

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
ADJUDICATION ORDER No. Order/BD/VS/2020-21/7916**

**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:

Mr. Aditya Omprakash Gaggar
[PAN: AARPG6390G]
4A, Hamam House,
Hamam Street, Fort,
Mumbai – 400 023

**In the matter of circulation of unpublished price sensitive information (UPSI) through
WhatsApp messages with respect to Bata India Limited**

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During November 2017, there were certain articles published in newspapers / print media referring to the circulation of Unpublished Price Sensitive Information (*hereinafter referred to as "UPSI"*) in various private WhatsApp groups about certain companies ahead of their official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.
2. Accordingly, SEBI carried out an investigation in the matter of circulation of UPSI through WhatsApp messages with respect to Bata Ltd., to ascertain any possible violation of the

Adjudication Order in the matter of circulation of UPSI through WhatsApp messages – Bata India Ltd

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 during the period of January 1, 2016 to February 10, 2016 (*hereinafter referred to as "Investigation Period"*).

- It was observed that Bata India Ltd. had announced financial results for quarter and nine months ended on December 31, 2015 on February 10, 2016 (15:20:32 hours on BSE, 15:21 hours on NSE). Details of the major corporate announcements made by Bata India Limited, on BSE and NSE, during IP and their impact on the price of the scrip were observed to be as follows

Table 1 – Exchange BSE

(Price in Rs.)

S.No.	Date-Time	Announcement/News	Price Impact/Shares Traded						Remarks
1.	20/01/2016 (14:26:29)	<u>Disclosures under Reg. 29(1) of SEBI(SAST) Regulations, 2011</u> Life Insurance Corporation of India has submitted the disclosures under Reg. 29(1) of SEBI (SAST) Regulations, 2011	Date	O	H	L	C	No. of shares traded	The number of shares of Bata traded recorded a increase by 2.41 times
			19.01.2016	460.25	468	459	464.9	14540	
			20.01.2016	465	465	447.9	452.45	35042	
2.	22/01/2016 (13:03:19)	<u>Revised Disclosures under Reg. 29(1) of SEBI(SAST) Regulations, 2011</u> Life Insurance Corporation of India has submitted the revised disclosures under Reg. 29(1) of SEBI (SAST) Regulations, 2011	Date	O	H	L	C	No. of shares traded	The number of shares of Bata traded recorded a decrease by 1.21 times
			21.01.2016	452	460	438.05	447.1	29199	
			22.01.2016	450	477	450	473.1	24136	
3.	27/01/2016 (15:47:55)	<u>Q3 results on Feb 10, 2016</u> Bata India Ltd has informed BSE that a meeting of the Board of Directors of the Company will be held on February 10, 2016, inter-alia, to consider and approve the Unaudited Financial Results of the Company for the third quarter and nine month period ended December 31, 2015 (Q3).	Date	O	H	L	C	No. of shares traded	The number of shares of Bata traded recorded a decrease by 1.60 times
			27.01.2016	478.85	488.4	469.05	480.55	61439	
			28.01.2016	480	486.5	474	479.05	38372	
4.	10/02/2016 (15:20:32)	<u>Announces Q3 results (Standalone). Limited Review Report (Standalone) & Results Press Release for the Quarter ended December 31, 2015</u> Bata India Ltd has announced the following Unaudited Standalone results for the quarter ended December 31, 2015 The Company has posted a net profit of Rs. 445.690 million for the quarter ended December 31, 2015 as compared to Rs. 349.470 million for the quarter ended December 31, 2014. Total Income has increased from Rs. 5447.240 million for the quarter ended	Date	O	H	L	C	No. of shares traded	The number of shares of Bata traded recorded an increase by 3.83 times
			09.02.2016	477	484	473	481.6	18209	
			10.02.2016	479	496	456.4	488.6	69718	

S.No.	Date-Time	Announcement/News	Price Impact/Shares Traded	Remarks
		December 31, 2014 to Rs. 6247.090 million for the quarter ended December 31, 2015.		

Table 2- Exchange NSE

(Price in Rs.)

S.No.	Date-Time	Announcement/News	Price Impact/Shares Traded						Remarks
1.	25/01/2016 (19:49)	<u>Trading Window</u> Bata India Limited has informed the Exchange that in terms of the Company's Code of Conduct to Regulate, Monitor and Report Insider Trading and pursuant to the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015, the Trading Window for dealing in shares of Bata India Limited, will be closed from Tuesday, January 26, 2016 to Friday, February 12, 2016 (both days inclusive) for the purpose of consideration and approval of the Unaudited Financial Results for the 3rd quarter ended December 31, 2015 at the Board Meeting to be held on February 10, 2016.	Date	O	H	L	C	No. of shares traded	The number of shares of Bata traded recorded a decrease by 1.09 times
			25.01.2016	474	506.75	470.8	476.3	8,36,437	
			27.01.2016	483.4	487.9	468.75	480.55	7,67,898	
2.	10/02/2016 (15:21)	<u>Financial Results Update</u> Bata India Limited has submitted to the Exchange the standalone financial results along with the Limited Review Report for the period ended December 31, 2015.	Date	O	H	L	C	No. of shares traded	The number of shares of Bata traded recorded a increase by 3.64 times
			09.02.2016	470.1	483.9	470.1	481.75	200756	
			10.02.2016	483	497	457.1	487.25	730551	

CSE, vide email dated August 26, 2019, submitted the following w.r.t corporate announcements in the scrip of Bata India Ltd. " ... *we would like to submit that as on line trading system of this Exchange namely C-STAR, was non-operational since April, 2013, this Exchange could not disseminate information pertaining to Corporate Announcement of Bata India Ltd. for the period commencing from October 01, 2015 to May 31, 2016 in the on line trading system of this Exchange.* "

Chronology of events pertaining to financial results of quarter ended December 31, 2015

4. The chronological events related to financial results for the quarter ended December 31, 2015 as furnished by Bata India Ltd., vide its letter dated July 24, 2019 were as below:

Date	Particular of events	Details of names and designations of persons involved
January 1, 2016 – January 10, 2016	Finalization of unit trial balances and start of consolidation process for preparation of yearly results of whole company for the period relating to	Aastha Grover, Assistant Manager Chandrima Malik, Manager, Finance Kundan Kumar, Group Manager – Accounts

Date	Particular of events	Details of names and designations of persons involved
	January 1, 2015 to December 31, 2015 under US GAAP	
January 11, 2016 – January 12, 2016	Preparation of the consolidated results as per US GAAP for the calendar year.	Aastha Grover, Assistant Manager Chandrima Malik, Manager, Finance Kundan Kumar, Group Manager – Accounts
January 13, 2016 – January 14, 2016	Preparation of other related reports of Monthly Information Package (MIP) and Financial Reporting Package(Finpack)	Aastha Grover, Assistant Manager Chandrima Malik, Manager, Finance Kundan Kumar, Group Manager – Accounts
January 15, 2016	Submission of financial reporting package under US GAAP to the global headquarter.	Peeyush Gupta, General Manager Saket Mohta, AVP-Finance RK Gupta, Director Finance
January 16, 2016 – January 19, 2016	Preparation of trial balances as per Indian GAAP, by eliminating US GAAP adjustments and identification and accounting for Indian GAAP adjustments.	Aastha Grover, Assistant Manager Kundan Kumar, Group Manager – Accounts
January 20, 2016	Preparation of quarterly results as per the Indian GAAP for the quarter ended on December 31, 2015(“Quarterly Financial Statements”)	Peeyush Gupta, General Manager Aastha Grover, Assistant Manager Kundan Kumar, Group Manager – Accounts
January 21, 2016 – January 25, 2016	Internal review of the Quarterly Financial Results before handing over to the statutory auditors	Aastha Grover, Assistant Manager Peeyush Gupta, General Manager Saket Mohta, AVP-Finance RK Gupta, Director Finance
January 26, 2016 – February 9, 2016	Review of the Quarterly Financial Results by the statutory auditors i.e. S R Batliboi & Co. LLP and final confirmation for publication and presentation to the board of directors of Bata India	<u>Statutory Auditors(S R Batliboi & Co. LLP)</u> Sanjay Vij (Partner) Prateek Agrawal(Senior Manager) <u>S R Batliboi & Co. LLP – Audit team members</u> Dinesh Agarwal, Abhishek Jain, R Sundar, Vijay Kumar Wadhwani, Divya Bushan, Amit Poddar, Akash Mansinka, Shreya Shah, Anchal Poddar, Manjul Prakash, Mallika Malhotra, Mayank Daruka, Naman Agarwal, Pulkit Agarwal, Deepak Arora, Nikhil Chhabra, Diksha Garg, Sachin Kumar Gupta, Avneet Singh, Anurag Agarwal, Ishan Arora, Ankit Barolia, Gaurav Goel, Himanshu Satija, Anshudhar Seth, Srishti Singhal, Paavni Vohra, Anjali Haryana, Manik Goenka, Rajat Gupta, Ateeshay Jain, Jatin Sachdeva, Santosh Suresh Maller, Vibhu Gupta, Pratik Setia, Anubhav Agrawal <u>Bata team members</u> Peeyush Gupta Aastha Grover
February 10, 2016	Final quarter Financial Results discussed with the Managing Director of Bata India	R K Gupta, Director Finance Rajeev Gopalakrishnan, Managing Director
February 10, 2016	Results presented before the audit committee and board of directors of Bata India	<u>Persons who attended the board meeting</u> Mr. Uday Khanna, Chairman(Independent director) Mr. Akshay Chudasama (Independent Director) Ms. Anjali Bansal (Independent Director)(attended over phone)

Date	Particular of events	Details of names and designations of persons involved
		Mr. Christopher Kirk (Non-executive Director) Mr. Rajeev Gopalakrishnan (Managing Director) Mr. Ram Kumar Gupta(Director Finance) Mr. Ravindra Dhariwal (Independent Director) Mr. Shaibal Sinha(Non-executive Director) Mr. Maloy Kumar Gupta(Company Secretary) <u>Persons who attended the audit committee meeting</u> Mr. Ravindra Dhariwal, Chairman(Independent Director) Mr. Akshay Chudasama(Independent Director) Ms. Anjali Bansal(Independent Director)(attended over phone) Mr. Christopher Kirk(Non-executive Director) Mr. Shaibal Sinha(Non-executive Director) Mr. Uday Khanna(Independent Director) Mr. Rajeev Gopalakrishnan(Managing Director) Mr. Ram Kumar Gupta(Director Finance) Mr. Sanjay Vij(Partner, S.R. Batliboi & Co. LLP) Mr. Prateek Agrawal(Audit Manager, S.R.Batliboi & Co. LLP) Mr. Maloy Kumar Gupta(Company Secretary)
February 10, 2016	Approved Quarterly Financial Results sent to stock exchanges for dissemination	Maloy Kumar Gupta, Company Secretary & Compliance Officer

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

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

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

6. From the chronology of events as tabulated in para 4 above, information relating to financial results of Bata India Ltd for quarter ended December 31, 2015 was observed to be a Price Sensitive Information (PSI), which came into existence on January 01, 2016. The corporate announcement of unaudited financial results for the quarter ended December 31, 2015 was made to the exchanges (BSE and NSE) by Bata on February 10,

2016.(15:20:32 hours on BSE, 15:21 hours on NSE). Therefore, the period from January 01, 2016 to 15:20:32 hours on February 10, 2016 was considered as the period of UPSI (unpublished price sensitive information).

7. The investigation *inter alia* revealed that Mr. Aditya Omprakash Gaggar (hereinafter also referred to as “Noticee”) among other had communicated the UPSI related to Bata India Ltd. viz; Sales, PAT and EBITDA for QE December 2015 through WhatsApp messages. From the WhatsApp chat of Ms. Shruti Vora (retrieved from her device – Apple iPhone 6s, IMEI: 355767073570777) on February 10, 2016, a chat was observed stating, “*Bata hearing pat of 44 vs 43 expectation Ebitda 80 crs vs mkt exp of 73 crs Sales 617 vs exp of 601 crs*” received from the Noticee.
8. In the following table, financial figures circulated on WhatsApp pertaining to Bata India Ltd. were compared with actual figures disclosed subsequently on exchange 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 hrs)	Figures in WhatsApp message	Date and time of disclosure on Exchange	Actual figures disclosed on Exchange	F1W	F1A	F2W	F2A	F3W	F3A	%ge Deviations observed in Figures		
										F1Dev	F2Dev	F3Dev
10/02/2016 12:28:32	pat of 44 vs 43 expectation Ebitda 80 crs vs mkt exp of 73 crs Sales 617 vs exp of 601 crs	10/02/2016 (15:21 NSE) (15:20:32 BSE)	Net Sales/Income from Operations(Net of excise duty) 617.227 crores Net Profit for the Period 44.569 crores Profit from Operations before other income, finance costs, exceptional item and tax 60.298 crores Depreciation and amortization expense 19.533 crores	617	617.227	44	44.569	80	79.831	-0.04	-1.28	0.21

Note: EBITDA is calculated as: EBITDA (Earnings before interest, tax, depreciation and amortization) = Profit from Operations before other income, finance costs, exceptional item and tax + Depreciation and amortization expense = 60.298+19.533 = 79.831 crores

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

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

9. From the above table, it was observed that the financial figures of Bata India Ltd., were communicated through WhatsApp prior to their announcement on stock exchanges. The timing of the said message (incoming) as per extract chat from Shruti Vora's device was 05:42:42 hours. However, expert agency, hired for retrieval and backup of the data from the instruments/devices seized, vide 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.
10. The details of communication of WhatsApp message related to Bata India Ltd. (" *Bata hearing pat of 44 vs 43 expectation Ebitda 80 crs vs mkt exp of 73 crs Sales 617 vs exp of 601 crs*") as observed from WhatsApp Chat retrieved from Shruti Vora's device were tabulated below:

Entity from whom Shruti Vora received the message		Date and Time of receipt of message by Shruti Vora (After adding 5.30 hours)	
Name	Tel.Number	Date	Time
Aditya Gaggar*	9821016310	10/02/2016	12:28:32

*Note: Remote party name displayed in messages are Adit, Shailendra and Parikshit Shah, respectively

11. It was observed from the WhatsApp chats retrieved from the Shruti Vora's device that the aforesaid message was received by Ms. Shruti Vora from the Noticee on February 10, 2016 at 12:28:32 which was further forwarded by Shruti Vora on February 10, 2016 to Mr. Parikshit Shah on one-on-one chat.
12. It was observed from the WhatsApp chats retrieved from Ms. Shruti Vora's device that the Noticee had communicated the referred message on WhatsApp group namely, "*Market Info*" (in which Ms. Shruti Vora was also a member) comprising of the following telephone/mobile Nos:

Sr.no.	Tel/Mobile no.	Sr.no.	Tel/Mobile no.	Sr. no.	Tel/Mobile no.	Sr. no.	Tel/Mobile no.
1	9821016310	22	9821099265	43	9820042404	64	9322240978

Sr.no.	Tel/Mobile no.	Sr.no.	Tel/Mobile no.	Sr. no.	Tel/Mobile no.	Sr. no.	Tel/Mobile no.
2	9821865539	23	9920420879	44	9821447073	65	9821055180
3	9869135297	24	9820230885	45	9867645454	66	9004699578
4	9821049538	25	9833996922	46	9820013909	67	9004233300
5	9819944145	26	9828073068	47	7506072751	68	9301626212
6	9819740976	27	9892600656	48	9820011218	69	9819700544
7	9821172879	28	9820280998	49	9820122367	70	9833127332
8	9820513508	29	9619022336	50	9873426212	71	9320224321
9	9930879571	30	9920190072	51	9821434110	72	9819262102
10	9892838881	31	9833127396	52	7877905004	73	9007482736**
11	9323021372	32	9833180731	53	9820256376	74	9821223351
12	9820242405**	33	9821266696	54	9820991554		
13	8983196678	34	9820690906	55	9322214012		
14	9820126782	35	9967541721	56	9681099930		
15	9867333174	36	9830036331	57	9819616477		
16	9820832032	37	9821170817	58	9819412544		
17	9833737010	38	9821055181	59	9867751705		
18	9811067999	39	9820028634	60	9820835367		
19	9920421946**	40	9920308564**	61	9820763682		
20	9823080955	41	9799717852	62	9820086448		
21	9820128379	42	9820021673	63	9324740098		

*Whatsapp group name as per chat extracts retrieved from Ms. Shruti Vora's device was "Market Info."

**UCC/PAN details were not available with BSE, NSE, CSE, NSDL, CDSL, R&D Infotech Pvt. Ltd.(Registrar and Share Transfer Agent of Bata India Ltd.), CAMS(Computer Age Management Services Pvt. Ltd.), Karvy and Link Intime India Pvt. Ltd. (copies of emails at Annexure 6) for the telephone/mobile nos. In absence of UCC/PAN details, for these numbers, their trading/off-market transfer(s) details could not be verified. UCC/PAN details of entities corresponding to the remaining telephone/mobile no.s received are at Annexure 6.

13. It was noted that the financial figures of Bata India Ltd. (viz; Sales, PAT and EBITDA) circulated through WhatsApp closely matched with those disclosed subsequently by Bata India Ltd. on stock exchanges (deviation in financial figures was within a range of -1.28% to 0.21%). Hence, it was alleged that the aforesaid message related to Bata India Ltd., would fall under UPSI and such circulation of financial figures through WhatsApp was considered as communication of UPSI.

14. The Noticee who was in possession of the UPSI was termed as Insider 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...”

15. Therefore, it was alleged that the Noticee being insider had communicated the UPSI relating to Bata India Ltd., to other person(s) through Whatsapp messages.
16. Accordingly, it was alleged that the Noticees had communicated UPSI related to Bata India Ltd. viz; Sales, PAT and EBITDA for QE December 2015, to other person (s) through WhatsApp message, which is prohibited and thereby acted in violation of the provisions of Section 12 A (d) & 12 A (e) of the SEBI Act, 1992 and Regulation 3 (1) of SEBI (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 November 26, 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 Noticee.

SHOW CAUSE NOTICE, HEARING AND REPLY

18. A Show Cause Notice dated January 8, 2020 bearing ref No. EAD-7/BJD/VS/ 1225/1/2020 (*hereinafter referred to as ‘SCN’*) was served on the Noticee under Rule 4 of the SEBI Adjudication Rules, calling upon to show cause as to why an inquiry should not be held against him 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 him in terms of Section 15G of SEBI Act, 1992 for the aforesaid alleged violations. In reply, Noticee vide his reply dated March 3, 2020 *inter alia* submitted as under:

1. *During Investigation Period, the Noticee has not bought nor sold any equity shares of BIL off the floor of the exchange or on the floor of stock exchanges where the equity shares of the BIL are listed. The Noticee was not connected with BIL and its promoter, directors, employees and persons named in clause 3 dealing with **Chronology of the Case** of this present reply as also the table forming part of clause 3 of Notice. The copy of demat holding statement of Noticee is enclosed as “Annexure 2”. During Investigation Period, the Noticee had not engaged nor indulged in trading or dealing of any kind whatsoever in the shares of BIL.*
2. *Therefore, in the Notice it has been wrongly alleged that the Noticee has violated the provision of Section 12A(d) of the SEBI Act, 1992. Further, no facts or any trade details are adduced in the Notice to substantiate that the Noticee has indulged in trading or dealing in securities of BIL.*
3. *The Noticee, has not been associated with a company, directly or indirectly, in any capacity, including by reason of frequent communication with its officers nor by being in any contractual, fiduciary or employment relationship or by being a director, officer or an employee of the company nor holds any position including a professional or business relationship between himself and the company whether temporary or permanent, that allows the Noticee, directly or indirectly, access to unpublished price sensitive information or is reasonably expected to allow such access.*
4. *The Noticee used to frequently receive the text messages relating to market such as daily news items, opinions/views of market experts and other related information which are mostly unverified or unsubstantiated without any right, liability or obligation on the contributor or recipient of the post on different WhatsApp groups.*
5. *Normally, the Noticee used to forward text messages to his clients for the purpose of market awareness. The information about BIL was also received on WhatsApp Group like any other generally available information to the Noticee alongwith other members in the group.*
6. *Further, the message of BIL forwarded by the Noticee in the group namely ‘**Market Info**’ (“**WhatsApp Group**”) and not specifically to Ms. Shruti Vishal Vora (being the Noticee no. 3) and when it was forwarded the Noticee was not in the knowledge that the information is UPSI and material and non-public information. The Noticee has forwarded the message as he forwards any other messages as market information on a daily basis.*
7. *It is submitted that a message (read as “**Bata hearing pat of 44 vs 43 expectation Ebitda 80 crs vs inkt exp of 73 crs Sales 617 vs exp of 601 crs**”) (hereinafter referred to as the “**Alleged Whatsapp Message**”) was alleged to be received on a WhatsApp Group of which Noticee was one of the members and that the Noticee has forwarded the Alleged Whatsapp Message to another Group by the name of “Market Info” of which Ms. Shruti Vora (being the Noticee no. 3) was one of the members.*
8. *The Alleged Whatsapp Message makes a reference to ‘**Bata hearing**’ and ‘**market expectation**’ with respect to PAT, EBITDA and Sales and comparative figures between ‘market expectation’ and ‘Bata hearing’ are set out. It is the understanding of the Noticee that the three items of market*

expectation of PAT, EBITDA and Sales are unverifiable information and there is no recognition of such information by any authority or any association or by any organized body. They are unconfirmed information coming from unrecognized source. Further the phrase 'Bata hearing' also does not give any indication whether the Alleged Whatsapp Message is emanating from any insider or from any dependable or verifiable source and that such information has been wrongly obtained and posted on the WhatsApp Group. From the nature of the post Noticee could not infer that this would amount to inside information and whoever has posted this message has wrongfully obtained the information and that such person may be having an obligation of holding the information in confidence. Until the Noticee knows that the source of such information is from an insider or from a person who is connected to an Insider or from a source that is under an obligation to keep the information confidential then the said information cannot be considered as inside information for the Noticee. At the point of time when the Alleged Whatsapp Message was posted on the WhatsApp Group, Noticee never had any reason to believe that the source of information was under an obligation to keep the information confidential. Therefore at that time this Whatsapp Message is merely unconfirmed/unverified market information and it might be true or might not be true i.e. it is speculative in nature. There was no way the Noticee could believe it to be UPSI nor anything in the Alleged Whatsapp Message that heightened his concern to make any enquiry to check if the Alleged Whatsapp Message was a will possibly amount to a UPSI. The Whatsapp Group carried innumerable messages on a daily basis about various companies, market movement, views of different participants etc. that are unconfirmed and unverified. The Alleged Whatsapp Message was also posted like these innumerable messages on the Whatsapp Group and it is not discernible as to whether a particular message is factually true or it is an opinion nor it is discernible to know owner/creator of the opinion to be certain that some post in the general bin (Whatsapp Group) will possibly amount to a UPSI.

9. *It was only after the quarterly results were in fact announced on the appointed date that one can look back with hindsight wisdom and lead to a conclusion that the Alleged Whatsapp Message which was speculative or which did not deserve as much attention on the date Noticee received in his Whatsapp Group may possibly be have been a UPSI. As on the date the Alleged Whatsapp Message was received the Noticee did not have knowledge or have any reason to believe that the Alleged Whatsapp Message may possibly be considered as a UPSI. Further, the Alleged Whatsapp Message was not the only message the Noticee posted on the Whatsapp Group going by the name of 'Market Info.'*

10. *The Noticee was on various Whatsapp groups on which market information including views and opinion of different participants in the Whatsapp groups are shared by the members. At times one may rely on the market information and may benefit and at times one may not benefit. It is not possible for any member on the Whatsapp groups to verify or confirm the veracity of any news posted on the Whatsapp groups as the Whatsapp group is an open forum.*

11. *Further it is submitted that the Noticee had innocuously posted the Alleged Whatsapp Message received from some other whatsapp group on to the Whatapps group going by the name of Market Info to the entire group which had several members as against communication to any identified individual(s) to provoke or induce them to trade solely on the basis of the Alleged Whatsapp Message.*

12. *in view of the above submissions, the Noticee is innocent and the Noticee did not have malafide*

intention in receiving or forwarding Alleged Whatsapp Message on the WhatsApp Group

13. *In this regard, we submit that the Noticee has not made any disproportionate gain or unfair advantage by forwarding the Alleged Whatsapp Message on the WhatsApp Group."*

19. Further, considering the facts and replies of the Noticee, opining that an inquiry needs to be held in the matter, an opportunity to appear for hearing through video conference and to make additional submissions, if any, was granted vide email dated May 6, 2020. In response, the Noticee vide his email dated May 13, 2020 sought for an adjournment of the hearing and made additional submissions stating as under:

"1. The Noticee used to frequently receive the text messages relating to market such as daily news items, opinions/views of market experts and other related information which are mostly unverified or unsubstantiated without any right, liability or obligation on the contributor or recipient of the post on different WhatsApp groups. The information about BIL was also received on WhatsApp Group like any other generally available information to the Noticee alongwith other members in the group.

2. It is the obligation of the management of BIL not to reveal any UPSI. Further, the SEBI failed to establish during the Investigation Period that the Noticee was connected with BIL and its promoter, directors, employees and persons named in clause 3 of the Noticee Letter dealing with Chronology of the Case and that the alleged UPSI was communicated by management of BIL to the Noticee.

3. The Noticee was in no position to know that the information received on Whatsapp Group will possibly amount to a UPSI as the information received on Whatsapp Group was considered to be heard on street (HOS). Also, the Noticee has not bought nor sold any equity shares of BIL off the floor of the exchange or on the floor of stock exchanges where the equity shares of the BIL are listed during the Investigation Period. Therefore, the Noticee was innocent recipient of information about BIL on Whatsapp Group, which possibly amount to a UPSI upon declaration of results by BIL, in view of SEBI, considering the figures provided in the Whatsapp Group largely co-incides with the quarterly results declared by BIL."

20. Further, another opportunity of hearing was granted on June 12, 2020 vide email dated June 3, 2020 vide video conference, if the Noticee wished to avail. In response the Noticee vide his email dated June 10, 2020 stated that his earlier submissions dated March 3, 2020 and May 13, 2020 shall be considered with respect to the disposal of the proceedings. Considering the Noticee did not confirm for appearing for the hearing, it is inferred that the submissions of the Noticee is to be taken in lieu of the hearing and accordingly I proceed further in the matter.

CONSIDERATION OF ISSUES AND FINDINGS

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

- I. Whether the Noticee has 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 Noticee is 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 Noticee?***

FINDINGS

22. 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 Noticee has 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?

23. 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

24. After due consideration of the submission of the Noticee, I prima facie note that there is no dispute as to the communication of the information through WhatsApp messages by the Noticee as alleged and the same has been admitted by him. However it is the primary case of the Noticee that such information was not in the nature of UPSI but was in the nature of an unconfirmed/ unverified information which was in speculative nature. The Noticee contended that it was a regular practice that several of such messages were being circulated in whatsapp groups on a routine basis. Further, it has been contended that he used to forward the information to his clients for the purpose of market awareness. Apart from the above, the Noticee has also made submissions stating that:

- a) no Connection was established between company and himself;
- b) he was not part of Bata in any capacity to be able have access to any of the UPSI as alleged
- c) he did not trade in the shares of Bata and thus did not make any gains
- d) no leak was established from the Insiders;
- e) without establishing a connection and without leak there cannot be UPSI;
- f) At the point of time when the Alleged Whatsapp Message was posted on the WhatsApp Group, Noticee never had any reason to believe that the source of information was under an obligation to keep the information confidential.
- g) Until the Noticee knows that the source of such information is from an insider or from a person who is connected to an Insider or from a source that is under an obligation to keep the information confidential then the said information cannot be considered as inside information for the Noticee.

25. After considering the submissions of the Noticee and the documents available on record, I note my findings on the Noticee's major submissions as under:

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

26. I note from the record that Bata Ltd. vide its letter dated July 24, 2019 submitted the chronology of events leading to the quarterly disclosure on February 10, 2016 for QE December 2015 which is noted in the preparas above. From the same, I further note that period of alleged UPSI in the matter started from January 1, 2016 when finalization of unit trial balances and start of consolidation process for preparation of yearly results of whole company for the period relating to January 1, 2015 to December 31, 2015 under US GAAP was initiated and existed till 15:20:32 on February 10, 2016 when the financial results were disclosed to the stock exchanges. Admittedly the message with respect to the same viz., “Bata hearing pat of 44 vs 43 expectation Ebitda 80 crs vs mkt exp of 73 crs Sales 617 vs exp of 601 crs” was sent by the Noticee to the Group “Market Info.” at 12:28:32 on February 10, 2016. While I note that the investigation has not revealed any material directing to the source of the UPSI, however I note that the significant fact is that the content of the message that was communicated between the Noticee exactly matched with that of the financial results of Bata Ltd announced later on the same day. 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 Noticee. I do not find merit in the submission of the Noticee 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 received from any direct source other than the whatsapp communications.

27. As noted above, it is not the case of the Noticee that the information shared through the WhatsApp in the instant case were generated by him through market research or by any other data and in fact, apart from denying the connection to the source, the Noticee has stated that the information was passed on generally and he was part of the chain that carried on the information which was speculative in nature. Such being the case, I deem it relevant to examine the content of the information to ascertain its nature.

28. In this regard, firstly, I peruse the following table wherein the financial figures circulated on WhatsApp pertaining to Bata 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 hrs)	Figures in WhatsApp message	Date and time of disclosure on Exchange	Actual figures disclosed on Exchange	F1W	F1A	F2W	F2A	F3W	F3A	%ge Deviations observed in Figures		
										F1Dev	F2Dev	F3Dev
10/02/2016 12:28:32	pat of 44 vs 43 expectation Ebitda 80 crs vs mkt exp of 73 crs Sales 617 vs exp of 601 crs	10/02/2016 (15:21 NSE) (15:20:32 BSE)	Net Sales/Income from Operations(Net of excise duty) 617.227 crores Net Profit for the Period 44.569 crores Profit from Operations before other income, finance costs, exceptional item and tax 60.298 crores Depreciation and amortization expense 19.533 crores	617	617.227	44	44.569	80	79.831	-0.04	-1.28	0.21

Note: EBITDA is calculated as: EBITDA (Earnings before interest, tax, depreciation and amortization) = Profit from Operations before other income, finance costs, exceptional item and tax + Depreciation and amortization expense = 60.298+19.533 = 79.831 crores

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

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

29. While it is evident that the information related to the financial results were sensitive in nature, I note that the financial figures matched almost 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 Sales, EBIDTA and PAT were not even stated in any

approximate range of values but were stated as a definite amount in the messages and exactly 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 UPSI period, on February 10, 2016, after discussion with the Managing Director of Bata India, Final quarter Financial Results were presented before the audit committee and board of directors of Bata India. Therefore, in spite of the fact that the source of leak of information could not be traced back due to the technological constraints owing to deletion of whatsapp messages, in the circumstances as above, I note that it is reasonably possible that the information that was communicated by the Noticee had already come into existence on February 10, 2016 at the time when the Noticee sent the message at 12:28:32 to the group. In view of the above, I am of the opinion that Noticee's submission claiming that the aforesaid information did not constitute UPSI for the reason of non-establishing the leak and connection with the source is devoid of any merit.

ii) The information shared was of the nature of unverified/unsubstantiated HOS and not UPSI

30. The Noticee has also argued that the information as in the instant case was unverified/unconfirmed HOS which was speculative in nature. 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 it was a regular practice on whatsapp groups where several messages were shared/ exchanged on daily basis. The Noticee contended that the Whatsapp Message referred in the instant case was also posted like the innumerable messages on the Whatsapp Group and it was not discernible as to whether a particular message was factually true or it was an opinion nor it was discernible to know owner/creator of the opinion to be certain that some post in the general bin (Whatsapp Group) will possibly amount to a UPSI. 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, I am also of the opinion that information generated 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 Noticee is neither being claimed as arising from the market research nor was it the estimates/predictions of Noticee himself. In fact, the Noticee has stated that such information was received by him from a third party or another group and the same was further forwarded by him.

31. At this juncture, it is pertinent to note that the investigation in this case was initiated pursuant to the news article published in Financial Chronicle (sourced from Reuter's article by Mr. Rafael Nam) dated November 17, 2017 whereby it was reported that unpublished financial results of some major Companies were posted in private whatsapp group prior to Companies announcements stock exchanges. In this regard, the Shruti Vora vide her email and letter dated May 09, 2019 had stated that she was part of the Reuters Trading India Platform which comprised of various analysts, fund managers and traders of the reputed brokerage firms/fund houses and the member of the said group had formed a whatsapp group which she had admittedly was part of. Therefore, the Noticee forwarding to a group involving the person who had always been an active participant in the whatsapp groups of the nature reported in the aforementioned News article, in the facts and circumstances of case gives a reasonable scope of his connection with such group.

32. Further, considering the fact that the shared information matched exactly with the subsequently published financial results, the submissions 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 Noticee 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 Noticee 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, due to technological constraints, as stated above.

33. Further, while the Noticee has submitted that he often forwarded the messages, such as the referred one in the instant case, to his clients through whatsapp it is evident that Noticee was not required to share such information to various other unconnected entities who were part of the group 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 could not be traced back due to deletion of the messages in whatsapp by sender, gives a scope for transmission of UPSI through a chain of forward messages to various other entities/ closed groups thereby granting an undue advantage to them.

34. 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 Noticee by treating the information as unverified/unsubstantiated HOS as contended by him.

35. The Noticee has also argued that the information claiming to be in the nature of HOS had not been taken advantage by him as he did not trade in the shares of Bata. In this regard, as already noted, due to the technological challenges, the trail of the messages (which were deleted) 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. Furthermore, irrespective of the factors whether the information was originated from the Noticee or that he had traded based on such information, the charge against the Noticee sustain to be considered as the same is concerned with whether the Noticee was 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 impact, 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.

36. It is also the submission of the Noticee that he did not believe the information to be a UPSI and he innocuously posted the Whatsassp Message received from some other whatsapp group on to the Whatapp group going by the name of Market Info. In the established facts of the case, the Noticee who is 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 Noticee in all probability must have observed that some of the information he received had very closely matched with the subsequently announced financial results. Especially considering that he was not aware of the source of the UPSI that he had received, it was to alarm the Noticee or give raise to a suspicion on the source of the information. Surprisingly, it has not been the case and the Noticee had chosen to accept the information and further communicate the same ignoring the material nature of the information.

iii) No breach of law on the part of the Noticee

37. In this regard, I note that the Noticee has 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...”

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

- a) Whether the information constituted UPSI?
- b) Whether the Noticee was an insider within the definition under Regulation 2(1)(g) of the PIT Regulations, 2015?
- c) Whether the Noticee being an insider further communicated the UPSI?

a) Whether the information constituted UPSI

39. 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

unverified/unsubstantiated 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 has further stated that he 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. He has contended that merely the fact that the results exactly matched cannot be enough to allege the information to be a UPSI, when he himself was not the originator of message as well.

40. In this regard, I find it pertinent to refer 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 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. In this regard, I note that UPSI is essentially an 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 information|| 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 available|| 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.

”

41. As stated above, 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 or unverified gossip/information as in the instant case 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. 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, the information which the Noticee has claimed to have received in nother group and forwarded to “Market info” cannot be treated as HOS so as to treat it as generally available. The fact that it has been circulated between the closed groups of entities including the Noticee through the WhatsApp messages 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 Noticee.

42. Furthermore, with respect to the submissions of the Noticee, I also note that while the Noticee has contended that he used to often forward such information to his his clients for the awareness of market, it was not a requisite task arising from his duty to forward the messages of the nature as in the instant case to a group of unconnected entities which the Noticee has not contended to be his clients. Yet, the Noticee has been continuously involved in sharing such information being an active chain in the transmission of information. While I note that the information shared/forwarded by the Noticee 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. Especially when the information included the exact details with respect to crucial part of financial results such as Sales, EBIDTA and PAT. 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 Noticee being financially literate personal who has been associated with the securities market by holding significant position noted at paras above, it was well within a reasonable expectation out of him 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 Noticee has allowed himself 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 Noticee is an insider within the definition under Regulation 2(1) (g) of the PIT Regulations, 2015?*

&

c) *Whether the Noticee being an insider further communicated the UPSI?*

43. 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.

44. In his defense against being alleged as the insiders in the instant case, the Noticee has based his contentions on the argument that the information contained in the WhatsApp messages were in the nature of unverified information/ HOS and hence cannot be regarded as UPSI and thus he did not act as insider in the instant case. However, from the conclusions arrived in the preparas 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 10, 2016 at the time the Noticee forwarded the messages for the reasons mentioned above. Further from the admitted fact that Noticee had forwarded the said message to the group by name "Market Info", it is imperative that the Noticee was in possession of UPSI even though it was only few hours before the said UPSI became public and consequently he is considered as insider with respect to the UPSI he possessed.

45. Further with respect to the circulation of the aforesaid UPSI by the Noticee, it is contended by the Noticee that he did not trade in the shares of Bata. 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. In case of the deleted messages as in the case, the complete trail is lost. 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 Noticee, who has 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 Noticee being an insider for having the UPSI in possession on February 10, 2016 had forwarded such UPSI through WhatsApp messages to the group by name "Market info" before the UPSI was made public by the Company. In view of the same there is no reasonable doubt in concluding the Noticee as an insider under the provisions of Regulation 2 (1) (g) of SEBI (PIT) Regulations who was in possession of UPSI and further communicated the same to Shruti Vora.

46. 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.

47. In view of the all the above, I conclude that the Noticee is 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 Noticee is liable for monetary penalty under Section 15G of the SEBI Act, 1992?

48. 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.

49. It is established from the findings that the Noticee being an insider had communicated the UPSI relating to Bata Ltd., to other person 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 Noticee is 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 Noticee taking into consideration the factors mentioned in Section 15J of SEBI Act?

50. 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.”

51. 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 when the messages are deleted 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 investors and the activity of such kind 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

52. 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 the Noticee viz., Mr. Aditya Omprakash Gaggar 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.

53. The Noticee shall remit / pay the said amount of penalty within 45 days of the receipt of this order either by way of Demand Draft in favour of “SEBI - Penalties Remittable to Government of India”, payable at Mumbai, OR through online payment facility available on the SEBI website www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT → Orders → Orders of AO → PAY NOW

54. The Noticee shall forward said Demand Draft 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 Noticee 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

55. In the event of failure to pay the said amount of penalty within the timelines as mentioned in Paras 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.

56. 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 Mr. Aditya Omprakash Gaggar (Noticee) and also to the Securities and Exchange Board of India, Mumbai.

Date: June 16, 2020
Place: Mumbai

B J Dilip
Adjudicating Officer