

**BEFORE THE ADJUDICATING OFFICER**  
**SECURITIES AND EXCHANGE BOARD OF INDIA**

**[ADJUDICATION ORDER NO. Order/SR/PP/2020-21/7500/3]**

**UNDER SECTION 15-I OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 5 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 1995 AND UNDER SECTION 23-I OF THE SECURITIES CONTRACTS (REGULATION) ACT, 1956 READ WITH RULE 5 OF THE SECURITIES CONTRACTS (REGULATIONS) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES BY ADJUDICATING OFFICER) RULES, 2005**

**In respect of**

**Abhay Javlekar**

(Address: Satkar, 3/15, Kisan Road,  
Near Police Line, Malad West,  
Mumbai- 400064)

**(PAN: ACVPJ4679B)**

**In the matter of Incap Financial Services Limited**

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**BACKGROUND THE CASE IN BRIEF**

1. Securities and Exchange Board of India (in short **SEBI**) received a complaint from India Infoline Limited alleging that an individual (Prem Agarwal) had circulated a message through short messaging service regarding trading in the scrip of Incap Financial Services Limited (hereinafter referred to as "**Incap**"/ "the **Company**") on January 11, 2011, stating: "BSE call buy INCFS (530887) at CMP TRGT 35/50 within a week news (splited), going to declare dividend within week so hurry up don't miss profit [www.indiainfoline.com](http://www.indiainfoline.com)".

2. On the basis of the aforementioned complaint, a department of SEBI (in short **OD**) appointed Investigating Authority (in short **IA**) and undertook an investigation in the matter for a period from December 1, 2010 to February 23, 2011 (hereinafter referred to as **Investigation period / IP**) to ascertain whether there was any violation of (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 (in short **PFUTP Regulations**), the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 1997 (in short **SAST Regulations**) and the SEBI (Prohibition of Insider Trading) Regulations, 1992 (in short **PIT Regulations**). The shares of Incap were listed at Bombay Stock Exchange Limited during IP. IA observed non-compliances with regard to SEBI Act, SCRA, PFUTP Regulations, SAST Regulations and PIT Regulations by Abhay Javlekar (hereinafter referred to as **Noticee**) and others.
3. In view of the said investigation and observations by IA regarding Noticee, OD initiated adjudication proceedings against the Noticee to inquire into and adjudge under sections 15A(b), 15H and 15HA of the SEBI Act and section 23H of the SCRA the alleged violations of provisions of regulations 7(1), 7(1A), 10 and 11(1) of SAST Regulations, regulation 13(1) and 13(3) of PIT Regulation, sections 12A(a), (b), (c) of the SEBI Act r/w regulations 3(a), (b), (c) & (d) and regulation 4(1), 4(2)(a) & (g) of PFUTP Regulations and section 16 of the SCRA r/w SEBI Notification G.S.R.219(E) dated March 2, 2000, sections 13 & 18 r/w section 2(i) of SCRA.

#### **APPOINTMENT OF ADJUDICATING OFFICER**

4. SEBI appointed Shri Nagendraa Parakh as the Adjudicating Officer (in short **AO**) and his appointment was communicated vide communique dated April 27, 2016

under section 15-I of the SEBI Act read with (r/w) rule 3 of the Securities and Exchange Board of India (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 1995 (in short **AO Rules, 1995**) and also section 23-I of SCRA r/w rule 3 of Securities Contracts (Regulation) (Procedure for Holding Inquiry and Imposing Penalties by Adjudicating Officer) Rules, 2005 (in short **AO Rules, 2005**) to inquire into and adjudge under section 15A(b), 15H, 15HA of the SEBI Act the alleged violations of regulation 7(1), 7(1A), 10, 11(1) of SAST Regulations, regulation 13(1) & 13(3) of PIT Regulations, sections 12A(a), (b), (c) of SEBI Act r/w regulation 3(a), (b), (c) & (d) and 4(1), 4(2)(a)&(g) of PFUTP Regulations and under section 23H of SCRA, the alleged violations of section 16 of SCRA r/w SEBI Notification G.S.R.219(E) dated March 2, 2000, sections 13 & 18 r/w section 2(i) of SCRA by the Noticee. Subsequently, the matter was transferred and Ms. Sangeeta Rathod (undersigned) was appointed an AO in this matter. The appointment of undersigned as AO was communicated vide order dated July 10, 2017.

### **SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING**

5. Show cause notice EAD/AO-NP/VVK/14000/1/2016 dated May 13, 2016 (hereinafter referred to as **SCN**) was issued by previous AO to the Noticee under rule 4 of the AO Rules, 1995 and rule 4 of AO Rules, 2005 to show cause as to why an inquiry should not be held against him and why penalty under sections 15A(b), 15H & 15HA of SEBI Act and section 23H of SCRA be not imposed on him for the violations alleged and specified in the said SCN. The investigation Report of the IA which had description of alleged violations by the Noticee was sent to the Noticee as part of the SCN, and following was alleged in the SCN:

i) Noticee has triggered open offer obligations on 30<sup>th</sup> September, 2010 under Regulation 10 and on 16<sup>th</sup> October, 2010 under Regulation 11(1) of the SEBI SAST Regulations. It is alleged that the combined shareholding of Dharmendra Bhojak, Arvind Babulal Goyal and Noticee being PACs, crossed 15% of issued capital of Incap on 30<sup>th</sup> September, 2010 and further 5% twice, once on 16<sup>th</sup> October, 2010 and once along with Pooja Goyal and Ramesh Dwarkades Daga on 6<sup>th</sup> December, 2010, of shares of Incap, which allegedly attracted the provision of regulation 10 & 11(1) of the SAST Regulations, 1997, however, no open offer was given under the SAST Regulations, 1997. Therefore, Noticee being PAC, have failed to comply with the provisions of regulations 10 & 11(1) of the SAST Regulations, 1997. Further, it is alleged that Noticee has failed to make disclosure for change in shareholding as PAC as required under regulation 7(1) & 7(1A) of SAST Regulations, 1997. It is also alleged that Noticee has failed to file disclosures with the company under regulation 13(1) and 13(3) of SEBI PIT Regulations, 1992 for change in shareholding.

ii) Noticee has indulged in unfair trade practice by using the accounts of other suspected entities for reversal, synchronised trades and self-trades resulting in creation of artificial volume, thereby prima facie, acted in violation of section 12A(a), (b), (c) of SEBI Act r/w Regulation 3(a), (b), (c) & (d) and Regulation 4(1), 4(2)(a) & (g) of PFUTP Regulations, 2003.

iii) Noticee has acquired 150000 shares in off market which was not in conformity with the provisions of Section 2(i) of SCRA, therefore, prima facie, acted in violation of Section 16 of SCRA read with SEBI Notification G.S.R. 219 (E) dated March 2, 2000 and Section 13 and 18 of SCRA read with Section 2(i) of SCRA.

iv) Details of violations are given below

| <i>Alleged violation of provisions of law</i>                                                                                                                                | <i>Charging Sections under Act</i>                        |
|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------|
| Regulation 7(1) & 7(1A) of SEBI SAST regulations, 1997<br>Regulation 10 & 11(1) of SEBI SAST Regulations, 1997                                                               | Sec.15A(b) of SEBI Act, 1992<br>Sec.15H of SEBI Act, 1992 |
| Section 12A(a), (b), (c) of SEBI Act r/w Regulation 3(a), (b), (c) & (d) and Reg.4(1), 4(2)(a) & (g) of SEBI (PFUTP) Regulations, 2003                                       | Sec.15HA of SEBI Act, 1992                                |
| Section 16 of SCR Act, 1956 read with SEBI Notification G.S.R.219(E) dated March 2, 2000, Section 13 and Section 18 of SCR Act, 1956 read with Section 2(i) of SCR Act, 1956 | Sec.23H of SCR Act, 1956                                  |
| Regulation 13(1) & 13(3) of PIT Regulation, 1992 read with Regulation 12(2) of the PIT Regulation, 2015                                                                      | Sec. 15A(b) of SEBI Act, 1992                             |

7. The SCN was sent to the Noticee through the speed post acknowledgment due (SPAD). Proof of service of the SCN upon the Noticee is available on record.

Noticee vide his letter dated June 11, 2016 and September 12, 2016 sought certain documents.

8. Vide hearing Notice dated October 18, 2016 an opportunity of personal hearing scheduled on November 08, 2016 was granted to the Noticee. Authorized representative (in short **AR**) of the Noticee appeared for hearing on the specified date. The Noticee has requested inspection of documents in the matter. A letter dated November 08, 2016 was handed over to the AR with respect to the inspection of documents which was to be availed by him on or before November 23, 2016. The Noticee was further advised to file reply to the SCN within two week's post inspection. Vide letter dated December 13, 2016, Noticee was advised to file his reply on or before January 07, 2017 and an opportunity of personal hearing was granted to Noticee scheduled on January 11, 2017. Vide letter dated January 09, 2017 Noticee had requested one month's time to submit reply. Vide letter dated April 06, 2017, Noticee filed his reply to the SCN, given in brief as under-

1. *A separate proceeding under section 11B of SEBI Act have also been initiated against me and I have received SCN dated February 29, 2016 for the same alleged violation.*
2. *The SCN issued to me is in complete contradiction to the findings contained in BSE report and also investigation report of SEBI.*
3. *The investigation carried out concludes that trading in my account has been carried out by Mr.Arvind, one of the promoter/ director of Incap, which has been accepted by Mr Arvind himself in his submissions. I state and submit to SEBI that Mr. Arvind was an acquaintance for past many years. Prior to the period of investigation, he approached me to open trading accounts with Yoke Securities Ltd. and in turn he promised to pay me a sum of Rs.10,000/- p.m. I was in need of money at that time, and therefore accepted his proposal. Thus on his insistence, I opened trading accounts with the brokers in my name wherein email id and telephone number of Mr. Arvind was provided. The KYC form was filled in by Mr Arvind only and I only signed the same to facilitate trading by him in my account with the brokers.*

4. *Further Mr Arvind also advised me to open a bank account with Indusind bank. Mr Arvind has kept the cheque book in his custody and the account was operated by him only for the purpose of making and receiving various payments to and from the trading accounts used by him in my name.*
5. *At para number 21 of the investigation report, Mr Arvind has himself accepted in his submission made to SEBI that he was the one operating my trading account, and that all trading in my account was done by him only. Further after complete investigation in the matter, SEBI has also reached to the same conclusion at Para 12 of the Investigation Report wherein it has been mentioned that “Arvind Babulal Goyal played key role in creation of artificial volume”. However, despite the investigation concluding that Mr Arvind is the main culprit, I have been issued the said SCN for alleged violation of PFUTP Regulations, SAST Regulations, 1997, SEBI Act and other alleged violations.*
6. *Further it is stated the Mr. Arvind has made payment for the said transactions in cash, and there are no dues pending in this respect. Hence, I deny that I have violated Section 2(i) of SCRA read with SEBI notification G.S.R. 219 € dated March 2, 2000 issued under Section 16 and section 13 r/w section 18 of the Securities Contracts (Regulation) Act, 1956.*
7. *The synchronized trading is only 1.88% of the total market volume, the reversal trades are only 1.44%, whereas the self trades are 0.93% of the market volume. These miniscule percentages are very insignificant to have any effect on price and volume which would lead to creation of artificial volume or price manipulation.*
8. *As observed from Annexure 4 of the Sec 11 SCN, (Synchronised Trades) from 2.12.2010 to 4.01.2011, the total number of synchronised trades attributed to me are only 19. Copy of the said annexure 4 is annexed hereto at Annexure 6. It is stated that 19 trades, out of a total of 2,127 trades carried out during the period of investigation amounts to a very miniscule percentage of 0.89%. I submit that same would barely have any effect on the market trading and creation of artificial volume. Even the said paragraph of the IR itself acknowledges this fact in respect of trading in my account, and states that “the volume of shares traded in this manner is not huge”.*
9. *Despite the fact that SEBI has traced the origin of the above message to Mr. Prem, the same has been very conveniently ignored thereafter. Whereas it has been alleged in the SCN that there was a spurt in the trading in the scrip of Incap upon such SMS circulation, no action has been taken or proposed against the individual who started the SMS.*
10. *With regard to para 2 of the IR, in so far as the observation in the BSE Report that Abhay Javlekar was the top client on net sales basis post SMS, and also counter party to his own trades on number of occasions, it is submitted that*

*trading in my account has been carried by Mr. Arvind, and the same has concluded by IR.*

11. *With regard to para 3 of the said SCN, it is hereby reiterated that having a common objective of taking over the company is a pre-condition for levying alleged violation of SAST Regulations, it is reiterated that I, did not have any common objective or purpose of taking over of Incap, or having control over Incap along with Mr Arvind and Mr Dharmendra. We do not fall under the definition of of PACs as stipulated under Regulation 2 of the SAST Regulations, 1997. Therefore, the question of being a PAC and violating the provisions of SAST Regulations does not arise. Hence, I vehemently deny that I have violated Regulations 7(1)&7(1A) and 10&11(1) of the SEBI (SAST) Regulations, 1997. As regards alleged violation of Regulation 10 carried out by me, I submit that I did not have any intention to takeover the company and the violation of Regulation 10 of SAST Regulations, if any is unintentional and technical in nature and no penalty may be levied for the same.*
9. Previous AO vide hearing notice dated March 30, 2017 gave an opportunity of personal hearing to the Noticee scheduled on April 10, 2017. The AR appeared for personal hearing on April 10, 2017 and stated that the Noticee has filed his reply to SCN on April 07, 2017. However, the reply of the Noticee had not been received by AO till the date of scheduled hearing. Thus it was recorded in the hearing minutes that the next date of hearing would be intimated after receipt of his reply to the SCN. Subsequent to the appointment of the undersigned as AO, the Noticee was informed about the change of AO vide letter dated November 20, 2017 and an opportunity of hearing before the undersigned was granted, scheduled on December 12, 2017. AR of the Noticee vide email dated December 11, 2017 requested for rescheduling the hearing. Thereafter, vide hearing notice dated January 31, 2020 Noticee was advised to file additional submissions, if any, by February 07, 2020 and an opportunity of hearing was granted to the Noticee scheduled on February 12, 2020. This hearing notice sent by SPAD had returned undelivered with comment "Insufficient Address"/ "Not Known". The same was

forwarded to the AR vide email dated February 12, 2020. AR vide email dated February 13, 2020 requested any other date for hearing. Vide letter dated February 13, 2020 final opportunity of hearing was granted to Noticee scheduled on February 26, 2020. AR attended the said hearing scheduled on February 26, 2020 and reiterated the submissions made in the Noticee's reply dated April 06, 2017. During the course of hearing, AR also submitted a copy of the order of Whole Time Member of SEBI, dated October 23, 2019 in the matter of Incap Financial Services Limited, which was passed in respect of many entities including the Noticee.

10. After taking into account, the allegations levelled in the SCN, replies received and material available on record, I hereby proceed to decide the case on merit.

### **CONSIDERATION OF ISSUES, EVIDENCES AND FINDINGS**

11. I have carefully perused the charges levelled against the Noticee in the SCN and the material available on record. In the instant matter, the following issues arise for consideration and determination:-

**Issue a: Whether the Noticee has violated the provisions of regulations 7(1), 7(1A), 10 and 11(1) of SAST Regulations, regulation 13(1) & 13(3) of PIT Regulations, section 12A(a), (b), (c) of SEBI Act r/w regulation 3(a), (b), (c) & (d) and 4(1), 4(2)(a) & (g) of PFUTP Regulations and section 16 of SCRA r/w Notification G.S.R.219(E) dated March 2, 2000, and sections 13 & 18 of SCRA r/w section 2(i) of SCRA?**

**Issue b: If yes to issue a then, do the violations by Noticee attract monetary penalty under sections 15A(b), 15H & 15HA of SEBI Act and section 23H of SCRA for the alleged violations by the Noticee?**

**Issue c: If yes to issue b then, what is the quantum of monetary penalty to be imposed upon the Noticee, taking into consideration the factors mentioned in section 15J of the SEBI Act r/w rule 5(2) of the AO Rules, 1995 and section 23J of the SCRA r/w rule 5(2) of the AO Rules, 2005?**



12. Before proceeding further, I would like to refer to the relevant provisions:-

### **SAST Regulations**

#### *Disclosures of Shareholding and Control in a Listed Company*

##### *Acquisition of 5% and more shares of a company*

7.(1) Any acquirer, who acquires shares or voting rights which (taken together with shares or voting rights, if any, held by him) would entitle him to more than five per cent or ten per cent or fourteen percent or fifty four per cent or seventy four per cent shares or voting rights in a company, in any manner whatsoever, shall disclose at every stage the aggregate of his shareholding or voting rights in that company to the company and to the stock exchanges where shares of the target company are listed.

(1A) Any acquirer who has acquired shares or voting rights of a company under sub-regulation (1) of regulation 11, shall disclose purchase or sale aggregating two percent. or more of the share capital of the target company to the target company, and the stock exchanges where shares of the target company are listed within two days of such purchase or sale along with the aggregate shareholding after such acquisition or sale.

##### **Acquisition of fifteen or more of the shares or voting rights of any company.**

10. No acquirer shall acquire shares or voting rights which (taken together with shares or voting rights, if any, held by him or by persons acting in concert with him), entitle such acquirer to exercise fifteen percent or more of the voting rights in a company, unless such acquirer makes a public announcement to acquire shares of such company in accordance with the Regulations.

#### **Consolidation of holdings**

11. (1) No acquirer who, together with persons acting in concert with him, has acquired, in accordance with the provisions of law, 15 per cent or more but less than fifty five per cent. (55%) of the shares or voting rights in a company, shall acquire, either by himself or through or with persons acting in concert with him, additional shares or voting rights entitling him to exercise more than 5% of the voting rights, in any financial year ending on 31st March, unless such acquirer makes a public announcement to acquire shares in accordance with the Regulations.

(2) No acquirer, who together with persons acting in concert with him holds, fifty five per cent. (55%) or more but less than seventy five per cent. (75%) of the of the shares or voting rights in a target company, shall acquire either by himself or through persons acting in concert with him any additional shares or voting rights therein, unless he makes a public announcement to acquire shares in accordance with these Regulations:

Provided that in a case where the target company had obtained listing of its shares by making an offer of at least ten per cent. (10%) of issue size to the public in terms of clause (b) of sub-rule (2) of rule 19 of the Securities Contracts (Regulation) Rules, 1957, or in terms of any relaxation granted from strict enforcement of the said rule, this sub-regulation shall apply as if for the words and figures 'seventy five per cent. (75%)', the words and figures 'ninety per cent. (90%)' were substituted.

(2A) Where an acquirer who (together with persons acting in concert with him) holds fifty five per cent. (55%) or more but less than seventy five per cent. (75%) of the shares or voting rights in a target company, is desirous of consolidating his holding while ensuring that the public shareholding in the target company does not fall below the minimum level permitted by the Listing Agreement, he may do so only by making a public announcement in accordance with these regulations:

Provided that in a case where the target company had obtained listing of its shares by making an offer of at least ten per cent. (10%) of issue size to the public in terms of clause (b) of sub-rule (2) of rule 19 of the Securities Contracts (Regulation) Rules, 1957, or in terms of any relaxation granted from strict enforcement of the said rule, this sub-regulation shall apply as if for the words and figures 'seventy five per cent. (75%)', the words and figures 'ninety per cent. (90%)' were substituted.

(3) Notwithstanding anything contained in Regulations 10, 11 and 12, in case of disinvestment of a Public Sector Undertaking, an acquirer who together with persons acting in concert with him, has made a public announcement, shall not be required to make another public announcement at the subsequent stage of further acquisition of shares or voting rights or control of the Public Sector Undertaking provided:-

(i) both the acquirer and the seller are the same at all the stages of acquisition, and

(ii) disclosures regarding all the stages of acquisition, if any, are made in the letter of offer issued in terms of Regulation 18 and in the first public announcement.

Explanation:- For the purposes of Regulation 10 and Regulation 11, acquisition shall mean and include,-

(a) direct acquisition in a listed company to which the Regulations apply;

(b) indirect acquisition by virtue of acquisition of companies, whether listed or unlisted, whether in India or abroad.

## **PIT Regulations**

### **Disclosure of interest or holding in listed companies by certain persons – Initial Disclosure**

**13.** (1) Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company in Form A, the number of shares or voting rights held by such person, on becoming such holder, within 2 working days of :—

(a) the receipt of intimation of allotment of shares; or

(b) the acquisition of shares or voting rights, as the case may be.

### **Continual disclosure**

(3) Any person who holds more than 5% shares or voting rights in any listed company shall disclose to the company in Form C the number of shares or voting rights held and change in shareholding or voting rights, even if such change results in shareholding falling below 5%, if there has been change in such holdings from the last disclosure made under sub-regulation (1) or under this sub-regulation; and such change exceeds 2% of total shareholding or voting rights in the company.

## **SEBI Act**

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

12A. No person shall directly or indirectly—

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

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

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

### **PFUTP Regulations**

#### **3. Prohibition of certain dealings in securities**

No person shall directly or indirectly—

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

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

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

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

#### **4. Prohibition of manipulative, fraudulent and unfair trade practices**

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

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

(a) indulging in an act which creates false or misleading appearance of trading in the securities market;

(g) entering into a transaction in securities without intention of performing it or without intention of change of ownership of such security;

### **SCRA**

#### **Definitions.**

2. In this Act, unless the context otherwise requires-

(i) “spot delivery contract” means a contract which provides for,—

(a) actual delivery of securities and the payment of a price therefore either on the same day as the date of the contract or on the next day, the actual period taken for the despatch of the securities or the remittance of money therefore through the post being excluded from the computation of the period aforesaid if the parties to the contract do not reside in the same town or locality;

(b) transfer of the securities by the depository from the account of a beneficial owner to the account of another beneficial owner when such securities are dealt with by a depository;

**Contracts in notified areas illegal in certain circumstances.**

13. If the Central Government is satisfied, having regard to the nature or the volume of transactions in securities in any State or States or area that it is necessary so to do, it may, by notification in the Official Gazette, declare this section to apply to such State or States or area, and thereupon every contract in such State or States or area which is entered into after the date of the notification otherwise than between the members of a recognised stock exchange or recognised stock exchanges in such State or States or area or through or with such member shall be illegal:

Provided that any contract entered into between members of two or more recognized stock exchanges in such State or States or area, shall—

(i) be subject to such terms and conditions as may be stipulated by the respective stock exchanges with prior approval of Securities and Exchange Board of India;

(ii) require prior permission from the respective stock exchanges if so stipulated by the stock exchanges with prior approval of Securities and Exchange Board of India.

**Power to prohibit contracts in certain cases.**

16. (1) If the Central Government is of opinion that it is necessary to prevent undesirable speculation in specified securities in any State or area, it may, by notification in the Official Gazette, declare that no person in the State or area specified in the notification shall, save with the permission of the Central Government, enter into any contract for the sale or purchase of any security specified in the notification except to the extent and in the manner, if any, specified therein.

(2) All contracts in contravention of the provisions of sub-section (1) entered into after the date of notification issued thereunder shall be illegal.

**Exclusion of spot delivery contracts from sections 13, 14, 15 and 17.**

18. (1) Nothing contained in sections 13, 14, 15 and 17 shall apply to spot delivery contracts.

(2) Notwithstanding anything contained in sub-section (1), if the Central Government is of opinion that in the interest of the trade or in the public interest it is expedient to regulate and control the business of dealing in spot delivery contracts also in any State or area (whether section 13 has been declared to apply to that State or area or not), it may, by notification in the Official Gazette, declare that the provisions of section 17 shall also apply to such State or area in respect of spot delivery contracts generally or in respect of spot delivery contracts for the sale or purchase of such securities as may be specified in the notification, and may also specify the manner in which, and the extent to which, the provisions of that section shall so apply.

13. On perusal of the material available on record and giving regard to the facts and circumstances of the case, I hereby record my findings as under.

**Issue a: Whether the Noticee has violated the provisions of regulations 7(1), 7(1A), 10 and 11(1) of SAST Regulations, regulation 13(1) & 13(3) of PIT Regulations,**

**section 12A(a), (b), (c) of SEBI Act r/w regulation 3(a), (b), (c) & (d) and 4(1), 4(2)(a) & (g) of PFUTP Regulations and section 16 of SCRA r/w Notification G.S.R.219(E) dated March 2, 2000, and sections 13 & 18 of SCRA r/w section 2(i) of SCRA?**

Open offer violations

a) As per SCN, an allegation against the Noticee is that the Noticee was person acting-in-concert (PAC) with other entities, Noticee being PAC allegedly triggered open offer obligations on September 30<sup>th</sup>, 2010 under regulation 10 of SAST Regulations and on October 16<sup>th</sup>, 2010 & December 06<sup>th</sup> 2010 under regulation 11(1) of the SAST Regulations, however, no open offer was made under the SAST Regulations. Therefore, Noticee being PAC, has failed to comply with the provisions of regulations 10 and 11(1) of the SAST Regulations. As regards, the said allegation, Noticee has contended that, *"We do not fall under the definition of of PACs as stipulated under Regulation 2 of the SAST Regulations, 1997. Therefore, the question of being a PAC and violating the provisions of SAST Regulations does not arise. Hence, I vehemently deny that I have violated Regulations 7(1)&7(1A) and 10&11(1) of the SEBI (SAST) Regulations, 1997. As regards alleged violation of Regulation 10 carried out by me, I submit that I did not have any intention to takeover the company and the violation of Regulation 10 of SAST Regulations, if any is unintentional and technical in nature and no penalty may be levied for the same"* in the aforementioned reply to the SCN filed by Noticee. Upon perusal of the material on record, i.e. Investigation Report (in short IR) and other material I note that there is details of connection between Noticee and others who were alleged to be PAC in the table reproduced below:

| Sr. no. | Name | Observations |
|---------|------|--------------|
|         |      |              |

|   |                   |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
|---|-------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| 1 | Abhay Javlekar    | Cell no 9322229797 belongs to Arvind Goyal. The same number was used to place orders on behalf of Abhay Javlekar, as confirmed by the stock broker, yoke securities. As per kyc, agoyal143@yahoo.com was mail id for confirmation of contract notes with yoke securities, religare securities limited. This id also belonged to Arvind Goyal. Off-market transfers with chandrakanta satish mandowara, dharmendra bhojak, chandra shekhar sunil, manjulaben patel, dharmesh visariya, ramesh daga. Acknowledged knowing arvind goyal, pooja goyal, dharmendra bhojak, ramesh daga and chandrakanta satish mandowara. |
| 2 | Arvind Goyal      | Director of the company. Pooja Goyal is his spouse. Acknowledged knowing abhay javlekar and had given his email id for incorporating in kyc documents. His cell no 9322229797 was used to place orders in abhay javlekar's account.                                                                                                                                                                                                                                                                                                                                                                                  |
| 3 | Dharmendra Bhojak | Off-market transfer with abhay javlekar. Acknowledged by noticee no. 1 to be a friend and was also an employee of arvind goyal. As per kyc, e-mail ids i.e. Agoyal143@yahoo.com and csbhatt111@zapak.com for confirmation of contract notes belonged to arvind goyal.                                                                                                                                                                                                                                                                                                                                                |
| 4 | Pooja Goyal       | Spouse of arvind goyal (director). as per kyc cell no 9322229797 and e-mail id for confirmation of contract notes belonged to arvind goyal.                                                                                                                                                                                                                                                                                                                                                                                                                                                                          |
| 5 | Ramesh Daga       | Off-market transfers with abhay javlekar, dhaval shah, dharmesh visariya and ishwari dharmesh visariya. same e-mail as that of arvind goyal at kyc of guinness securities i.e. csbhatt111@zapak.com. acknowledged knowing arvind goyal.                                                                                                                                                                                                                                                                                                                                                                              |

(i) It is an admitted position that Noticee had connection with other alleged PACs, also that Noticee opened a bank account with IndusInd Bank to facilitate trading by one Arvind Goyal and had provided him with DIS and signed cheques for the purpose of trading in the scrip of Incap. Further, Noticee's KYC with Yoke Securities, Religare Securities Limited, has e-mail id of Arvind Goyal i.e. [agoyal143@yahoo.com](mailto:agoyal143@yahoo.com). Also that, Noticee was introduced by Arvind Goyal to Yoke Securities, as per Yoke's letter dated January 6, 2014. Also that Arvind Goyal placed orders in the trading account of Noticee through his mobile nos. 9322229797 (whereas Noticee's no. was 8080729797).

(ii) It is further noted from the material on record including the IR that the combined shareholding of Noticee, Arvind Goyal and Dharmendra Bhojak, had crossed 15% on September 30, 2010 and a further 5% twice i.e. on October 10, 2010 (Noticee, Arvind Goyal and Dharmendra Bhojak) and December 6, 2010 (Noticee, Arvind Goyal and Dharmendra Bhojak along with Pooja Goyal and Ramesh Dwarkadas Daga). Following are details regarding shares acquired,

| DATES ON WHICH ACQUISITION OCCURRED |            |       |        |               |                    |
|-------------------------------------|------------|-------|--------|---------------|--------------------|
| FIRST HOLDER NAME                   | DATE       | DEBIT | CREDIT | TOTAL HOLDING | % OF SHARE CAPITAL |
| ARVIND GOYAL                        | 30.09.2010 | 0     | 170000 | 170000        | 4.46               |
| DHARMENDRA BHOJAK                   | 30.09.2010 | 0     | 175000 | 345000        | 9.05               |
|                                     | 30.09.2010 | 0     | 175000 | 520000        | 13.63              |
| ABHAY JAVLEKAR                      | 30.09.2010 | 0     | 150000 | 670000        | 17.57              |
| ABHAY JAVLEKAR                      | 5.10.2010  | 0     | 71800  | 741800        | 19.45              |
|                                     | 12.10.2010 | 0     | 98400  | 840200        | 22.03              |
|                                     | 16.10.2010 | 0     | 93700  | 933900        | 24.49              |
| DHARMENDRA BHOJAK                   | 1.12.2010  | 0     | 5448   | 939348        | 24.63              |
| ABHAY JAVLEKAR                      | 2.12.2010  | 0     | 17257  | 956605        | 25.08              |
| ABHAY JAVLEKAR                      | 3.12.2010  | 0     | 2728   | 959333        | 25.15              |
| ARVIND GOYAL                        | 3.12.2010  | 0     | 500    | 959833        | 25.17              |
| DHARMENDRA BHOJAK                   | 3.12.2010  | 0     | 10817  | 970650        | 25.45              |
| POOJA GOYAL                         | 3.12.2010  | 0     | 100    | 970750        | 25.45              |
| RAMESH DAGA                         | 3.12.2010  | 0     | 7500   | 978250        | 25.65              |
| ABHAY JAVLEKAR                      | 6.12.2010  | 0     | 223215 | 1201465       | 31.50              |

(iii) I refer to definition of PAC - as per regulation 2(1)(e) of the SAST Regulations ,  
'persons acting in concert' inter alia comprises: *"(1) persons who, for a common objective or purpose of substantial acquisition of shares or voting rights or gaining control over the target company, pursuant to an agreement or understanding (formal or informal), directly or indirectly co-operate by acquiring or agreeing to acquire shares or voting rights in the target company or control over the target company. (2) Without prejudice to the generality of this definition, the following persons will be deemed to be persons acting in concert with other persons in the same category, unless the contrary is established..."* I note from record that Noticee had admittedly opened bank account and trading account to facilitate trading by Arvind Goyal and that was in lieu of monetary compensation. These actions by Noticee ensured the ownership and custody of the funds/securities in such account with him while at the same time ensuring the concealment of the real owner of such funds/securities in the records of the Depositories, etc. since the same continued to vest with name-lending account holder i.e. Noticee. I note that thus Noticee was 'person acting in concert' with the Acquirer i.e. Arvind Goyal in terms of Regulation 2(1)(e)(1) of the SAST Regulations 1997 for acquiring shares in Incap and had the obligation of making open offer. For the aforementioned change in shareholding which attracted Regulations 10 and 11(1) of the SAST Regulations 1997, the Noticee as 'persons acting in concert' had failed to make an Open Offer thereby violating the said Regulations.

(iv) Regulation 10 of the SAST Regulations 1997, states that no acquirer shall acquire shares or voting rights which (taken together with shares or voting rights, if any, held by him or by 'persons acting in concert' with him), entitle such acquirer to exercise 15% or more of the voting rights in a company, unless such acquirer makes a public announcement to acquire shares of such company in accordance with the Regulation. Under Regulation 11(1) of the SAST Regulations 1997, any person, who together with 'persons acting in concert', already owns 15% or more shareholding in a company but



less than 55%, must make a public announcement if he intends to acquire additional shareholding of more than 5% in a company with post acquisition shareholding or voting rights not exceeding 55% in any financial year ending on March 31 unless such acquirer makes a public announcement to acquire shares in accordance with the Regulations. Record shows that the acquisitions made by Arvind Goyal along with 'persons acting in concert' with him (as reproduced below) was over the threshold limits specified under Regulation 10 (as on October 16, 2010 – Arvind Goyal along with Abhay Javlekar) and Regulation 11(1) (as on December 6, 2010 – Arvind Goyal along with Abhay Javlekar and Pooja Goyal) of the SAST Regulations.

| DATES ON WHICH ACQUISITION OCCURRED                                                                                                                                                                                                   |            |       |         |               |                    |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|------------|-------|---------|---------------|--------------------|
| FIRST HOLDER NAME                                                                                                                                                                                                                     | DATE       | DEBIT | CREDIT  | TOTAL HOLDING | % OF SHARE CAPITAL |
| ARVIND GOYAL                                                                                                                                                                                                                          | 30.09.2010 | 0     | #170000 | 170000        | 4.46               |
| ABHAY JAVLEKAR                                                                                                                                                                                                                        | 30.09.2010 | 0     | #150000 | 320000        | 8.40               |
| ABHAY JAVLEKAR                                                                                                                                                                                                                        | 5.10.2010  | 0     | 71800   | 391800        | 10.28              |
|                                                                                                                                                                                                                                       | 12.10.2010 | 0     | 98400   | 490200        | 12.86              |
|                                                                                                                                                                                                                                       | 16.10.2010 | 0     | 93700   | 583900        | 15.32              |
| ABHAY JAVLEKAR                                                                                                                                                                                                                        | 2.12.2010  | 0     | 17257   | 601157        | 15.77              |
| ABHAY JAVLEKAR                                                                                                                                                                                                                        | 3.12.2010  | 0     | 2728    | 603885        | 15.84              |
| ARVIND GOYAL                                                                                                                                                                                                                          | 3.12.2010  | 0     | 500     | 604385        | 15.86              |
| POOJA GOYAL                                                                                                                                                                                                                           | 3.12.2010  | 0     | 100     | 604485        | 15.86              |
| ABHAY JAVLEKAR                                                                                                                                                                                                                        | 6.12.2010  | 0     | 223215  | 827700        | 21.71              |
| #SHARES WERE ACQUIRED THROUGH OFF-MARKET TRANSFERS WITH SHAREHOLDERS OF THE COMPANY WHO HELD SHARES IN PHYSICAL FORM. THESE SHARES WERE CONVERTED FROM PHYSICAL TO DEMAT AND THEN SOLD OFF-MARKET TO ARVIND GOYAL AND ABHAY JAVLEKAR. |            |       |         |               |                    |

Noticee has not provided any evidentiary proof to suggest otherwise, hence in accordance with the material on record, I find that there is evidence on record to

demonstrate that Noticee had shared a common objective or purpose (with other persons/entities named in the IR) of substantial acquisition of shares or voting rights or gaining control over the Target Company i.e. Incap or in other words, was 'persons acting in concert' under Regulation 2(1)(e) of the SAST Regulations and that allegation against the Noticee for violation of provisions of regulations 10 and 11(1) of the SAST Regulations, stand established.

### Disclosure violations

b) Further, it is alleged in the SCN that Noticee has failed to make disclosure for change in shareholding as PAC as required under regulation 7(1) and 7(1A) of SAST Regulations. Following table shows the transactions for which disclosure under SAST Regulations were required to be made by Noticee being PAC.

(Table- 18A)

| Entity                                                                                                | Date       | % holding of share Capital | Disclosures required under SAST Regulation but not complied |
|-------------------------------------------------------------------------------------------------------|------------|----------------------------|-------------------------------------------------------------|
| Abhay Javlekar, Arvind Babulal Goyal & Dharmendra Harilal Bhojak                                      | 30/09/2010 | 17.57                      | SAST 7(1)                                                   |
|                                                                                                       | 12/10/2010 | 22.03                      | SAST 7(1A)                                                  |
|                                                                                                       | 16/10/2010 | 24.49                      | SAST 7(1A)                                                  |
| Abhay Javlekar, Arvind Babulal Goyal , Dharmendra Harilal Bhojak, Pooja Goyal & Ramesh Dwarkadas Daga | 09/12/2010 | 27.82                      | SAST 7(1A)                                                  |
|                                                                                                       | 09/12/2010 | 24.67                      | SAST 7(1A)                                                  |
|                                                                                                       | 14/12/2010 | 26.93                      | SAST 7(1A)                                                  |
|                                                                                                       | 21/12/2010 | 29.17                      | SAST 7(1A)                                                  |
|                                                                                                       | 27/12/2010 | 32.88                      | SAST 7(1A)                                                  |
|                                                                                                       | 03/01/2011 | 30.46                      | SAST 7(1A)                                                  |
|                                                                                                       | 04/01/2011 | 25.69                      | SAST 7(1A)                                                  |
|                                                                                                       | 05/01/2011 | 20.50                      | SAST 7(1A)                                                  |
|                                                                                                       | 06/01/2011 | 16.81                      | SAST 7(1A)                                                  |
|                                                                                                       | 07/01/2011 | 19.40                      | SAST 7(1A)                                                  |
|                                                                                                       | 12/01/2011 | 13.50                      | SAST 7(1A)                                                  |

Further, it is also alleged in the SCN that Noticee has failed to make disclosure for change in shareholding required under regulations 13(1) and 13(3) of PIT Regulations for initial and continual disclosures for change in shareholding or voting rights, regarding the following transactions

| Date       | No. of shares | Holding (%) | Regulation SAST/ PIT Triggered | Disclosures /open offer given (Yes/No) |
|------------|---------------|-------------|--------------------------------|----------------------------------------|
| 05/10/2010 | 2,21,800      | 5.81        | Yes- 13(1) PIT                 | No                                     |
| 16/10/2010 | 4,13,900      | 10.85       | Yes- 13(3) PIT                 | No                                     |
| 06/12/2010 | 6,57,100      | 17.22       | Yes- PIT13(3) & SAST 10        | No                                     |
| 03/01/2011 | 5,46,306      | 14.30       | Yes- PIT13(3)                  | No                                     |
| 07/01/2011 | 5,99,498      | 15.70       | Yes- SAST 10                   | No                                     |

The Noticee has not submitted any evidentiary proof of having made any disclosures under the SAST or PIT regulations to counter the allegations made in the SCN whereas record shows that the Noticee has not made relevant disclosures, Thus, I find that allegations levelled against the Noticee regarding failure to make disclosures under regulations 7(1) and 7(1A) of the SAST Regulations and regulations 13(1) and 13(3) of the PIT Regulations is established.

#### PFUTP violations

c) The SCN alleges that Noticee has alleged to have created artificial volume in the scrip of Incap in violation of the provisions of sections 12A(a), (b), (c) of SEBI Act r/w regulations 3(a), (b), (c) & (d) and 4(1), 4(2) (a) & (g) of PFUTP Regulations through self-trades, synchronised trades, reversal trades and off-market transactions. In this regards, Noticee has contended as follows: *"The synchronized trading is only 1.88% of the total*

*market volume, the reversal trades are only 1.44%, whereas the self trades are 0.93% of the market volume. These miniscule percentages are very insignificant to have any effect on price and volume which would lead to creation of artificial volume or price manipulation....As observed from Annexure 4 of the Sec 11 SCN, (Synchronised Trades) from 2.12.2010 to 4.01.2011, the total number of synchronised trades attributed to me are only 19. Copy of the said annexure 4 is annexed hereto at Annexure 6. It is stated that 19 trades, out of a total of 2,127 trades carried out during the period of investigation amounts to a very miniscule percentage of 0.89%. I submit that same would barely have any effect on the market trading and creation of artificial volume. Even the said paragraph of the IR itself acknowledges this fact in respect of trading in my account, and states that "the volume of shares traded in this manner is not huge".*

1. Upon perusal of documents available on record I find that the Noticee has executed 20 self-trades involving a total quantity of 31,800 shares (0.62% of the market volume) on BSE in the scrip of Incap during the investigation period. Noticee has provided no evidentiary proof of having not done the above trades, on the contrary it is an admitted position that the Noticee has carried out these trades. In this regard, I note that it is a matter of record now, that SEBI has come out with a policy on issue of self-trades dated May 16, 2017 which states that intention is a sine qua non for establishing manipulation in case of self-trades and accidental/unintentional self-trades are not covered under Regulations 4(2)(a) and 4(2)(g) of SEBI (PFUTP) Regulations, 2003 which are the specific legal provisions applicable to self-trades. I note that volume transacted in self-trades is a factor to analyze the manipulative intention of a person as per the SEBI policy dated May 16, 2017 on the issue of self-trades. If the self-trades of the Noticee is considered in that background then it would not be appropriate to hold that there was any manipulative intent on the part of the Noticee to engage in intentional self-trades as the percentage of self-traded quantity of the Noticee to that of the market trade volume on BSE is 0.93% only. Volume of self-trades (i.e. 0.93%) of the Noticee in the scrip of Incap is small

as compared to the total trading in the said scrip during trading in the said scrip during the investigation period, However, in light of the other allegations made against the Noticee regarding synchronised trades and reversal trades, analysed below, the small volume of self-trades needs to be taken into account.

2. Synchronized trades (where the buy and sell order quantity and rate were identical and orders for these transactions were placed within time gap of one minute) in the scrip of Incap during the investigation period by the Noticee contributed around 0.613% of total market volume, respectively. Details as available in record is given below:

| DETAILS OF SYNCHRONIZED TRADES FROM 2.12.2010 TO 4.01.2011 |                  |            |               |                    |                        |                                       |                                               |
|------------------------------------------------------------|------------------|------------|---------------|--------------------|------------------------|---------------------------------------|-----------------------------------------------|
| BUY CLIENT NAME                                            | SELL CLIENT NAME | SYNC. QTY. | NO. OF TRADES | SUM OF LTP % DIFF. | SUM OF LTP DIFF. (INR) | % OF CLIENT SYNC. VOL. TO MARKET VOL. | % OF CLIENT SYNC. VOL. TO CLIENT'S TOTAL VOL. |
| ABHAY JAVLEKAR                                             | ARVIND GOYAL     | 9531       | 1             | 0                  | 0                      | 0.187                                 | 1.027                                         |
| ABHAY JAVLEKAR                                             | POOJA GOYAL      | 1000       | 1             | -1.02              | -0.3                   | 0.02                                  | 0.108                                         |
| ARVIND GOYAL                                               | ABHAY JAVLEKAR   | 5737       | 5             | 0.32               | 0.1                    | 0.113                                 | 25.735                                        |
| DHAVAL SHAH                                                | ABHAY JAVLEKAR   | 10000      | 1             | 1.47               | 0.45                   | 0.195                                 | 5.407                                         |
| POOJA GOYAL                                                | ABHAY JAVLEKAR   | 5000       | 2             | 2.04               | 0.55                   | 0.098                                 | 3.716                                         |

Noticee's contention that the volume percentage of synchronised trades was only 1.44% vis a vis total market volume is not acceptable to me, in light of the allegations regarding self-trades and reversal trade volumes. Noticee has provided no evidentiary proof of having not done the above trades, on the contrary it is an admitted position that the Noticee has carried out these trades.

3. Reversal Trades by Noticee contributed around 1.38% of market volume. Details of the same available on record are given below:

| <b>TABLE XII: DETAILS OF REVERSAL TRADES</b> |                    |                                                |                                 |                               |                                       |
|----------------------------------------------|--------------------|------------------------------------------------|---------------------------------|-------------------------------|---------------------------------------|
| <b>CLIENT NAME</b>                           | <b>CLIENT NAME</b> | <b>% OF REVERSAL QUANTITY TO MARKET VOLUME</b> | <b>SUM OF REVERSAL QUANTITY</b> | <b>NO. OF REVERSAL TRADES</b> | <b>NO. OF DAYS OF REVERSAL TRADES</b> |
| ARVIND GOYAL                                 | ABHAY JAVLEKAR     | 0.06                                           | 3,000                           | 6                             | 1                                     |
| ABHAY JAVLEKAR                               | POOJA GOYAL        | 0.49                                           | 25,000                          | 15                            | 3                                     |
| ABHAY JAVLEKAR                               | DHARMENDRA BHOJAK  | 0.58                                           | 29,735                          | 34                            | 4                                     |
| ABHAY JAVLEKAR                               | RAMESH DAGA        | 0.24                                           | 12,664                          | 9                             | 2                                     |
| <b>TOTAL</b>                                 |                    | <b>1.38</b>                                    | <b>70,399</b>                   | <b>64</b>                     | <b>10</b>                             |

Reversal transactions were also noticed in trades of Noticee with certain other suspected entities who had transferred the shares in off-market transactions and the same were bought back from the same entities in market transactions through the exchange mechanism. Such trades were about 1.44% of market volume, as shown below:

| <b>DETAILS OF OFF-MARKET TRANSFERS BETWEEN THE NOTICEES AND SUSPECTED ENTITIES</b> |                               |                      |                         |                                      |                      |                         |
|------------------------------------------------------------------------------------|-------------------------------|----------------------|-------------------------|--------------------------------------|----------------------|-------------------------|
| <b>OFF MARKET TRANSFER BY</b>                                                      | <b>OFF MARKET TRANSFER TO</b> | <b>NO. OF SHARES</b> | <b>% TO MARKET VOL.</b> | <b>BOUGHT IN ON MARKET BOUGHT BY</b> | <b>NO. OF SHARES</b> | <b>% TO MARKET VOL.</b> |
| ABHAY JAVLEKAR                                                                     | MANJULABEN PATEL              | 95,000               | 1.86                    | ABHAY JAVLEKAR                       | 15,000               | 0.30                    |
|                                                                                    | DHARMESH VISARIYA             | 58,000               | 1.14                    | ABHAY JAVLEKAR                       | 58,000               | 1.14                    |
| <b>TOTAL</b>                                                                       |                               | <b>1,53,000</b>      | <b>3.00</b>             | <b>TOTAL</b>                         | <b>73,000</b>        | <b>1.44</b>             |

Noticee has provided no evidentiary proof of having not done the above trades, on the contrary it is an admitted position that the Noticee has carried out these trades.

Owing to the material available on record and admitted position by Noticee the allegation in the SCN that Noticee indulged into and created false appearance of trading in the scrip of Incap and manipulated the trading volumes through the following synchronised trades, self-trades and reversal of trades, as detailed in the above paras, in violation of provisions of regulations 3(a), (b), (c) & (d) and 4(1), 4(2) (a) & (g) of PFUTP Regulations thus stand established.

#### SCRA violations

d)It is alleged that Noticee has acquired 1,50,000 shares in off market transactions In this regard, the Noticee has contended that *Mr. Arvind has made payment for the said transactions in cash, and there are no dues pending in this respect. Hence, I deny that I have violated Section 2(i) of SCRA read with SEBI notification G.S.R. 219 dated March 2, 2000 issued under Section 16 and section 13 r/w section 18 of the Securities Contracts (Regulation) Act, 1956.* However, Noticee has failed to submit the documentary proof of the payment made or receipt of consideration by counterparty. As per material on record and the admitted position of the Noticee of having entered into off market transactions, the alleged violation of provisions of section 16 of SCRA r/w Notification G.S.R.219(E) dated March 2, 2000, sections 13 & 18 of SCRA r/w section 2(i) of SCRA, thus stand established.

**15. Issue b: if yes to issue a then, do the violations on the part of the Noticee attract any monetary penalty under sections 15A(b), 15H & 15HA of SEBI Act and section 23H of SCRA for the alleged violations by the Noticee?**

In light of the analysis regarding various allegations in terms of material available on record, it has been established that Noticee has violated provisions of regulations 7(1), 7(1A), 10 and 11(1) of SAST Regulations, regulation 13(1) & 13(3) of PIT Regulations, section 12A(a), (b), (c) of SEBI Act r/w regulation 3(a), (b), (c) & (d) and 4(1), 4(2)(a) & (g) of PFUTP Regulations and section 16 of SCRA r/w Notification G.S.R.219(E) dated March 2, 2000, and sections 13 & 18 of SCRA r/w section 2(i) of SCRA. Therefore, after taking into account the aforesaid entire facts / circumstance of the case, and material available on record, I am of the view that the above said violations attracts imposition of monetary penalty under sections 15A(b), 15H and 15HA of SEBI Act and section 23H of SCRA. The relevant provisions in this regard is as under-

### **SEBI Act**

#### ***Penalty for failure to furnish information, return, etc.***

**15A.** *If any person, who is required under this Act or any rules or regulations made thereunder,—*

*(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty of one lakh rupees for each day during which such failure continues or one crore rupees, whichever is less;*

#### ***Penalty for non-disclosure of acquisition of shares and takeovers.***

**15H.** *If any person, who is required under this Act or any rules or regulations made thereunder, fails to,—*

*(i) disclose the aggregate of his shareholding in the body corporate before he acquires any shares of that body corporate; or*

*(ii) make a public announcement to acquire shares at a minimum price; or*

*(iii) make a public offer by sending letter of offer to the shareholders of the concerned company; or*

*(iv) make payment of consideration to the shareholders who sold their shares pursuant to letter of offer,*

*he shall be liable to a penalty twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher.*



***Penalty for fraudulent and unfair trade practices.***

**15HA.** *If any person indulges in fraudulent and unfair trade practices relating to securities, he shall be liable to a penalty twenty-five crore rupees or three times the amount of profits made out of such failure, whichever is higher.*

**SCRA**

***Penalty for contravention where no separate penalty has been provided.***

**23H.** *Whoever fails to comply with any provision of this Act, the rules or articles or bye-laws or the regulations of the recognised stock exchange or directions issued by the Securities and Exchange Board of India for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.*

**16. Issue c - If yes to issue b then what would be the quantum of monetary penalty that can be imposed upon the Noticee taking into consideration the factors mentioned in section 15J of SEBI Act and section 23J of the SCRA r/w rule 5(2) of the AO Rules, 1995 and AO Rules, 2005?**

While determining the quantum of penalty under section 15J of SEBI Act and section 23J of SCRA it is important to consider the factors stipulated in the said sections which reads as under:-

*While adjudging quantum of penalty, 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.”*

I observe, that the material available on record with regard to the disproportionate gain, I would like to draw reference to SEBI order no. WTM/GM/EFD/42/2019-20 dated October 23, 2019 for the transactions made by the Noticee in its account in the scrip of Incap, which was placed on record by Noticee, *interalia* observed that-

*“4.26 From the Impounding Order, it is observed that the wrongful gains/loss avoided by Arvind Goyal and Abhay Javlekar (through sale of shares when the price of the scrip of Incap was falling thereby avoiding loss) amounted to Rs. 5,43,88,397.34. As noted from the findings contained in the preceding paragraphs, Arvind Goyal had traded, by means of manipulative and unfair trade practices, in his own account and the account of Abhay Javlekar. In view of the aforesaid, I am inclined to direct disgorgement only against Arvind Goyal in respect of the wrongful gains/ loss avoided through his trading account and the trading account of Abhay Javlekar. From the material available on record, I also note that the aforementioned amount has not been deposited in an Escrow Account as directed vide the Impounding Order. Having regard to the same, I am of the opinion that the interest amount computed under the Impounding Order should be extended till the date of this Order.”*

Therefore taking into consideration the facts/circumstance of the case, I am of the view that the Noticee is liable for a monetary penalty as mentioned below for his failure to comply with the provisions of regulations 7(1) & 7(1A) and regulations 10 & 11(1) of SAST Regulations, regulations 13(1) & 13(3) of PIT Regulations, sections 12A(a), (b), (c) of SEBI Act r/w regulations 3(a), (b), (c) & (d) and 4(1), 4(2)(a) & (g) of PFUTP Regulations and section 16 of SCRA r/w SEBI Notification G.S.R.219(E) dated March 2, 2000, sections 13 & 18 of SCRA r/w section 2(i) of SCRA.

| <i>Charging Sections</i>      | <i>Penalty (In Rs)</i> |
|-------------------------------|------------------------|
| <i>Sec.15A(b) of SEBI Act</i> | 6 lakh                 |
| <i>Sec.15H of SEBI Act</i>    | 8 lakh                 |
| <i>Sec.15HA of SEBI Act</i>   | 3 lakh                 |

|                    |          |
|--------------------|----------|
| Sec.23H of SCR Act | 1.5 lakh |
|--------------------|----------|

## **ORDER**

17. In exercise of the powers conferred under section 15-I of SEBI Act and section 23-I of the SCRA and rule 5 of the AO Rules 1995 and AO Rules, 2005, I hereby impose a penalty of Rs 18,50,000/- (Rupees Eighteen Lakh Fifty Thousand only) under sections 15A(b), 15H and 15HA of SEBI Act and section 23H of SCRA. I am of the view that the said penalty is commensurate with the defaults committed by the Noticee.

18. The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order by one of following two modes:

- a) By using the web link  
<https://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html>
- b) By way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai

19. Details of Demand Draft made as given in format below shall be sent to "The Division Chief, EFD-DRA-III, Securities and Exchange Board of India, SEBI Bhavan II, Plot no. C- 7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai - 400 051." and also to e-mail id :- [tad@sebi.gov.in](mailto:tad@sebi.gov.in)

- a) Case Name
- b) Name of the 'Payer/Noticee'
- c) Date of Payment
- d) Amount Paid
- e) Transaction No.

- f) Bank Details in which payment is made
- g) Payment is made for (like penalties/disgorgement / recovery/ settlement amount and legal charges along with order details)

20. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, recovery proceedings may be initiated under section 28A of the SEBI Act for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.

21. Copies of this Adjudication Order are being sent to the Noticee and also to SEBI in terms of rule 6 of AO Rules, 1995 and AO Rules, 2005.

**Date: April 20, 2020**

**Place: Mumbai**

**SANGEETA RATHOD**

**ADJUDICATING OFFICER**