

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
ADJUDICATION ORDER NO. Order/BD/NR/2020-21/7591-7592**

**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) RULES, 1995**

In respect of

1. Neeraj Kumar Agarwal (PAN: ADBPB5444R) H-1606, Rustomjee Azziano Majiwada Thane (W) – 400601.	2. Shruti Vishal Vora (PAN: AKZPM7724N) 701-A, Surya Apartment 53, Bhulabhai Desai Road Opp: Breach Candy Hospital Mumbai – 400026.
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**In the matter of circulation of unpublished price sensitive information (UPSI)
through WhatsApp messages with respect to Ambuja Cements Ltd.,**

BACKGROUND

1. During November 2017, there were certain articles published in newspapers / print media referring to the circulation of Unpublished Price Sensitive Information (*hereinafter referred to as “UPSI”*) in various private WhatsApp groups about certain companies ahead of their official announcements to the respective Stock Exchanges. Against this backdrop, Securities and Exchange Board of India (*hereinafter referred to as “SEBI”*) initiated a preliminary examination in the matter of circulation of UPSI through WhatsApp groups during which search and seizure operation for 26 entities of Market Chatter WhatsApp Group were conducted and approximately 190 devices, records etc., were seized. The WhatsApp chats extracted from the seized devices were examined further and while examining the chats, it was found that in respect of around 12 companies whose earnings data and other financial information got leaked in WhatsApp. Out of the 12 companies, Ambuja Cements Ltd., was one among the company, whose quarterly financial results for the 3rd quarter of financial year 2016-17 closely matched with the messages circulated in WhatsApp chats.

2. Accordingly, SEBI carried out an investigation in the matter of circulation of UPSI through WhatsApp messages with respect to Ambuja Cements Ltd., to ascertain any possible violation of the provisions of the Securities and Exchange Board of India Act, 1992 (*hereinafter referred to as “SEBI Act”*) and SEBI (Prohibition of Insider Trading) Regulations, 2015 (*hereinafter referred to as “SEBI (PIT) Regulations”*) during the period January 01, 2017 and February 20, 2017 (*hereinafter referred to as “Investigation Period”*).
3. It was observed that Ambuja Cements Ltd., had announced financial results for the quarter ended December 31, 2016 on February 20, 2017 after-market hours at 18:02 hours on The National Stock Exchange Ltd., (NSE) and The Bombay Stock Exchange Ltd., (BSE). The details of corporate announcement made by Ambuja Cements Ltd., on February 20, 2017 on BSE & NSE and its impact on the price of the scrip on BSE & NSE are given as under:

BSE (Price in ₹)									
Sl. No.	Date-Time	Announcement/News	Price Impact/Shares Traded						Remarks
1	20/02/2017 (18:36:44)	Announces Q4 & FY16 results (Standalone & Consolidated) & Auditors Report (Standalone & Consolidated) for the Quarter ended December 31, 2016 Ambuja Cements Ltd has announced the following results for the quarter & year ended December 31, 2016	Date	O	H	L	C	No. of shares traded	The number of shares of Ambuja traded recorded an increase by 1.75 times
			20.02.2017	238.1	241.2	237.25	239.4	156085	
			21.02.2017	238.45	239.35	232.25	238.70	273403	

NSE (Price in ₹)									
Sl. No.	Date-Time	Announcement/News	Price Impact/Shares Traded						Remarks
1	20/02/2017 (18:02:00)	Financial Results Update Ambuja Cements Limited has submitted to the Exchange, the financial results for the period ended December 31, 2016.	Date	O	H	L	C	No. of shares traded	The number of shares of Ambuja traded recorded an increase by 2.45 times
			20.02.2017	239	241.4	237.25	239.4	1414109	
			21.02.2017	238	239.6	232.75	238.95	3463345	

4. The standalone financial results for the quarter ended December 31, 2016 are furnished hereunder:

(in ₹ Crores)

Description	Quarter ended
	Dec 31, 2016 (Audited)
Net sales/income/revenue from operations	2196.66
Other operating Income/income	34.37
Total income from operations(net)	2231.03
Net profit/Loss	175.88

(Source: www.bseindia.com)

5. It is observed from the above table that for the quarter ended December 2016, Ambuja Cements Ltd., reported an income of ₹2196.66 crores, other operating income of ₹34.37 crores taking the total income from operations (net) to ₹2231.03 crores and net profit of ₹ 175.88 crores..
6. The chronological events related to financial results for the quarter ended December 31, 2016 as furnished by Ambuja Cements Ltd., are as per the table below:

Date	Key events/meeting
	Accounts closure
31.12.2016	Closing of books of Account
	Preparation of the preliminary draft financial statements (01.01.2017 to 26.01.2017)
02.01.2017	A. Initial trial balance without closing entries
06.01.2017	B. Trial balance with closing entries
07.01.2017	C. Preparation of financial statements without tax entries
07.01.2017 to 21.01.2017	D. Review of preliminary financial statements as per 'C' above by statutory auditors
22.01.2017	E. Passing of tax entries to arrive at post tax profit & loss statement
25.01.2017	F. Finalization of draft financial statements
During 24.01.2017 to 28.01.2017	Preliminary meeting with the main Audit partners of Statutory Auditors firm
01.02.2017	Board meeting intimation to stock exchanges
	Draft standalone/consolidated financial statements(01.02.2017 to 06.02.2017)
03.02.2017	A. Publishing of financial results by Company's material subsidiary (ACC Limited) to stock exchanges
04.02.2017 to 06.02.2017	B. Consolidation of ACC financial statements with company's financial statements
06.02.2017	C. Finalisation of draft/standalone/consolidated financial statements
On or around	Auditors final meeting with CFO and MD

Date	Key events/meeting
08.02.2017	
13.02.2017	Circulation of board meeting agenda papers by email sent to Directors(Excluding financial results) Copy of email attached
15.02.2017	Draft financial results sent to Directors hard copy**
20.02.2017	Board Meeting
20.02.2017	Outcome of board meeting intimated to stock exchanges

7. The definition of ‘unpublished price sensitive information’ as prescribed under Regulation 2(1)(n) of SEBI (PIT) Regulations 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*

8. From the chronology of events as tabulated in para 6 above, the information relating to financial results was a Price Sensitive Information (PSI), which came into existence on January 1, 2017 with the preparation of draft preliminary financial statements. The Company informed BSE and NSE of the PSI i.e., financial results on February 20, 2017 after market hours (18:02:00 hours on NSE, 18:36:44 hours on BSE). Therefore, the period from January 1, 2017 to February 20, 2017 is considered as the period of UPSI (*unpublished price sensitive information*).

9. The investigation revealed that the Noticees communicated the UPSI related to Ambuja Cements Ltd., viz., Revenue and PAT (Profit after tax) for the quarter ended December 2016, to other person (s) through WhatsApp messages. From the WhatsApp chat of the Noticee 2 i.e., Shruti Vora (retrieved from her device – Apple iPhone 6s, IMEI: 355767073570777) on February 20, 2017, a chat was observed viz., *“ambuja rev 2233ebitda 329 pat 176 ebitda per tonn 650”*

10. The financial figures circulated on WhatsApp pertaining to Ambuja Cements Ltd., were compared with the actual figures disclosed subsequently on stock exchanges to gauge the deviation between two sets of figures, as recorded in the table below.

Abbreviations format used:

Figure1 in WhatsApp (F1W) Figure1 in Actual (F1A) Figure1 Deviation (F1Dev)

Date and time of WhatsApp message(after adding 5:30 hours)	Figures in WhatsApp message	Date and time of disclosure on Exchange	Actual figures disclosed on Exchange(in ₹ crore)	F1W	F1A	F2W	F2A	F3W	F3A	%ge Deviations observed in Figures*		
										F1Dev	F2Dev	F3Dev
20/02/2017 12:50:03	rev 2233 ebitda 329 pat 176	20/02/2017 (18:02 NSE) (18:36:44 BSE)	Total income from operation (net) 2231.03 Net profit for the period 175.88	2233	2231.03	329	-	176	175.88	0.09	-	0.07

* % ge deviation is calculated as per the following methodology:

%ge Deviation = (Figure in WhatsApp message-Actual Figures disclosed on Stock Exchange)*100/(Actual figures disclosed on exchange)

11. From the above table, it was observed that the financial figures of Ambuja Cements Ltd., were communicated through WhatsApp prior to their announcement to the stock exchanges. The timing of the said message (incoming) as per extract chat from the device of Noticee 2 was 05:42:42 hours. However, the expert agency, hired for retrieval and backup of the data from the instruments/devices seized, vide their email dated March 12, 2018 informed SEBI that their forensic tools generate zero G.M.T. timing by default, so add +5.30 hours as our Indian G.M.T in all the report generated.

12. The details of communication of WhatsApp message related to Ambuja Cements Ltd., (“ambuja rev 2233ebitda 329 pat 176 ebitda per tonn 650”) as observed from the WhatsApp Chat retrieved from Ms. Shruti Vora’s device were as tabulated hereunder (Apple iPhone 6s, IMEI: 355767073570777):

Entity from whom Shruti Vora received the message		Date and Time of receipt of message by Shruti Vora (After adding 5.30 hours)		Entities to whom Shruti Vora forwarded the message		Date and Time of forwarding of message by Shruti Vora (After adding 5:30 hours)	
Name	Tel.Number	Date	Time	Name	Tel.Number	Date	Time
Neeraj Agarwal*	9004089401	20/02/2017	12:50:03	Sumeet Hinduja*	9819227915	20/02/2017	13:26:35
Mobile no. Ms. Shruti Vora: 9820832032				Sunil Kumar*	9820808438	20/02/2017	13:26:25

**Note: Remote party name displayed in messages are Neeraj Antique, Sumeet Hinduja Exide Life and Sunil Kumar*

13. It was observed from the WhatsApp chats retrieved from Shruti Vora's device that the aforesaid message was received by Shruti Vora from Neeraj Kumar Agarwal (Noticee 1) on February 20, 2017 at 12:50:03 hours. The said WhatsApp message was communicated by Shruti Vora on February 20, 2017 between 13:26:25 and 13:26:35 hours to two entities viz., Sunil Kumar and Sumeet Hinduja.

14. It was observed that the financial figures of Ambuja Cements Ltd., (viz., Revenue and PAT) circulated through WhatsApp closely matched with those disclosed subsequently by Ambuja Cements Ltd. on stock exchanges (deviation in financial figures was within a range of 0.07% to 0.09%). Hence, the aforesaid message related to Ambuja Cements Ltd., would fall under UPSI and such circulation of financial figures through WhatsApp has been considered as communication of UPSI.

15. The Noticees who were in possession of the UPSI were termed as Insiders as per Regulation 2 (1) (g) of SEBI (PIT) Regulations, 2015, the provisions of which are furnished hereunder:

"insider" means any person who is:

- i. *A connected person, or*
- ii. *in possession of or having access to unpublished price sensitive information*

NOTE: Since "generally available information" is defined, it is intended that anyone in possession of or having access to unpublished price sensitive information should be considered as "insider" regardless of how one came in possession of or had access to such information..."

16. Therefore, it was alleged that the Noticees being insiders had communicated the UPSI relating to Ambuja Cements Ltd., viz., total income, EBITDA and PAT for the quarter ended December 2016 to other person(s) through WhatsApp messages, which is prohibited and is in violation of the provisions of Section 12 A (d) & 12 A (e) of the SEBI Act, 1992 and Regulation 3 (1) of PIT Regulations, 2015.

APPOINTMENT OF ADJUDICATING OFFICER

17. The undersigned has been appointed as the Adjudicating Officer (*hereinafter referred to as "AO"*) vide Order dated October 15, 2019 under Section 19 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) Rules, 1995 (*hereinafter referred to as "SEBI Adjudication Rules"*) to inquire into and adjudge under section 15G of the SEBI Act, 1992 for the alleged violations of provisions of section 12A(d) and 12A(e) of SEBI Act, 1992 and Regulation 3(1) of SEBI (PIT) Regulations, 2015, committed by the Noticees.

SHOW CAUSE NOTICE, HEARING AND REPLY

18. A Show Cause Notice bearing Reference No. EAD-7/BJD/NJMR/30738/2019 dated November 20, 2019 (*hereinafter referred to as 'SCN'*) was served on the Noticees under Rule 4 of the SEBI Adjudication Rules, calling upon to show cause as to why an inquiry should not be held against them in terms of Rule 4 of the SEBI Adjudication Rules read with Section 15-I of SEBI Act, 1992 and why penalty should not be imposed on them in terms of Section 15G of SEBI Act, 1992 for the aforesaid alleged violations. In reply, the Noticee 2 vide letter dated December 9, 2019 sought for the additional documents in support of the allegations made against her, besides seeking inspection of the documents. With respect to the aforesaid request by the Noticee, it was communicated to her vide email dated December 18, 2019 that all the documents that were relied upon with respect to the alleged charges against her were provided along with the SCN and no additional document were relied upon in the matter apart from the documents supplied along with the SCN. Further, upon the request of the Noticees, an opportunity of inspection was granted, which was carried out by them on

January 9, 2020 and thereafter the Noticees were given an opportunity to file their reply on merits by January 24, 2020 and also to avail an opportunity of personal hearing on January 28, 2020.

19. The Noticee 2 vide email dated January 13, 2020 contended that the inspection of documents remained incomplete and sought all the documents that were collected during the investigation by SEBI whether or not they are actually annexed to the SCNs. In support of her contention, the Noticee placed a compilation of 13 judgments of Hon'ble Supreme Court and various High Courts.

20. Vide email dated January 14, 2020, while refuting the contentions raised by the Noticee 2; it was informed to the Noticee that the inspection and supply of documents relied upon for the proceedings have already been granted in consonance with the principles of natural justice. Accordingly, the Noticee was once again informed to furnish her reply by January 24, 2020 and also to avail the opportunity of personal hearing on January 28, 2020.

21. Aggrieved with the decision of the AO, the Noticee preferred an Appeal before the Hon'ble Securities Appellate Tribunal (*hereafter referred to as "Hon'ble SAT"*) on January 16, 2020. The matter was heard at length by the Hon'ble SAT on January 29, 2020. Pursuant to the hearing, the matter was adjourned and since there was no Order granting interim stay on the Adjudication proceedings, the Noticee was provided with another opportunity to submit her reply on merits latest by February 14, 2020.

22. The Noticee 2 vide email dated February 10, 2020 submitted that since the Hon'ble SAT has already seized of the matter and is deciding on the issue of inspection and keeping due reverence to the fact that the Order has been reserved by the Hon'ble Tribunal, requested to await for the decision of the Hon'ble SAT and once the same is passed, further directions to file the reply within a reasonable time and fixing of a date of hearing, can be given by the Ld. Adjudicating Officer.

23. Vide email dated February 10, 2020 it was reiterated to the Noticee that all the relevant and relied upon documents in support of the charges have already been

made available to her along with the SCN and therefore filing of reply on merits does not suffer from any constraint/ prejudice. Accordingly, the Noticee was given time till February 20, 2020 to furnish its reply.

24. The Hon'ble SAT vide Order dated February 12, 2020 (Appeal {L} No. 28 of 2020) while upholding the decision taken by the AO on inspection and supply of documents, has made the following observations, which are summarized hereunder:

"We are of the opinion that concept of fairness and principles of natural justice are in-built in Rule 4 of the Rules of 1995 and that the AO is required to supply the documents relied upon while serving the show cause notice. This is essential for the person to file an efficacious reply in his defence"

"The contention that the appellant is entitled for copies of all the documents in possession of the AO which has not been relied upon at the preliminary stage when the AO has not formed any opinion as to whether any inquiry at all is required to be held cannot be accepted. A bare reading of the provisions of the Act and the Rules as referred to above do not provide supply of documents upon which no reliance has been placed by the AO, nor even the principles of natural justice require supply of such documents which has not been relied upon by the AO. We are of the opinion that we cannot compel the AO to deviate from the prescribed procedure and supply of such documents which is not warranted in law. In our view, on a reading of the Act and the Rules we find that there is no duty cast upon the AO to disclose or provide all the documents in his possession especially when such documents are not being relied upon."

25. As per the directions of the Hon'ble SAT, the Noticee 2 submitted her reply dated February 28, 2020, which is summarized hereunder:

- a. No Connection established between company and me or the sender of the message: No connection has been established between the company, its promoters /directors /employees/ auditors with either me or the person who forwarded the said HOS to me.

- b. No leak established from the Insiders: SEBI has relied on the declarations given by the said company/promoters/directors/employees/auditors who had access to the financial results prior to the date of announcement of the same. They have declared and SEBI has accepted that they have not leaked any UPSI. SEBI has investigated and found no leak in this matter or the other matters covered by SCNs issued to me.
- c. Without establishing even a remote connection and without leak there cannot be UPSI: Thus, if there was no connection with the company and there was no leak from the insiders it is humbly submitted that the concerned estimate cannot change its nature from being a market guess to a full proof UPSI. Admittedly, individuals who have sent me the HOS messages alleged to be UPSI have also on numerous instances sent me HOS messages which were not closely matching and therefore not UPSI. While choosing whether a particular message is UPSI or gossip, the holistic view of the entire evidence, including the exculpatory evidence is required to be taken. The entire evidence if taken into consideration would give the reason to any judicial mind that I have the benefit of doubt and that the messages were not UPSI.
- d. Without the guarantee about the source that the information is from the company there cannot be UPSI: There is no information/allegation that the source of the estimate is the company or any person who was factually in possession of the UPSI. In fact, HOS means that the estimate is not from the company and, therefore, estimate received by me was from an unknown source and such estimate whose origin is not known cannot be regarded as UPSI. UPSI necessarily means estimates whose origin is definitely the company and/or a person who is in possession of UPSI. It is second nature to participants in the securities market to keep on guessing about estimates and the same is not a prohibited activity.
- e. HOS forwarded by me just closely matching with the actual numbers does not make it UPSI. The SCN fails to consider numerous instances where estimates did not match: While the SCN has cherry picked a few instances, it clearly ignores the more evolved analysis of my messages which establish that closely matching of numbers was a rare occurrence and more of an aberration than the rule. In any event, I have never been the originator of any of the alleged messages and have merely received and forwarded the same. The person sending the message to me is not even alleged to be a person who could reasonably be in possession of the UPSI.
- f. Cherry picking of HOS which have closely matched: SEBI has admittedly analysed thousands of messages from my phone. SEBI has also analysed my husband's phone. SEBI has not found a single instance where I forwarded the HOS to any family member. There are several instances where the HOS turned out to be preposterously incorrect, however SEBI has cherry picked only those HOS which

have closely matched with the actual numbers and issued the SCN. All HOS were speculative in nature. Any post facto analysis done post result declaration is useless. In this background of estimates, the nature of a HOS estimate cannot change to UPSI retrospectively once the actual numbers match as there is no benefit of hindsight.

- g. I forwarded HOS/Estimate/speculation and not UPSI: The SEBI PIT Regulations prohibit sharing of price sensitive information which has not been published. By its very definition, information is something that is accurate, certain or based on facts. An analysis of the messages on WhatsApp would reveal HOS was sent and clearly understood as market gossip and the same cannot be treated as “information”. Admittedly, there was no source-based credibility to any of such HOS.
- h. Forwarding of HOS to various persons including non-clients: Since I did not deem the said HOS to be UPSI, I merely forwarded the same to clients/market groups/acquaintances who actively track the securities market) without application of mind. Had the information been UPSI, I would not have widely circulated the same.
- i. No nexus/no definite pattern of access to UPSI: There has been no pattern / no arrangement established from my phone available with SEBI which suggests that any insider kept sharing any UPSI with me or that I was soliciting the same from any person. There has been no trading or quid pro quo arrangement established or alleged. The HOS received by me were random / sporadic in nature and did not follow any quarterly pattern. If I would have had access to UPSI for one Quarter then I would reasonably have access to UPSI on a continuing basis. There is no such pattern established even with respect to any one company. On the contrary, there have been instances when the HOS matched for one quarter and for another quarter it did not match.
- j. No mens rea: There is no allegation in the SCN that there was a wilful attempt to source UPSI and then share the same. On the contrary, all the information received was without solicitation and all the information shared did not result in insider trades. All the messages were intact on my phone and there has never been an intent to evade questions or escape the investigation for two years.
- k. No breach of law established: The SCN, on a plain reading, does not establish any breach of law / rules / regulations by me and merely makes a bald allegation. The SCN is contrary to the SEBI PIT Regulations, that mandates SEBI to prove that I had access to UPSI.

26. Further, with respect to the charges, the Noticee 2 also submitted a brief Background of her work profile with Antique Stock Broking Limited (“**Antique**”) as under:

- a. *I am currently working in the institutional sales and cater to institutional clients for the firm like Mutual Funds, Insurance companies etc.*
- b. *I act as the bridge between my company's research team and the clients and my job also involves sending updates to such institutional clients on various aspects including:*
 - *Indices and expected technical analysis of the same;*
 - *Calls and recommendations on scripts;*
 - *News about events in the market;*
 - *Analysing reports from other brokerage house on several scripts;*
 - *Market intelligence in the form of news items, news appearing on TVs etc., heard on street estimates.*
- c. *I have been employed in the said role since 2016 and prior to the same I was in the Derivatives Sales Department and prior to that I worked as a technical analyst. I have been working with Antique since 2008.*
- d. *As you would appreciate, it is part and parcel of my daily job to accumulate information about movements in the market, possible stock prices, news about important elements in the financial world and communicate the same to the institutional clients of Antique."*

27. Further, the Noticee 2 contended that the nature of information forming part of the allegation against her was that of *Heard on Street (HOS)* and made the following submissions in support of the same:

" Concept of Heard on Street (HOS)

- a. *Heard on Street or HOS is a common practice within traders, market analysts, institutional investors etc. whereby unsubstantiated gossips are widely shared and the said gossips are clearly understood as speculation / rumours in the market. In fact, reputed journals in the USA like the Wall Street Journal also have an entire page dedicated to such speculations. In fact, the Wall Street Journal runs a twitter handle @WSJHeard (Title: Heard on the Street) and the said handle shares "The first word on what Wall Street is talking about.". Even in India, the Economic Times carried an entire column dedicated to such market chatter. Leading news channels like CNBC, ETNOW also regularly have talk show hosts citing anonymous sources on probable results, developments etc.*

- b. *The Street expectation is the average estimate of a public company's quarterly earnings and revenues that is derived from forecasts of research analysts who provide research coverage on the company. The Street expectation is a closely-watched number that becomes prominent during the period when most public companies report their results. The term is derived from the fact that analysts of the biggest brokerages are typically based on Wall Street in the U.S., Bay Street in Canada and Dalal Street in India.*
- c. *HOS used to be shared by the way of newspaper articles earlier and with the advancement of technology, HOS estimates started floating across instant messaging platforms like WhatsApp. It is a well-known fact that nobody gives undue weightage to HOS while making investment decisions as it is pure speculation / gossip from unverified sources. However, a lot of traders and investors rely upon HOS to get a pulse of market and make their decisions on the basis of several factors, one of which is HOS. HOS functions like a grapevine whereby the said is shared by news agencies (like CNBC / Reuters), analysts with broking houses, traders, active investors etc. News agencies typically are a part of such groups for sourcing their news and also share news on such groups. It is common knowledge that HOS cannot be a sole factor for making a trade decision, however, traders consider awareness about the same as important to understand market sentiment. Every element that a trader uses has some level of probability attached to it as the price of a scrip is not a direct function of any one factor. The market sentiment around a scrip is affected by several factors (technical charts, volumes in F&O Segment, general economy news, sector specific news, news about any Key Managerial Person, HOS about results etc.,). Therefore, any person trading has to factor in several elements and then plan his trades accordingly.*
- d. *It is a common practice that the analysts of various brokerage houses come out with a preview report and estimate the results across all coverage companies. These estimations are based on several factors including financial modelling, management guidance, global factors, meetings with management of listed companies etc. Once the official results are declared, the estimated numbers are compared with the actuals and an analysis is done as to whether the numbers "**in line with estimates**" / "**beats estimates**" / "**misses estimates**". The entire trading community / active investors use these estimates to plan their trades. Even the comment board on popular websites like "moneycontrol.com" / "ET poll" are used frequently by investors / traders to get a sense of the market.*

28. In addition to the above, the Noticee denying the allegation that the information shared by her was in the nature of UPSI, further submitted as under:

- a. *Despite the fact that such a detailed search was conducted, there is no allegation that I forwarded the said HOS to any of my family members or that I have gained any money from the said forwards. Further, the SCN is completely silent on any arrangement between me and any other person / persons for forwarding of such alleged UPSI. The SCN is completely silent on any quid pro quo arrangement for sharing the information. The same is only attributable to the fact that I always believed the information being forwarded was to be HOS / speculative in nature and not UPSI as alleged or at all.*
- b. *SEBI has analysed the entire data on my phone and would appreciate that the nature of my messages shows that there is widespread conversation on stock charts, fundamentals, historical behaviours, analysis and pattern, estimates-in house and external, market talk, market intelligence. It would be appreciated that as an employee working in the institutional sales team, it was my role and responsibility to provide the clients all such information. While the SCN has cherry picked a few messages, it conveniently ignores the pattern whereby the larger role of coordination and knowledge sharing as a part of sales function and sharing HOS information being a very small element of it.*
- c. *Analysing a pattern of WhatsApp Chats, it would be evident that the same HOS/Market Gossip was shared at times by more than one person clearly signifying that I was not the sole person who had the said market gossip and this I believed that said information was widely and generally available to several parties. I had no idea or any reason to believe that the said information was confidential. Also, since the information never came from a person who is connected to the Company, I further had no reason to ever believe that the same was UPSI;*
- d. *All the messages were forwarded to clients / market chatter groups instantly, without any specific thought applied to the same and it therefore shows that there was no reason for me to believe that the information was confidential; no message ever came from a connected person.*
- e. *There was not a specific entity/person who would regularly send me HOS every quarter of company in question and the information, the HOS information was sent to me by different entities for different quarters. The pattern of receiving information and forwarding the same is sporadic and therefore belies the evidence of a larger conspiracy to communicate UPSI.*
- f. *Neither me nor my family members have ever traded on the basis of the alleged UPSI or have had any arrangement that would give us any monetary gain for*

sharing this UPSI. Further, the alleged HOS / UPSI was never shared with any family member. Further, it must be appreciated that the information was shared on WhatsApp chats/groups, which had several members including journalists from reputed financial news channels. If the intention was to communicate UPSI to select entities, I would have never shared information with larger groups of people. There was no reason for me to hoard the message for myself or my company alone or even delete any such evidence as these HOS numbers had no special significance for me. The very fact that journalists also use such HOS information clearly belies the allegation that the information so shared was UPSI.

Annexures to the SCN do not make out any charge against me

- g. Annexure 6 is a copy of WhatsApp chat extracted from my phone. It is pertinent to note that the said document is an incomplete document and only select few pages have been annexed to the SCN. It is submitted that reliance on an incomplete document is bound to give an incorrect picture and incomplete documents extracted from a report cannot be relied upon to frame a charge.
- i. An analysis of the messages would reveal that:
- (i) Neeraj Agarwal (currently working at Antique and was working at IDFC at the relevant time) sent me the message about Ambuja Cement's HOS. Further, the SCN does not allege that Neeraj was in possession of UPSI or he was connected to any person who would be in possession of UPSI.
 - (ii) A perusal of my chat with Sumeet Hinduja (from Exide Life Insurance) would show that I have forwarded the said message without any application of mind as to the veracity of the same. Exide Life Insurance is a client of Antique. The SCN is completely silent as to whether Mr. Sumeet Hinduja or Exide Life Insurance traded on the basis of the said HOS.
 - (iii) A perusal of my chat with Sunil Kumar (from SBI Life Insurance) would show that I have forwarded the said message in less than a minute without any application of mind as to the veracity of the same. SBI Life Insurance is a client of Antique. The SCN is completely silent as to whether Mr. Sunil Kumar or SBI Life Insurance traded on the basis of the said HOS.
- h. A perusal of above provisions makes it abundantly clear that the SCN makes out no case of violation of the SEBI Act, 1992 or the PIT Regulations, 2015. The only case against me is that I have received certain WhatsApp forwards about estimates of a company's result, from a person who is in no manner a "connected person" (within the meaning of the PIT Regulations or otherwise) with the

Company and I forwarded the information to several clients and some market chatter groups on an “as is where is” basis without any specific application of mind. Therefore, it is submitted that the rumour shared with me and the rumour that I forwarded, was not UPSI as the said rumour was in the nature of mere speculation about the results. Since the information was mere gossip and market speculation forwarded by people, the same was generally available information and not UPSI.

- i. Essentially, information that is accessible to the public on a non-discriminatory basis would be considered generally available information. Analysis and research based on generally available information would also be generally available information. Information that is capable of being accessed by any person without breach of any law would be considered generally available. It is submitted that in the facts of the present case, the information that was forwarded to me was in the nature of market gossip and I have given several other examples to show that it is common practice among market participants to keep on predicting future events and the said market gossip is not prohibited under any law. The HOS messages received by me and forwarded by me were clearly understood to be mere speculative estimates and nothing more. Further, it is evident that more often than not, in fact, in more than 90% of the cases, the news did not turn out to be true.*
- j. The High-Level Committee to Review the SEBI (Prohibition of Insider Trading) Regulations, 1992 under the Chairmanship of Mr. Justice N K Sodhi (“**Justice Sodhi Committee Report**”) made it abundantly clear that while defining the terms “insider” and “generally available information”, due care was taken. The Committee concluded that the term — “insider should be defined to mean all — connected person¹¹ and those in possession of UPSI leaving it to the definitions of — generally available information¹² to safeguard against an over-reach of the prohibition being read as a ban on — informed trading as opposed to — insider trading. The Committee has also provided robust defences against bringing a charge without satisfying the essential ingredient and rationale behind the prohibition on insider trading.*
- k. While determining the fine nuances as to what constitutes to be generally available information and how the same information could be both UPSI and generally available information, the Justice Sodhi Committee Report discusses several illustrations as the difference between the same forms the backbone of Regulation 3. At para 25 to 33, the Justice Sodhi Committee Report discusses:*

“

..... “

- l. A perusal of the aforesaid paragraphs would clearly show that whether a piece of information is UPSI or generally available information is a mixed question of fact and law. In the facts of the present case, the SCN only states that I received the information from two individuals who work within the same organisation as me and the SCN does not even attempt to allege that the said individuals had any contact or could have been in a position to procure the alleged UPSI. What is also curious to consider is that although SEBI has information about every single individual who has received the UPSI from me, the SCN is completely silent as to whether any one of them has ever traded on the basis of the alleged UPSI or forwarded the information to anyone who has traded on the basis of the alleged UPSI. As the Justice Sodhi Committee Report rightly concludes, "it is settled law that such regulations ought to be purposively construed and if two views were possible, the view that furthers the legislative objective would need to be adopted over a view that makes a mockery of the legal provisions". While dealing with the present SCN, the sight of the fact that primary objective of the PIT Regulations is to entail a prohibition on trading by insiders in securities when in possession of UPSI, thus obtaining an unfair advantage. Given the fact that:*
- None of the senders of the messages are even remotely connected to the Company or any person who may be in possession of the UPSI;*
 - Despite the information being forwarded to several parties, not one of them has alleged that the said information was UPSI; and*
 - The SCN also does not allege that anyone traded on the basis of the alleged UPSI;*
 - The correct interpretation of law would be that the said WhatsApp messages are merely market gossip and generally available information and not UPSI as alleged in the SCN.*
- m. Even in cases where it was proved beyond doubt that the tipper had shared information leading to trades by relatives of the tipper, the same lead to profits by such tippees, SEBI decided not to impose any monetary penalty on the said Noticee.*
- n. An analysis of the bare provisions of the law and the Justice Sodhi Committee Report would clearly signify that I was not an "insider" or a "connected person" and the information that I have forwarded is merely speculation about the probable results of the company, it cannot be alleged that I have violated the SEBI Act, 1992 and the PIT Regulations."*

29. Further, the Noticee 2 appeared for the hearing on March 18, 2020 and reiterated the submission made above and was given additional time to make submissions on her job profile during the period of allegation. Further, vide her email dated March 25, 2020, the Noticee submitted the same *inter alia* stating as under:

- a. *I was working at the relevant period and continue to work with the Institutional Sales team to cater to the needs of Institutional Clients at Antique. I have been employed in the said role since 2016. I am associated with Antique since 2008 in different roles as a Technical analyst and Derivatives Sales Department. I act as the bridge between my company's research team and the clients who are various mutual funds, Insurance Companies, Hedge funds etc.*
- b. *My job during the relevant period and presently involves sending updates to such institutional clients on various aspects including:*
 - *Calls and recommendations –fundamental/technical/quantitative parameters on scrips;*
 - *News about events in the market;*
 - *Sector reports published by Antique research analysts team from time to time. Arrange calls and set up meetings between Antique research team and fund representatives from time to time to discuss these research reports. “*

30. The Noticee further submitted that the EBIDTA per ton mentioned by her was ignored in the SCN and only a part of the message has been treated as UPSI. Ebidta per ton that was mentioned in the WhatsApp is Rs.650, however, actual ebidta per ton was 589 per ton. The page 3 of SCN has Revenue number as 2196.66 crs for Dec 31, 2016 whereas the message sent by me had revenue as 2233 crs which are not matching.

31. The Noticee 1 appeared for the hearing on March 18, 2020 and submitted his reply dated March 9, 2020 which was reiterated by him during the hearing. The main submissions of the Noticee 1 are *inter alia* as under:

- a. *As regards paragraphs 9, 10, 11 and 14 of SCN, we state that the contents of WhatsApp message forwarded by our client and actual results announced by the Company are not the same but are entirely different. The details are reproduced as under:*

Particulars	As per WhatsApp	As announced by Co.
Revenue	2233	2196.66**

EBIDTA	329	- (No allegation in SCN)
PAT	176	175.88
ebitda per tonn	650	- (No allegation in SCN)

***SCN paragraph 4.*

- b. At the outset, we would like to bring to your kind attention that the data quoted in paragraph 10 of the SCN is not as per the actual quarterly financial results announced by the company which are quoted at paragraph 4 of the SCN. Considering the huge deviation as above, it is abundantly clear that the WhatsApp message forwarded by our client was mere 'expectations and estimates' of the financial results. Assuming, but without admitting, had our client known UPSI about the Total revenue i.e. Rs 2196.66, the same would have been mentioned as such and not to 2233 which was mentioned in the WhatsApp message. From the above, it is abundantly clear that the WhatsApp message forwarded by our client was mere 'expectations and estimates' of the financial results. Similarly, the data about PAT as per the WhatsApp message and that announced by the company differ. In fact, the SCN admits that there are deviations. Moreover, although the WhatsApp message contained expectation about EBITDA and 'ebitda per tonn', there is no allegation about the same in SCN. Thus, these undisputed facts on record with you, when considered holistically, unequivocally demonstrate that the WhatsApp message forwarded by our client was an 'estimate and expectation' and not the UPSI as alleged. Consequently, our client did not communicate any UPSI.*
- c. Admittedly the announcement by the Ambuja Cement pertained to 3 sets of the financial results i.e. the financial results both stand alone for quarter ending and year ending 31.12.2016 and also consolidated financial results of Ambuja Cement for year ending 31.12.2016 i.e. 3 sets of financial results. As against this, the WhatsApp message contained expectations on financials for quarter ending 31.12.2016 alone (i.e. expectation of 1 set) and not about expectations of 3 sets of results. Further, it is noteworthy that the aforesaid regulatory provision read with the Note below it, specifically provides that any information indicated therein to become an UPSI has to necessarily fulfil the criteria of "materially affect the price of the securities". The SCN does not bring out any information/ data, which leads to any inference that the information about expectations of financial results for quarter ending 31.12.2016 contained in WhatsApp was made public, let alone had materially affected the price of securities. Thus, admittedly the content of WhatsApp message was not an UPSI. Further, the SCN at paragraph 3 admits that "the number of shares of Ambuja Cement traded recorded an increase by 1.75 times" after the UPSI was made public by the company. It is not the case in the SCN that the financials of 1 quarter ending 31.12.2016 alone to the exclusion of other 2 results announced by the company impacted its volume. Notwithstanding above, it is normal in the market to see a surge in volume of the scrip of any*

company immediately after announcement of its financial results on the Stock Exchange. It is noteworthy, that the expectations on financials about 1 quarter contained in the WhatsApp message and that announced by Ambuja Cement also differ and there is no allegation that the data contained in the WhatsApp message lead to any increase in price or volume. Thus, admittedly the contents of WhatsApp message were not any UPSI. We note that before and after the results were announced (i.e. on 20.02.2017 and 21.02.2017) the price of scrip on BSE ranged between Rs. 237.25 to 241.20 and Rs. 232.25 to 239.35, respectively, i.e. price was range-bound.

CONSIDERATION OF ISSUES AND FINDINGS

32. After perusal of the material available on record, the issues that arise for consideration in the present case are as under:

- I. Whether the Noticees have violated the provisions of Section 12 A (d) & 12 A (e) of the SEBI Act, 1992 and Regulation 3 (1) of SEBI (PIT) Regulations, 2015?***
- II. Whether the Noticees are liable for monetary penalty under Section 15G of the SEBI Act, 1992?***
- III. If so, what quantum of monetary penalty should be imposed on the Noticees?***

FINDINGS

33. On perusal of the material available on record and giving regard to the facts and circumstances of the case, I record my findings hereunder:

ISSUE I: Whether the Noticees have violated the provisions of Section 12 A (d) & 12 A (e) of the SEBI Act, 1992 and Regulation 3 (1) of SEBI (PIT) Regulations, 2015?

34. Before proceeding further, I find it pertinent to refer to the relevant provisions of SEBI Act, 1992 and PIT Regulations, 2015 which read as under:

Section 12 A (d) of SEBI Act, 1992

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

Regulation 3 (1) of SEBI (PIT) Regulations, 2015

No insider shall communicate, provide, or allow access to any unpublished price sensitive information, relating to a company or securities listed or proposed to be listed, to any person including other insiders except where such communication is in furtherance of legitimate purposes, performance of duties or discharge of legal obligations

35. After due consideration of the submission of the Noticees, I prima facie note that there is no dispute as to the communication of the information through WhatsApp messages between the Noticees as alleged and the same has been admitted by both the Noticees. However it is the case of the Noticees that such information was not in the nature of UPSI and was a HOS, the circulation of which is a regular practice as contended by Noticee 2. Further, it has been contended that she, as a part and parcel of her job, that involved institutional sales had to accumulate information about movement in the markets, possible stock prices, news about important elements in the financial world etc. Apart from the above, the Noticee 2 has also made submissions stating that:

- a) no Connection was established between company and her or the sender of the message;
- b) no leak was established from the Insiders;
- c) without establishing a connection and without leak there cannot be UPSI;

- d) without the guarantee about the source that the information is from the company there cannot be UPSI;
- e) the information forwarded by her was in the nature of HOS/Estimate/speculation and not UPSI and the same matching with the actual numbers does not make it a UPSI and that the SCN failed to consider numerous instances where estimates did not match;
- f) there was no nexus/no definite pattern of access to UPSI;
- g) there is no *mens rea* established;

36. After considering the submissions of the Noticees and the documents available on record, I note my findings on the Noticees major submissions are as under:

i) The information that was shared through WhatsApp did not match with that of the subsequently announced financial results of Ambuja Cements

37. The Noticee 1 contended that the figures of revenue (₹2,233 crores) and PAT (₹176 crores) of Ambuja Cements forwarded by him to Noticee 2 on WhatsApp message were entirely different as announced by the Company which was ₹2,196.66 crores and ₹175.88 crores respectively. The Noticee 2 also took the same objection on the parity in revenue figures as contended by the Noticee 1. In view of the same, the Noticees contended that the information shared through the WhatsApp did not match with that of the actual financial results as alleged with regard to revenue figures. In this regard, I note that the details with respect to PAT closely matched with that of the WhatsApp message information. However, it is also noted that it is the figures of revenue as per the Noticees' messages that matched with total income of Ambuja Cements. In this regard, I find it pertinent to note that it is the general practice that the term "total income" is often stated in a common parlance/ as synonym to revenue and the income would be termed as "income" for the ease of understanding of a layman. I also note that both the Noticees share common background i.e., analyst and therefore only those figures which are critical information would be shared among themselves. I note that the total income is reported as ₹2,231 crores by Ambuja Cements which was arrived at by adding other operating income i.e., ₹34.37 crores to the net sales/income/revenue from operations i.e., ₹2196.66 Crores. I am of the view that the relevant information from the analyst point of view is to ascertain income arising from the operations including other operating income. In view of the above, the total income

has to be seen as the income from operations i.e., net sales plus other operating income which is matching exactly in the instant matter. Furthermore, as noted above all the details mentioned in the Noticees' WhatsApp message dated February 20, 2017 accurately matched with that of the subsequently announced financial results of Ambuja Cements. Taking into consideration of all the above, I am of the opinion that Noticee's submission seeking benefit of doubt citing such minor technical disparities cannot be accepted, given the gravity of the alleged violation in the instant case and accordingly I note that the information forming part of the circulated WhatsApp messages by the Noticees was exactly same as that of the subsequently announced financial results.

ii) No Connection among the Noticees or with the Company and disputing the existence of UPSI without establishing leak:

38. I note from the record that the period of alleged UPSI in the matter started from January 1, 2017 and existed till February 20, 2017 when the financial results were disclosed to the stock exchanges. Admittedly the message with respect to the same viz., "ambuja rev 2233ebitda 329 pat 176 ebitda per tonn 650" was received by Shruti Vora from Neeraj Kumar Agarwal (Noticee 1) on February 20, 2017. Admittedly, the said WhatsApp message was communicated by Shruti Vora on the same day between 13:26:25 and 13:26:35 hours to two entities viz., Sunil Kumar and Sumeet Hinduja. While I note that the investigation has not revealed any material directing to the source of the UPSI, the fact that the content of the message that was communicated between the Noticees exactly matched with that of the later announced financial results of Ambuja Cements. I am of the opinion that such information which was in the nature of price sensitive information and remained unpublished, was in the possession of the Noticees. I do not find merit in the submission of the Noticees claiming that, in the absence of proof of leak and the source of UPSI, the information does not stand to qualify as a UPSI. In this regard, I find it pertinent to refer to the peculiar facts and circumstances involved in the instant case where the mode of circulation of information has been by way of WhatsApp messages. I note from the record that efforts were made to track back to the source of the message; however severe

technological constraints were faced in this regard owing to the end-to-end encryption of WhatsApp messages. I note that WhatsApp itself communicated to SEBI stating that WhatsApp users are protected with end-to-end encryption protocol, third parties and WhatsApp cannot read such messages or search for such messages and that WhatsApp does not store information regarding the sender and recipient of a message, the same could not be tracked despite all the efforts. Besides, in the instant case, the information has not been claimed as arising from any other source, but admittedly through a chain of WhatsApp communications.

39. As noted above, it is not the case of the Noticees that the information shared through the WhatsApp in the instant case were generated by the market research or by any other data and in fact, apart from denying the connection to the source, the Noticees have stated that the information was passed on generally and they were part of the chain that carried on the information. Such being the case, I deem it relevant to examine the content of the information to ascertain its nature. In this regard, I peruse the following table wherein the financial figures circulated on WhatsApp pertaining to Ambuja Cements Ltd., are compared with actual figures disclosed subsequently on stock exchanges to gauge the deviation between two sets of figures.

Abbreviations format used:

Figure1 in WhatsApp (F1W) Figure1 in Actual (F1A) Figure1 Deviation (F1Dev)

Date and time of WhatsApp message (after adding 5:30 hours)	Figures in WhatsApp message	Date and time of disclosure on Exchange	Actual figures disclosed on Exchange (in ₹ crore)	F1W	F1A	F2W	F2A	F3W	F3A	%ge Deviations observed in Figures*		
										F1Dev	F2Dev	F3Dev
20/02/2017 12:50:03	rev 2233 ebitda 329 pat 176	20/02/2017 (18:02 NSE) (18:36:44 BSE)	Total income from operation (net) 2231.03 Net profit for the period 175.88	2233	2231.03	329	-	176	175.88	0.09	-	0.07

* % ge deviation is calculated as per the following methodology:

%ge Deviation = (Figure in WhatsApp message - Actual Figures disclosed on Stock Exchange) * 100 / (Actual figures disclosed on exchange)

40. While it is evident that the information related to the financial results were sensitive in nature, I note that the financial figures were matching exactly with that circulated through the WhatsApp messages. I also find it very pertinent to note that the information relating to financial results that included Income and PAT were not even stated in any approximate range of values but were stated as a definite amount in the messages which accurately matched with that of the subsequently announced results. In addition, I also note from the chronology of events with respect to the preparation of accounts during the period from January 1, 2017 till February 20, 2017 of Ambuja Cements, the discussion of financial results for the purpose of submission to the auditors had started on January 24, 2017 which proceeded till January 28, 2017 and the draft/standalone/consolidated financial statements were finalized on February 6, 2017. In spite of the fact that the source of leak of information could not traced back due to the technological constraints, in the circumstances as above, I note that it is reasonably possible that the information that was communicated by the Noticees had already come into existence on February 20, 2017 i.e., the date when Noticee 1 sent it to Noticee 2 and the Noticee 2 forwarded further. In view of all the above, I am of the opinion that the aforesaid information constituted UPSI and the Noticees' submission claiming the contrary for the reason of non-establishing the leak and connection with the source is devoid of any merit.

iii) The information shared was of the nature – “Heard on Street” (HOS) and not UPSI

41. The Noticee 2 has argued that the information as in the instant case are in the nature of HOS i.e. Heard on Street as noted at para 27 above. I note that the said submission is in effect contending that the information was in the nature of an unsubstantiated gossip that was being forwarded as speculation or rumours. The Noticee has contended that such information was of the same nature that were published in the newspaper estimating/speculating the results of the public companies and that the same were being shared over WhatsApp due to the advancement of technology. Further that it is a common practice that the analysts of various brokerage houses come out with a preview report and estimate the results across all coverage

companies and such estimations are based on several factors including financial modelling, management guidance, global factors, meetings with management of listed companies etc., which are used by the entire trading community/active investors to plan their trades. In light of the aforesaid contention by the Noticee before me, I primarily note that the information of the nature of HOS that is published in the newspaper or by the brokerage houses estimating the results are in the public domain and there is generally no disparity in the access to such information. However, such information when being circulated among a closed group as in the instant case, such group and the people forming part of the information communication chain alone become privy not only to the content of the information, but also to the knowledge of very existence of such information. Further, as submitted by the Noticee herself, it is a common practice that the broking houses arriving at an estimate on results based on several factors including financial modelling, management guidance, global factors, meetings with management of listed companies etc. I am of the opinion that such information generated as above by the brokerage houses may not constitute UPSI even if the same subsequently matches with the result announced. However, in the instant case before me, the information communicated by the Noticees are neither being claimed as arising from the market research nor was it the estimates/predictions of Noticees themselves. In fact, the Noticees have stated that such information was received by Noticee 1 from a third party and the same was forwarded to Noticee 2. Also considering the fact that the shared information matched exactly with the subsequently published financial results, the submission of the Noticee that such information was in the nature of HOS would be to say that the financial results of the said company were already become public and being discussed openly among the general investors. In the absence of any document or evidence on record to signify such fact even remotely, I am not inclined to accept such a contentious argument by the Noticees that the access to accurate financial results was available to larger public in the form of HOS. Further, in the instant case, a few closed set of people including the Noticees were in possession of such UPSI and they alone had been privy to the information albeit all of them could not be tracked back due to the constraints stated above. With regard to the communication of the messages by the Noticees, I have

also perused the job profile of both the Noticees during the period the messages were communicated which are as under:

Noticee 1:

- Directional trading calls in stocks and indices based on analysis of fundamental, technical and derivatives indicators.

Fundamental indicators like consensus estimates on Income, EBITDA, PAT, PE bands, EPS, Market Cap, blocks, analysis of whether actual beating consensus estimates post announcement of results, etc are taken into consideration.

Technical indicators like moving averages, supports levels, resistance levels, breakout of technical formations, historical formations etc are taken into consideration.

Derivatives indicators like analysis of open interest, cost of carry, implied volatilities, etc are taken into consideration.

- Pair trades which involved buying one stock/indices and selling other stock/indices based on normalised price return analysis, ratio analysis, etc
- Indices rebalancing which included analysis of expected changes in the Nifty and MSCI India portfolio.
- Risk arbitrage which included analysis of any opportunity arising out of corporate actions like merger, demerger, buy backs, delisting, etc.

Noticee 2:

- Calls and recommendations –fundamental/technical/quantitative parameters on scrips;
- News about events in the market;
- Sector reports published by Antique research analysts team from time to time. Arrange calls and set up meetings between Antique research team and fund representatives from time to time to discuss these research reports.

42. From the above, it is evident that neither of the Noticees was required to share such information as a part of their job description prior to the announcement of results. I am of the opinion that the circumstances and arrangement as observed above where the source of the information is difficult/not possible to trace back and yet the information has been passed through a chain of communication, provides a significant scope for easy transmission of leaked UPSI to unauthorised persons causing a great disparity of information and prejudice millions of innocent investors. In view of the gravity of consequences arising out of such sharing of information among the closed groups

through WhatsApp or social media platform, I am not inclined to give any benefit of doubt in favour of the Noticees by treating the information as HOS as claimed by the Noticee 2.

43. The Noticee 2 has also vehemently argued that the information claiming to be in the nature of HOS had never been forwarded to any of their family members or was taken advantage by them. In this regard, as already noted, due to the technological challenges, the trail of the messages could not be made out so as to identify the actual source or the complete list of persons who were part of the communication trail and therefore it is not entirely acceptable that no gain was made by any investor being privy to such information shared through WhatsApp messages. Due to the same, I am also not inclined to accept Noticee's submission that the information lacked the credibility of the source and hence cannot be qualified as a UPSI. Furthermore, irrespective of the factors whether the information was originated from the Noticees or that their families had traded based on such information, the charge against the Noticees sustain to be considered as the same is concerned with whether the Noticee were in possession of UPSI and had shared it further. At this stage, I note that I am primarily of the opinion that it is against the interest of the investors to encourage any sharing of sensitive information within a closed group to the exclusion of general public especially when the source of such information cannot be traced back. If the same is allowed to continue in the pretext of sharing of HOS as stated by the Noticee, the insiders having access to the UPSI would be granted themselves with an unfettered mode of transmitting such information without having to be concerned about being tracked back to the source of the information. Considering the extent of significance, such UPSI involving financial results hold on the price of the securities, I am of the opinion that a lenient view cannot be warranted so as to consider such information qualifying to be an UPSI as a mere HOS.

44. It is also the submission of the Noticee 2 that she did not believe the information to be a UPSI and therefore forwarded to clients/market groups/acquaintances without application of mind. In the established facts of the case, the Noticees who are reasonably expected to be well acquainted with the working of the securities market

and the nature of sensitive information that an unpublished financial results cannot claim ignorance of the nature of information. I am of the opinion that such category of persons who are well aware of the sensitive nature of UPSI has an ethical obligation on their part to inform the regulators in case of coming across an accurate details regarding UPSI from a suspicious source rather than taking care of the interest of their acquaintances by forwarding the same. However, in the instant case, I note that admittedly there have been several communications which happened frequently with respect to the financial results of the companies between the personals who are closely associated with the market. I note that the Noticees in all probability must have observed that some of the information they received had very closely matched with the subsequently announced financial results. Especially considering that they were not aware of the source of the UPSI that they had received, it was to alarm the Noticees or give raise to a suspicion on the source of the information. Surprisingly, it has not been the case and the Noticees had chosen to accept the information and further communicate the same ignoring the material nature of the information.

iv) No breach of law on the part of the Noticees

45. In this regard, I note that the Noticees have been alleged to have violated the provisions of Sections 12A(d) and 12A(e) of the SEBI Act, 1992 and Regulation 3 of the PIT Regulations, 2015. While Section 12 (d) and (e) inter alia prohibits any person from communicating any material or non-public information to any other person, in a manner that is in contravention of the provisions of SEBI Act or the Rules or the regulations made thereunder. In addition, Section 3(1) of the PIT Regulations, 2015 prohibits any insider from communicating any unpublished price sensitive information, relating to a company or securities listed or proposed to be listed, to any person including other insiders except where such communication is in furtherance of legitimate purposes, performance of duties or discharge of legal obligations. In this connection, I also refer to the provisions of Regulation 2 (1) (g) of SEBI (PIT) Regulations, 2015, which state as under:

“insider” means any person who is:

- i. *A connected person, or*

- ii. *in possession of or having access to unpublished price sensitive information*

NOTE: Since “generally available information” is defined, it is intended that anyone in possession of or having access to unpublished price sensitive information should be considered as “insider” regardless of how one came in possession of or had access to such information...”

46. In view of the aforesaid charges against the Noticees, I analyse the facts to ascertain whether the following essential requirements are established or not:

- a) Whether the information constituted UPSI?
- b) Whether the Noticees were insiders within the definition under Regulation 2(1)(g) of the SEBI (PIT) Regulations, 2015?
- c) Whether the Noticees being the insiders further communicated the UPSI?

a) Whether the information constituted UPSI

47. Firstly, it is the contention of the Noticee that the information forming part of the WhatsApp messages were generally available and was in the nature of market gossip/rumour/ HOS. In this regard, as already opined above, I do not find that the information stated in the WhatsApp messages qualify to be regarded as HOS in the instant case. Further, contending that the information did not constitute UPSI, the Noticee 2 has further stated that she had forwarded the information relating to estimates of financial results on several occasions and that in only a few instances as in the instant case, the details had closely matched with that of the actual results announced. She has contended that merely the fact that the results exactly matched cannot be enough to allege the information to be a UPSI, when she herself was not the originator of message as well. The Noticee further argued that the information in the instant case was generally available and thus could not be treated as UPSI. In this regard, referring to the report of High-Level Committee to Review the SEBI (Prohibition of Insider Trading) Regulations, 1992 under the Chairmanship of Mr. Justice N K Sodhi (hereinafter referred to as “**Justice Sodhi Committee Report**”) the Noticee 2 submitted that whether a piece of information is UPSI or generally available information is a mixed question of fact and law and that in the instant case, she

receiving the information from an individual who is not shown to be connected to the Ambuja Cements or source or the information cannot be treated as receipt of UPSI.

48. In this regard, I note that the committee deliberating upon the issue of what information constitutes UPSI and what is to be regarded as generally available information and how the information of same nature may be UPSI in some case and generally available in others recorded various illustrations which the Noticee 2 has presented before me in contending that the information in her case is of generally available nature and not UPSI. In this regard, I note that the committee stating that UPSI is essentially information that is not generally available but on becoming generally available materially affects price of securities. The committee laying down the principles on how such general availability needs to be ascertained stated that any information that is accessible to the public on non-discriminatory basis would qualify to be generally available. Further, in the light of facts of the instant case, I also find it relevant to refer to the following paragraphs of the Report:

“26. The Committee deliberated upon how one should understand —non-discriminatory access and it was felt that one should not over-stipulate how this should be understood since that could risk narrowing the scope of that term. For example, a research report that is priced for purchase and is made available to all clients of a stock broker would be considered non-discriminatory inasmuch as any client of the broker or any class of clients of a broker having a certain risk profile may acquire that research report. Merely because the report is priced and needs to be purchased would by itself mean that access to it is non-discriminatory? However, if one were to find extraordinary and peculiar structures such as pricing a research report at a level not in line with market practice such that only some identified persons may be able to acquire it and hope to rely on it by way of ostensible non-discriminatory access, it would not be non-discriminatory. Therefore, whether some information is available on a non-discriminatory basis would be a question of fact to be answered adopting the standard of a reasonable man.

....

29. While these principles are also backed by the provisions containing the prohibition on communication of UPSI and the inducement of communication of UPSI in Regulation 3, it is important to also articulate how the concepts of —generally available information and —unpublished price sensitive information¹¹ are intended to be understood.

30. A piece of research work that is available on a discriminatory basis but is based entirely on generally available information would not change the character of the research work from being —generally available¹² to being —UPSI. The Committee is conscious that generally available information well analyzed by an insightful mind would not be transformed into UPSI. Therefore, the regulation explicitly provides that conclusions, deductions and analyses of generally available information too would be regarded as generally available information.

.....

33. To conclude, whether or not a piece of information is generally available or is unpublished would necessarily be a mixed question of fact and law. A bright line indicating the types of matters that would ordinarily give rise to UPSI are listed to give illustrative guidance. It could well also be possible that information from such events could be routine in nature and consistent with a long history. Information about the repetition of the same event on predictable lines would not render it to be UPSI unless deviated from. For example, the declaration of dividend at the same rate at which a company has declared dividend for the several years as per publicly stated dividend policy.

”

49. Having noted the above, I further note that the Noticee has *inter alia* contended before me that “Analysis and research based on generally available information would also be generally available information. Information that is capable of being accessed by any person without breach of any law would be considered generally available. It is submitted that in the facts of the present case, the information that was forwarded to me was in the nature of market gossip and I have given several other examples to show that it is common practice among market participants to keep on predicting future events and the said market gossip is not prohibited under any law.” In this

regard, while I note that whether or not a piece of information is generally available or is unpublished would necessarily be a mixed question of fact and law, the statement that the information was an outcome of the research does not by itself make it generally available. I note that the test to ascertain an information to be UPSI or not is its non-discriminatory nature of availability. In the instant case, the Noticees have not placed before me any evidence to indicate that the information was derived from any research work. Furthermore, as stated at paragraph 26 of the Committee Report, an illustration where a research work that is priced at *a level not in line with market practice such that only some identified persons may be able to acquire it was opined to be of discriminatory nature*. Therefore even if the information is said to be have been formed based on the research, firstly the research should have been based on the generally available information and secondly the research work should have been accessible on a non-discriminatory basis. However, in the instant case, even if the information is to be accepted as based on the research, there is no evidence brought on record by the Noticees to show that the research information emerged based on the generally available information. Further, the said information has been circulated between the closed groups of entities including the Noticees through the WhatsApp messages which by its very nature make it a discriminatory access to the selected few. Therefore the information in this case fails the test to be called generally available information as contended by the Noticees.

50. Furthermore, with respect to the submissions of the Noticee, I also note from the job description of the Noticees, it was not a requisite task arising from their duty to forward the messages of the nature as in the instant case. Yet, the Noticees have been continuously been involved in sharing such information being an active chain in the transmission of information. While I note that the information shared/forwarded by the Noticees had not matched with that of the actual results on several occasions, the fact it matched so accurately in a few instances also cannot be viewed leniently. I note that the information included the exact details with respect to crucial part of financial results such as Total Income and PAT, which turned out to be accurate. I cannot ignore the fact that such information have been shared with a closed set of people and the general public had no knowledge of such information being shared on the

WhatsApp platform to even have any access to the same. Further, the Noticees being financially literate persons who have been associated with the securities market by holding significant positions in their respective companies as noted at paras above, it was well within a reasonable expectation out of them to be triggered alarm when the information that were being circulated through WhatsApp messages so accurately matched with the subsequently announced actual figures of the company, even if such occurrence happened with respect to selected few messages out of several messages as stated by the Noticee. However, the Noticees have allowed themselves to continue to be an instrument in the chain of communication of such sensitive information through WhatsApp messages. From the summary of aforesaid findings, I am of the considered view that the messages about the financial results were circulated prior to the official announcement made by the Companies, is UPSI. In my opinion, the disclosure of this information violates the rule of parity of information and perpetuated information asymmetry. The prohibition against insider trading helps in ensuring fairness, achieving information symmetry and ultimately market efficiency.

b) *Whether the Noticees were insiders within the definition under Regulation 2(1)(g) of the PIT Regulations, 2015?*

&

c) *Whether the Noticees being the insiders further communicated the UPSI?*

51. I note that Regulation 2(1)(g) of the PIT Regulations, 2015 *inter alia* envisages that any person who is in possession of UPSI is regarded as an insider. Further, the note to the said provision also clarifies the legislative intent of the said provision by stating that such person is to be considered an insider regardless of how the UPSI has come into his/her possession. Therefore, once information is established to be a UPSI, anybody who is in possession of such information will be an insider.

52. In their defense against being alleged as the insiders in the instant case, the Noticees have based their contentions on the argument that the information contained in the WhatsApp messages were in the nature of market rumor/gossip/HOS and hence cannot be regarded as UPSI and thus they did not act as insiders in the instant

case. However, from the conclusions arrived in the pre-paragraphs of this Order, it has been already been noted that the financial results that were part of the WhatsApp messages constituted UPSI as on February 20, 2017 for the reasons mentioned above. Further from the admitted fact that Noticee 1 forwarded the said message on WhatsApp to Noticee 2 and the Noticee 2 subsequently forwarded the same to 2 other persons, it is imperative that both the Noticees were in possession of UPSI on the said date and consequently they are considered as insiders with respect to the UPSI they possessed.

53. Further with respect to the circulation of the aforesaid UPSI by the Noticees, it is contended by the Noticee 2 that despite the information being forwarded to several parties, none of them alleged that the said information was UPSI and in spite of the communication of the information, there is no evidence as to anyone has traded on the basis of the UPSI. In this regard, I note that the Regulation 3(1) of PIT Regulations, 2015 prohibits communication of UPSI from an insider in any mode. I note that the regulation does not exempt the person from the guilt of communicating merely on the fact that no trades had taken place based on the UPSI thus communicated. The main problem in case of dissemination of information through WhatsApp is the end to end encryption system of transfer of information because of which the data cannot be accessed by third party except receiver and sender. Furthermore, I again take note of the fact that the technological constraint arising in the peculiar facts and circumstances of circulating messages through WhatsApp, the complete trail of messages could not be discovered though the message was admittedly circulated among several market associated personals. Therefore, I am of the opinion that in order to safeguard the interest of the investors and the integrity of the securities market, one cannot import a liberal interpretation of the aforesaid provision so as to warrant the Noticees, who have been involved in the circulation of UPSI on a routine basis over the WhatsApp, with a benefit of doubt. Considering the same, as evident from the record, the Noticees being the insiders for having the UPSI in their possession of February 20, 2017 had forwarded such UPSI through WhatsApp messages i.e. Noticee 1 to Noticee 2 and further Noticee 2 to two persons. In view of the same there is no reasonable doubt in concluding the Noticees as insiders under

the provisions of Regulation 2 (1) (g) of SEBI (PIT) Regulations who were under the possession of UPSI and communicated the same further.

54. In light of the facts concluded above, I find it relevant to note that the Hon'ble Supreme Court has been consistently of the view that what cannot be done directly, cannot be done indirectly. I note that in *Jagir Singh v. Ranbir Singh* (MANU/SC/0097/1978 : 1979 AIR 381), the Hon'ble Supreme Court has held that what cannot be done directly, cannot be allowed to be done indirectly as that would be an evasion of the statute. The Supreme Court has held that it is a well-known principle of law that the provisions of law cannot be evaded by shift or contrivance, and that the objects of a statute cannot be defeated in an indirect or circuitous manner. (As per Abbott C.J. in *Fox v. Bishop of Chester* (1824) 2 B & C 635 "To carry out effectually the object of a Statute, it must be construed as to defeat all attempts to do, or avoid doing, in an indirect or circuitous manner that which it has prohibited or enjoined"). I also note that the same principle is also enshrined in Section 12A of the SEBI Act, which inter alia states that no person shall directly or indirectly engage himself with communicating the UPSI when being in possession of the same.

55. In view of the same, I conclude that the Noticees are liable for violation of the provisions of Sections 12 A (d) & 12 A (e) of the SEBI Act, 1992 and Regulation 3 (1) of SEBI (PIT) Regulations, 2015.

ISSUE II: Whether the Noticees are liable for monetary penalty under Section 15G of the SEBI Act, 1992?

56. A basic premise that underlines the integrity of securities market is that persons connected with the market conform to the standards of transparency, good governance and ethical behavior prescribed in securities laws and do not resort to fraudulent and deceptive activities like insider trading. Such activities are detrimental to the interests of the investors as well as the securities market. No person can be allowed to enrich himself/herself by way of wrongful or ill-gotten gains or

avoidance of potential loss made on account of such activity. SEBI has been entrusted with the important mandate of protecting investors and safeguarding the integrity of the securities market. In this regard, necessary powers have been conferred upon SEBI under the securities laws. The SEBI (PIT) Regulations have put in place a framework for prohibition of insider trading in securities. The prohibitions provided in the Regulations ensure a level-playing field in the securities market and safeguard the interest of investors and integrity of securities market. I am of the view that the object and spirit of the SEBI (PIT) Regulations would get defeated if the alleged violators of the said Regulations are not made to face the consequences.

57. It is established from the findings that the Noticees being insiders had communicated the UPSI relating to Ambuja Cements Ltd., to other person(s) through WhatsApp messages, which is in violation of the provisions of Sections 12 A (d) & 12 A (e) of the SEBI Act, 1992 and Regulation 3 (1) of SEBI (PIT) Regulations, 2015, for which the Noticees are liable for monetary penalty under Section 15G of the SEBI Act which reads as under.

Penalty for insider trading

15G. If any insider who,—

- (i) either on his own behalf or on behalf of any other person, deals in securities of a body corporate listed on any stock exchange on the basis of any unpublished price-sensitive information; or*
- (ii) communicates any unpublished price-sensitive information to any person, with or without his request for such information except as required in the ordinary course of business or under any law; or*
- (iii) counsels, or procures for any other person to deal in any securities of any body corporate on the basis of unpublished price-sensitive information,*

shall be liable to a penalty which shall not be less than ten lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher.

ISSUE III: If so, what quantum of monetary penalty should be imposed on the Noticees taking into consideration the factors mentioned in Section 15J of SEBI Act?

58. While determining the quantum of penalty under Section 15G of the SEBI Act, 1992, it is important to consider the factors stipulated in section 15J of SEBI Act, which reads as under:-

“15J - Factors to be taken into account by the adjudicating officer

While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
- (b) the amount of loss caused to an investor or group of investors as a result of the default;*
- (c) the repetitive nature of the default.”*

59. I note that on the basis of data available on record, it is difficult, in cases of such nature, to quantify exactly the disproportionate gain or unfair advantage enjoyed by the Noticee and the consequent losses suffered by the investors. Further the amount of loss to an investor or group of investors also cannot be quantified on the basis of available facts and data. Even though the monetary loss to the investors cannot be computed, unauthorized circulation of UPSI such as financial results holds a scope to pose a greater threat to the integrity of the market. The technological advancements may also equip the manipulators with innovative ways to flout and bypass the regulations that are put in place to protect the interest of the innocent investors. Today, developments in technology, information flow and access to markets have enabled new market structures to evolve and impact the way in which market manipulation occurs and new methods of market manipulation have emerged. The instant case before me is one such example where the information constituting UPSI has been circulated through WhatsApp messages, which conveniently wipes out any trace of the insider leaking the UPSI and

manages to reach the selected group of targets. Such acts which are essentially in the form of making UPSI available on a discriminatory basis, if legitimized in the garb of routine sharing of market gossips/rumors will compromise the confidence of this kind of activity has a serious impact on the price of the securities where the limited set of people having access to UPSI stand to gain at the expense of the innocent gullible investors. I am of the opinion that the peculiar nature of such communication of UPSI as in the instant case has to be strictly dealt with, in order to curb and discourage any future attempts at the same.

ORDER

60. In exercise of the powers conferred under Section 15 I of the Securities and Exchange Board of India Act, 1992, and Rule 5 of Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995, I hereby impose a penalty of ₹15,00,000/- (Rupees Fifteen Lakhs only) on each of the Noticees viz., Neeraj Kumar Agarwal and Shruti Vishal Vora in terms of the provisions of Section 15G of the Securities and Exchange Board of India Act, 1992 for the violation of Sections 12 A (d) & 12 A (e) of the Securities and Exchange Board of India Act, 1992 and Regulation 3 (1) of SEBI (Prohibition of Insider Trading) Regulations, 2015.

61. The Noticees shall remit / pay the said amount of penalty within 45 days from May 3, 2020 or service of this Order, whichever is later either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, OR through online payment facility available on the SEBI website www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT → Orders → Orders of AO → PAY NOW

62. The Noticees shall forward said Demand Draft (DD) or the details / confirmation of penalty so paid to the "The Division Chief, EFD-1, DRA-II, SEBI, SEBI Bhavan, Plot No. C -4 A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai -400 051". The Noticees shall provide the following details while forwarding DD/ payment information:

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

63. In the event of failure to pay the said amount of penalty within the timelines as mentioned in Para 61 above, recovery proceedings may be initiated under Section 28A of the Securities and Exchange Board of India Act, 1956 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

64. In terms of the provisions of Rule 6 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995, a copy of this order is being sent to Neeraj Kumar Agarwal (Noticee 1) and Shruti Vishal Vora (Noticee 2) and also to the Securities and Exchange Board of India, Mumbai.

Date: April 29, 2020
Place: Mumbai

B J DILIP
Adjudicating Officer