false statement made without reasonable ground for believing it to be true.
(9) The act of an issuer of securities giving out misinformation that affects the market price of the security, resulting in investors being effectively misled even though they did not rely on the statement itself or anything derived from it other than the market price.
And "fraudulent" shall be construed accordingly;

30.6 The conduct of SHL and its directors in the below mentioned instances fit into the definition of “fraud” and also violates the regulatory provisions of FUTP Regulations as stated above.

30.7 SHL had entered into an agreement with Kilitch Drugs Ltd on March 17, 2010, however, the corporate announcement was made by SHL only on March 29, 2010 stating “it is entering into an agreement” which was not true.

My observation

SHL in its reply stated that even though the agreement was dated as March 17, 2010 taking into the practical difficulties of signing the agreement, the same was signed and notarized on March 29, 2010. Accordingly, the corporate announcement was made on that day. Further, their submission that franking for stamp duty was completed on March 17, 2010 and the agreement was never back dated. Further, their submission that the draft agreement which was circulated was dated March 17, 2010 only and while finalizing inadvertently, the date was not changed. The above submission of SHL is not eliciting any merit since for all practical purposes the date mentioned on the agreement shall be construed as date of agreement. Hence, I conclude that Entities-1 have violated section 12 A(c) of the Act read with Regulations 3(d), 4(1), 4(2)(f) and 4(2)(r) of FUTP Regulations and liable for penalty.

30.8 SHL made disclosure about entering into MOU with Advanced Technolab on March 08, 2010 for which they made public announcement but SHL had not made any public announcement when the said MOU was called off on April 12, 2010.

My observation:

Reply of SHL in this regard is vague and not addressing the allegation that it had failed to make public announcement with regard to call off of the MOU. Failure on the part of SHL certainly had contravened the provisions of Regulation 12(2) read with Clause 2.0 of Schedule II of the PIT Regulations, 1992. Hence, I conclude that Entities-1 have violated Regulation 12(2) read with clause 2.0 of Schedule II of PIT Regulations, 1992 and liable for penalty.

ISSUE II : Does the violation, if any, on the part of the Entities-1 and Entities-2 attract monetary penalty under Sections 15 HA &15 HB and Section 15 HB of the Act respectively?

31. Further, I find that as per Section 27(1) of the SEBI Act, 1992, if an offence under the Act has been committed by a company, every person who at the time when the offence was committed was in charge of and was responsible to the company for the conduct of business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly. In view of the above, I conclude that the Entities-1 and Entities-2 have violated the provisions of law as stated above by diluting the very purpose which PIT Regulations, 1992 and FUTP Regulations seek to achieve.

32. Having concluded that the Entities-1 (Except Bagaria) have violated Regulation 12(2) read with clause 2.0 of Schedule II of PIT Regulation, 1992, and Section 12A(c) of the Act read with Regulations 3(d), 4(1), 4(2)(f) and 4(2)(r) of FUTP Regulations are liable for penalty under section 15 HA and 15 HB of the Act. Further having concluded Entities-2 (Except Bagaria) have violated Regulations 12(1) and 12(3) read with clause 1.2 of PART A of Schedule I of PIT Regulation, 1992 are liable for penalty under section 15 HB of the Act.

33. Bagaria has not been penalised considering the fact that he was the non-executive director of SHL.

34. Relevant portions of Sections 15 HA, 15 HB of the Act are reproduced as under:

Penalty for fraudulent and unfair trade practices.

15HA.

If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher.

Penalty for contravention where no separate penalty has been provided.

15HB.

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

Issue III : If so, what would be the quantum of monetary penalty that can be imposed on Entities-1 and Entities-2 taking into consideration the factors mentioned in Section 15J of the Act?

35. While determining the quantum of penalty under Sections 15A(a), 15A(b) and 15HB, it is important to consider the factors stipulated in Section 15J of the Act, which read as under:-

15J *- Factors to be taken into account by the adjudicating officer while adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-*

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default.

Explanation

For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E,clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.

36. The Hon'ble Supreme Court of India in the matter of SEBI Vs. Shri Ram Mutual Fund [2006] 68 SCL 216(SC) held that "*In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulations is established and hence the intention of the parties committing such violation becomes wholly irrelevant…*". Hence, Entities-1 and Entities-2 (except Bagaria) have contravened the provisions of law are liable for penalty.

37. I consider the following while determining the quantum of penalty to levied on Entities-1 & Entitie-2 for their above stated violations.

38. I would like to place the emphasis on the objective of code of conduct i.e., the objective of framing a Code of Conduct under the PIT Regulations, 1992 is to prevent insider trading and prevent misuse of the price sensitive information which undermines the confidence of the investors. It is, thus, a preventive measure rather than a post facto remedial action. Hence, I find that the quantum of penalty cannot primarily depend upon the disproportionate gain or unfair advantage made by the entities or the monetary loss to the investors. On the contrary, it will largely be guided by the conduct of the entities in complying with the relevant regulations.

39. Further it can be inferred from the Hon'ble Supreme Court's observation, detailed below, that it is necessary that suitable penalty is imposed on the Entities to meet the ends of justice. Hon'ble Supreme Court of India in the matter of N. Narayanan v. SEBI, vide judgment dated April 26, 2013 noted the following: "*'Market abuse' impairs economic growth and erodes investor's confidence. Market abuse refers to the use of manipulative and deceptive devices, giving out incorrect or misleading information, so as to encourage investors to jump into conclusions, on wrong premises, which is known to be wrong to the abusers.... SEBI, the market regulator, has to deal sternly with companies and their Directors indulging in manipulative and deceptive devices, insider trading etc. or else they will be failing in their duty to promote orderly and healthy growth of the Securities market. Economic offence, people of this country should know, is a serious crime which, if not properly dealt with, as it should be, will affect not only country's economic growth, but also slow the inflow of foreign investment by genuine investors and also casts a slur on India's securities market. Message should go that our country will not tolerate "market abuse" and that we are governed by the "Rule of Law". Fraud, deceit, artificiality, SEBI should ensure, have no place in the securities market of this country and 'market security' is our motto*."

40. SEBI has been entrusted with the important mandate of protecting the investors and safeguarding the integrity of the securities market. In this regard, necessary powers have been conferred upon it under the securities laws. It is, therefore, necessary that SEBI exercises these powers firmly and effectively to insulate the market and its investors from the fraudulent actions of any of the participants in the securities markets. A basic premise that underlines the integrity of securities market is that persons connected with securities market conform to standards of transparency, good governance and ethical behavior prescribed in securities laws and do not resort to fraudulent activities.

41. However, while determining the penalty I would like to take into account the violations of the Entities which are more of disclosure in nature rather than fraudulent and could not be attributed with any malafide intention.

ORDER

42. After considering all the facts, circumstances of the case and case laws mentioned above, I exercise the powers conferred upon me under Section 15-I of the Act and Rule 5 of Rules and hereby impose the following a monetary penalties which in my view are commensurate with the default committed by the entities:

Entity	Provisions of law violated	Penalty levied under Section	Quantum of penalty in Rs.
Entities - 1 M/s.Syncom Healthcare Ltd Mr. Ajay Bankda Ms. Jyoti Bankda Mr. J C Paliwal	Regulation 12(2) read with clause 2.0 of Schedule II of PIT Regulation, 1992	Section 15 HB of the Act	5,00,000
	Section 12A(c) of the Act read with Regulations 3(d), 4(1), 4(2)(f) and 4(2)(r) of FUTP Regulations	Section 15 HA of the Act	5,00,000
Entities - 2 M/s.Syncom Healthcare Ltd Mr. Ajay Bankda Ms. Jyoti Bankda Mr. J C Paliwal Mr.Atul Thapiyal Mr. Naveen Sood Mr. Subash Chandra Gupta	Regulations 12(1) and 12(3) read with clause 1.2 of PART A of Schedule I of PIT Regulation, 1992	Section 15 HB of the Act	5,00,000

43. The amount of penalty shall be paid within 45 days of receipt of this order either by way of

(i) demand draft in favor of "SEBI - Penalties Remittable to Government of India", payable at Mumbai

(or)

(ii) by e-payment in the account of

"SEBI - Penalties Remittable to Government of India ",
A/c No. 31465271959,
State Bank of India, Bandra Kurla Complex Branch,
RTGS Code SBIN0004380

44. The entities shall forward said Demand Draft or the details / confirmation of penalty so paid through e-payment to the Chief General Manager of Enforcement Department of SEBI. The Format for forwarding details / confirmations of e-payments shall be made in the following tabulated form as provided in SEBI Circular No.SEBI/HO/GSD/ T&A/CIR/P/2017/42 dated May 16, 2017 and details of such payment shall be intimated should be forwarded to "The Division Chief (Enforcement Department - DRA- III), Securities and Exchange Board of India, SEBI Bhavan, Plot no C- 4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai – 400052 and also to e-mail ID - tad@sebi.gov.in

Date	
Department of SEBI	
Name of Intermediary/ Other Entities	
Type of Intermediary	
SEBI Registration Number (if any)	
PAN	
Amount in Rs.	

Purpose of Payment (including the period for which payment was made e.g. quarterly, annually	
Bank name and Account number from which payment is remitted	
UTR No	

45. In terms of Rule 6 of the Rules, copies of this order are sent to the entities and also to Securities and Exchange Board of India.

Date: November 30, 2017 **SAHIL MALIK**

Place: Mumbai **ADJUDICATING OFFICER**