

**BEFORE THE ADJUDICATING OFFICER**

**SECURITIES AND EXCHANGE BOARD OF INDIA**

[ADJUDICATION ORDER NO.: Order/GR/HK/2022-23/18165-18169]

---

ORDER 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) RULES, 1995 AND SECTION 23-I OF SECURITIES CONTRACT (REGULATION) ACT, 1956 (HEREINAFTER REFERRED TO “SCRA”) AND RULE 5 OF SECURITIES CONTRACT (REGULATIONS) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 2005 (HEREINAFTER REFERRED TO “SCR ADJUDICATION RULES”)

In respect of:

Noticee No.	Noticee Name	PAN
1.	Shri Prakash C Kanugo	AFKPK2696F
2.	Dumet Wire India Pvt. Ltd	AAACD4629D
3.	Prakash Steelage Ltd.	AAACP6673K
4.	Ms. Palak Kohli Kochhar	DACPK5709R
5.	Ajcon Global Services Ltd.	AABCA1950B

**In the matter of suspected insider trading activities of certain entities  
in the scrip of Prakash Steelage Ltd.**

---

(The aforesaid entities are hereinafter individually referred to by their respective names/

Noticee numbers and collectively as “Noticees”, unless the context specifies otherwise)

---

*Adjudication Order in the matter of suspected insider trading activities of certain entities in the scrip of Prakash Steelage Ltd.*

## **BACKGROUND IN BRIEF**

1. Securities and Exchange Board of India (“**SEBI**”) conducted investigation into the trading in the scrip of Prakash Steelage Limited (hereinafter referred to as “**the company / PSL**”), to ascertain whether trading in the scrip of PSL by certain suspected entities was based on unpublished price sensitive information (“**UPSI**”) relating to financial results of PSL for the quarter ended March 31, 2016, during the period April 15, 2016 to May 30, 2016 (hereinafter referred to as “**investigation period/IP**”).
2. PSL, a Prakash Group entity, was started in the year 1996 to manufacture stainless steel welded pipes, tubes and U-tubes under one roof in India, through its Silvassa Division. PSL is one of the leader in Indian Stainless Steel Pipe and Tube industry. The shares of the Company were listed on Bombay Stock Exchange (“BSE”) and National Stock Exchange (“NSE”) w.e.f 25/08/2010. Pursuant to the investigation, the following are observed and alleged:
  - a) Shri Prakash C Kanugo (Noticee No. 1), the Managing Director of PSL, an insider, who while in possession of UPSI relating to the financial results of PSL for the period ended March 31, 2016 had traded/transferred (off-market) 25,00,000 shares of PSL to Dumet Wire India Pvt. Ltd. (Noticee No. 2)
  - b) Shri Prakash C Kanugo, though transferred the abovementioned shares on March 31, 2016 through off-market, but received consideration for the said shares from Dumet Wire India Pvt. Ltd. only on March 30, 2017 (Rs. 22,00,000) and on April 11, 2017 (Rs. 16,75,000), which is after a gap of almost a year from the transfer of shares, hence, Noticee No. 1 and 2 did not receive/transfer the consideration towards the aforesaid off-market transfer of 25,00,000 shares of PSL within the time period specified for off-market transactions.

- c) Further, by not stating the consideration and by not providing any cogent reason/explanation in the Delivery Instruction Slip (DIS) for the transfer of 25,00,000 shares of PSL to Noticee No.2 on 04/05/2016 and disclosing the transaction wrongly to the stock exchanges, Noticee No. 1 had allegedly committed an act of deceit/fraud.
- d) Further, Shri Prakash C Kanugo, also allegedly failed to make disclosures to the Company under Regulation 7(2)(a) of the SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as '**PIT Regulations**') with respect to the aforesaid off-market transaction(s) in the scrip of PSL during the UPSI period.
- e) The Company, Prakash Steelage Ltd. (Noticee No. 3), also failed to make disclosure to the stock exchanges under Regulation 7(2)(b) of the PIT Regulations in respect of the aforesaid transaction of Shri Prakash C Kanugo which was required as the transaction was made while in possession of UPSI.
- f) Palak Kohli Kochhar, (Noticee No. 4), the Company Secretary and Compliance Officer of the Company at the relevant point of time and who was responsible for administering disclosure requirements under the PIT Regulations, had also allegedly failed to discharge her responsibility as a Compliance Officer properly which is a statutory duty/obligation cast upon the Compliance Officer under the said regulations.
- g) The Depository Participant (DP) – Ajcon Global Services Ltd. (Noticee No. 5), had allegedly failed to exercise due diligence in monitoring the off market transaction between Shri Prakash C Kanugo and Dumet Wire India Pvt. Ltd. for 25,00,000 shares of PSL on 04/05/2016, as the shares were transferred without quoting consideration in DIS and also the reason for the transfer was not mentioned in the DIS except a tick mark on "Others" option. Hence, there was allegedly a failure to monitor the transactions of the client and to ascertain

as to whether such transaction executed was genuine transaction and was not of suspicious in nature.

3. SEBI had, therefore, initiated adjudication proceedings *inter alia* against Noticee No. 1, Shri Prakash C Kanugo, under Section 15G, 15HA and 15A(b) of the SEBI Act, 1992 and Section 23H of the SCRA, for the alleged violation of Section 12A(d) & (e) of SEBI Act, Regulations 4(1) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2015 (hereinafter referred to as “**PFUTP Regulations**”), Section 2(i) read with Section 13, 16 and 18 of SCRA and Regulation 4(1) and 7(2)(a) of PIT Regulations. For Noticee No. 2, Dumet Wire India Pvt. Ltd., adjudication proceedings were initiated under Section 23H of SCRA for the alleged violation of Section 2(i) read with Section 13,16 and 18 of SCRA. For Noticee No. 3, PSL, adjudication proceedings were initiated under Section 15A(b) of SEBI Act for the alleged violation of regulation 7(2)(b) of PIT Regulations. For Noticee No. 4, Ms. Palak Kohli Kochhar, adjudication proceedings were initiated under section 15HB of SEBI Act for alleged violation of Regulation 2(c) read with 9(3) of the PIT Regulations, 2015. Adjudication proceedings were also initiated against, Noticee No.5, Ajcon Global Services Ltd., under Section 15HB of SEBI Act, 1992 read with Section 19G of the Depositories Act, 1996 for the alleged violation of SEBI Master circular CIR/MRD/DP/6/2015 dated May 07, 2015 and Clauses 1, 2(b), 3, 4 and 11 of Code of Conduct prescribed for DPs in Schedule III of Regulation 20 AA SEBI (Depositories and participants) Regulations, 1996 (**DP Regulations, 1996**).

## **APPOINTMENT OF THE ADJUDICATING OFFICER**

4. The undersigned has been appointed as the Adjudicating Officer (hereinafter referred to as the “**AO**”) vide order dated February 08, 2021, conveyed vide communique dated February 11, 2021. The undersigned has been appointed as the AO under Rule 3 of SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as “**SEBI Adjudication Rules**”) read with Section 15-I of the SEBI Act and under Rule 3 of Securities Contracts (Regulation) (Procedure for holding Inquiry and Imposing Penalties) Rules, 2005 (hereinafter referred to as “**SCR Adjudication Rules**”) to inquire into and adjudge under Section 15A(b), 15G, 15HA, 15HB of the SEBI Act, 1992, Section 23H of the SCRA and Section 19G of Depositories Act, 1996 for the aforesaid violations alleged to have been committed by the Noticees.

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

5. A common Show Cause Notice dated April 05, 2022 (SCN) was issued to the Noticees in terms of Section 15-I of the SEBI Act, 1992 and Section 23 E of the SCRA read with Rule 4 of SEBI Adjudication Rules and Rule 4 of SCR Adjudication Rules to show cause as to why an enquiry should not be initiated and penalty be not imposed under Section 15HA, 15HB, 15A(b) and 15G of the SEBI Act 1992 and/or under section 23H of the SCRA and/or under Section 19G of the Depositories Act, 1996, as applicable, for the alleged violations specified in the

SCNs. The copies of the documents relied upon in the SCN were provided to Noticees along with the SCN as annexures.

6. The said SCN and annexures issued to the Noticees were duly delivered through Speed Post (SPAD). The details of date of the reply of the Noticees are as under:

<b>Name of the Noticee</b>	<b>Reply dated</b>
Shri Prakash C Kanugo (Noticee No. 1)	June 21 & July 19,2022
Dumet Wire India Pvt. Ltd. (Noticee No. 2)	June 02 & July 20, 2022
Prakash Steelage Ltd. (Noticee No. 3)	May 10 & July 19, 2022
Ms. Palak Kohli Kochhar (Noticee No. 4)	May 05 & July 18, 2022
Ajcon Global Services Ltd. (Noticee No. 5)	May 13 & July 20, 2022

7. An opportunity of personal hearing was granted to the Noticees on July 15, 2022. The Hearing Notices for the said hearing were duly served to the above mentioned Noticees, vide e-mail dated April 21, 2022. All the Noticees attended the said personal hearing through their Authorised Representatives.

8. **The summary of the replies submitted by Noticees are as under:**

**Noticee No. 1 (Mr. Prakash C. Kanugo) in his replies has inter alia submitted the following:**

- a. The SCN is issued after a gap of almost 6 years from the date of alleged trades in PSL. Hence, there is an inordinate delay.
- b. The Noticee was not involved in the process of finalization of accounts or preparation of financial results, hence was not in possession of UPSI.

c. Noticee did not trade in PSL shares as alleged. Rather the transfer of 25,00,000 shares in off market to Dumet Wire was in the nature of security towards future financial obligation and not otherwise.

d. Since pledging of shares is not required to be disclosed under PIT Regulations the disclosure was made under SAST.

**Noticee No. 2 (Dumet Wire India Pvt. Ltd.) in his replies has inter alia submitted the following:**

a. Due to certain disputes and differences between us and Noticee No. 1, the financial transaction could not materialise on immediate basis.

b. After some negotiation and reconciliation between us and Noticee No.1 an amount of Rs. 22 lakhs and 16.75 lakhs were transferred for the said off market transfer of shares on 30.03.2017 and 11.04.2017 respectively.

**Noticee No. 3 and 4 (Prakash Steelage Ltd. and Ms. Palak Kohli Kochhar) in their replies has inter alia submitted the following:**

a. The company made disclosure to exchanges as per the information received from Mr. Prakash C Kanugo. What we received we forwarded to the exchange. We made all the appropriate disclosures in timely manner.

**Noticee No. 5 (Ajcon Global Services Ltd. )in their replies has inter alia submitted the following:**

- a. The function of DP is that of facilitator in the securities market and not to investigate the transactions.
  - b. All the due diligence required was carried out and the transaction was verified from the BOs and prima facie no suspicion arose regarding the legitimacy of the transaction.
  - c. Due diligence should be construed from the perspective of reasonable and prudent person in the ordinary course of business.
9. In view of the above, I note that principles of natural justice have been duly complied with, as SCNs and Hearing Notices were duly served upon the Noticees and sufficient opportunity was also granted to the Noticees to reply to the SCN and appear for hearing.

### **CONSIDERATION OF ISSUES**

10. Considering the above facts, in the present proceedings, the examination has been done with respect to the allegations against the Noticees taking into consideration of their replies to the SCN and the documents / material available on record. The issues that arise for consideration in the present case are:

I(a). Whether Noticee No.1, by entering into the off-market transaction while in possession of UPSI and by non-disclosure, violated the provisions of Section 12A (d) and (e) of SEBI Act, 1992, read with Regulation 4(1) and Regulation 7(2)(a) of the PIT Regulations, 2015?



I(b). Whether Noticee No. 1, while entering into the off-market transaction and making wrong disclosure to the company, violated Regulation 4(1) of the PFUTP Regulations, 2003?

I(c). Whether Noticee No. 1 and 2, by not receiving/ transferring consideration towards the off-market transfer of 25,00,000 shares, violated Section 2(i) read with Section 13, 16 and 18 of the SCRA, 1956?

I(d). Whether Noticee No. 3, failed to make disclosure to the stock exchanges under Regulation 7(2)(b) of the PIT Regulations, 2015 with regard to the transaction of Noticee No.1 in the scrip of PSL during the UPSI period?

I(e). Whether Noticee No. 4, being the Company Secretary and Compliance Officer of the Company at the relevant point of time, violated Regulation 2(c) read with 9(3) of the PIT Regulations, 2015?

I(f). Whether Noticee No. 5, being the Depository Participant (DP), had failed to comply with the provisions of para 1.9(vii), (viii) of SEBI Master circular CIR/MRD/DP/6/2015 dated May 07, 2015 and failed to exercise due diligence in monitoring the off market transaction between Noticee No.1 and Noticee No.2 and violated the provisions of Clauses 1, 2(b), 3, 4 and 11 of Code of Conduct prescribed for DPs in Schedule III of Regulation 20 AA of the DP Regulations, 1996?

II.Does the violation, if established, attract monetary penalty under Section 15A(b), 15HA, 15G, 15HB of the SEBI Act, 1992, Section 19G of Depositories Act, 1996 and Section 23H of SCRA, as applicable?

III.If yes, then what should be the quantum of penalty?

### **OBSERVATIONS AND FINDINGS**

11. Before I proceed further with the matter, it is pertinent to mention the relevant provisions of the SEBI Act, 1992, SCRA, PIT Regulations, PFUTP Regulations, Depositories Act, 1996 and DP Regulations, 1996 alleged to have been violated by the Noticees. The same are reproduced below:

#### **“Section 12A (d) & (e) of SEBI Act, 1992**

*(d) engage in insider trading;*

*(e) 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;”*

#### **SEBI (PFUTP) Regulations, 2003**

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

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

*Explanation.–For the removal of doubts, it is clarified that any act of diversion, misutilisation or siphoning off of assets or earnings of a company whose securities are listed or any concealment of such act or any device, scheme or artifice to manipulate the books of accounts or financial statement of such*

*a company that would directly or indirectly manipulate the price of securities of that company shall be and shall always be deemed to have been considered as manipulative, fraudulent and an unfair trade practice in the securities market.”*

#### **“SEBI (PIT) Regulations, 2015**

**4(1)** *No insider shall trade in securities that are listed or proposed to be listed on a stock exchange when in possession of unpublished price sensitive information:*

*Explanation –When a person who has traded in securities has been in possession of unpublished price sensitive information, his trades would be presumed to have been motivated by the knowledge and awareness of such information in his possession.*

*Provided that the insider may prove his innocence by demonstrating the circumstances including the following: –*

- (i) the transaction is an off-market inter-se transfer between insiders who were in possession of the same unpublished price sensitive information without being in breach of regulation 3 and both parties had made a conscious and informed trade decision.<sup>19</sup> Provided that such unpublished price sensitive information was not obtained under sub-regulation (3) of regulation 3 of these regulations. Provided further that such off-market trades shall be reported by the insiders to the company within two working days. Every company shall notify the particulars of such trades to the stock exchange on which the securities are listed within two trading days from receipt of the disclosure or from becoming aware of such information.;*
- (ii) the transaction was carried out through the block deal window mechanism between persons who were in*

*possession of the unpublished price sensitive information without being in breach of regulation 3 and both parties had made a conscious and informed trade decision;*

*Provided that such unpublished price sensitive information was not obtained by either person under sub-regulation (3) of regulation 3 of these regulations.*

*(iii) the transaction in question was carried out pursuant to a statutory or regulatory obligation to carry out a bona fide transaction.*

*(iv) the transaction in question was undertaken pursuant to the exercise of stock options in respect of which the exercise price was pre-determined in compliance with applicable regulations.]*

*(v) in the case of non-individual insiders: –(a) the individuals who were in possession of such unpublished price sensitive information were different from the individuals taking trading decisions and such decision-making individuals were not in possession of such unpublished price sensitive information when they took the decision to trade; and(b)appropriate and adequate arrangements were in place to ensure that these regulations are not violated and no unpublished price sensitive information was communicated by the individuals possessing the information to the individuals taking trading decisions and there is no evidence of such arrangements having been breached;*

*(vi) the trades were pursuant to a trading plan set up in accordance with regulation*

**NOTE:** *When a person who has traded in securities has been in possession of unpublished price sensitive information, his trades would be presumed to have been motivated by the knowledge and*

*awareness of such information in his possession. The reasons for which he trades or the purposes to which he applies the proceeds of the transactions are not intended to be relevant for determining whether a person has violated the regulation. He traded when in possession of unpublished price sensitive information is what would need to be demonstrated at the outset to bring a charge. Once this is established, it would be open to the insider to prove his innocence by demonstrating the circumstances mentioned in the proviso, failing which he would have violated the prohibition.”*

## **Regulation 7(2)(a) and 7 (2) (b) of SEBI (PIT) Regulations, 2015**

### **Disclosures by certain persons**

#### **“(2) Continual Disclosures.**

- (a) Every promoter, member of the promoter group, designated person and director of every company shall disclose to the company the number of such securities acquired or disposed of within two trading days of such transaction if the value of the securities traded, whether in one transaction or a series of transactions over any calendar quarter, aggregates to a traded value in excess of ten lakh rupees or such other value as may be specified;*
- (b) Every company shall notify the particulars of such trading to the stock exchange on which the securities are listed within two trading days of receipt of the disclosure or from becoming aware of such information. Explanation. —It is clarified for the avoidance of doubts that the disclosure of the incremental transactions after any disclosure under this sub-regulation, shall be made when the transactions effected after the prior disclosure cross the threshold specified in clause (a) of sub-regulation (2).”*

## **Regulation 2(c) read with 9(3) of SEBI (PIT) Regulations, 2015**

**2 (c)** *“compliance officer” means any senior officer, designated so and reporting to the board of directors or head of the organization in case board is not there, who is financially literate and is capable of appreciating requirements for legal and regulatory compliance under these regulations and who shall be responsible for compliance of policies, procedures, maintenance of records, monitoring adherence to the rules for the preservation of unpublished price sensitive information, monitoring of trades and the implementation of the codes specified in these regulations under the overall supervision of the board of directors of the listed company or the head of an organization, as the case may be.[Explanation –For the purpose of this regulation, “financially literate” shall mean a person who has the ability to read and understand basic financial statements i.e. balance sheet, profit and loss account, and statement of cash flows.]”*

#### **Code of Conduct.**

**“9 (3)***Every listed company, intermediary and other persons formulating a code of conduct shall identify and designate a compliance officer to administer the code of conduct and other requirements under these regulations.”*

#### **Section 2(i) read with Section 13, Section 16 and Section 18 of the SCRA, 1956**

#### **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 therefor 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 therefor 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, declared 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 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 recognised 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.”*

**Clauses 1, 2(b), 3, 4 and 11 of Code of Conduct prescribed for DPs in Schedule III of Reg.20 AA of SEBI (Depositories and participants) Regulations, 1996.**

**THIRD SCHEDULE -Securities and Exchange Board of India (Depositories and Participants) Regulations, 1996**

**Regulation 20AA- CODE OF CONDUCT FOR PARTICIPANTS**

*“1. A participant shall make all efforts to protect the interests of investors.*

*2. A participant shall always endeavour to—*

*(a) ...*

*(b) ensure that all professional dealings are effected in a prompt, effective and efficient manner;*



3. *A participant shall maintain high standards of integrity in all its dealings with its clients and other intermediaries, in the conduct of its business.*
4. *A participant shall be prompt and diligent in opening of a beneficial owner account, dispatch of the dematerialisation request form, rematerialisation request form and execution of debit instruction slip and in all the other activities undertaken by him on behalf of the beneficial owners*
- .....
11. *A participant shall maintain the required level of knowledge and competency and abide by the provisions of the Act, Rules, Regulations and circulars and directions issued by the Board. The participant shall also comply with the award of the Ombudsman passed under the Securities and Exchange Board of India (Ombudsman) Regulations, 2003."*

## **SEBI ACT**

### ***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 <sup>1</sup>[which shall not be less than five lakh rupees but which may extend to twenty - five crore rupees or three times the amount of profits made out of such practices, whichever is higher.*

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

**15HB.** *Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.*

**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 66[or who furnishes or files false, incorrect or incomplete information, return, report, books or other documents], he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees;*

**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) \*\*\*\*\**

*(iii) \*\*\*\*\**

**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.*

**Depositories Act, 1996**

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

**19G.** *Whoever fails to comply with any provision of this Act, the rules or the regulations or bye-laws made or directions issued by the Board thereunder*

*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*

**Preliminary Issue raised by Noticee No. 1**

12. Noticee No. 1 in his replied has, among other things, raised objection w.r.t. the delay in issuing SCN by SEBI. As per his contention, the SCN is issued after a gap of 6 years from the date of the off-market transaction i.e. May 04, 2016 and the SCN is liable to be quashed on the ground of inordinate delay.
13. Addressing the above contention, I note that SEBI received report of NSE on December 13, 2016 whereby some alerts were generated by NSE after carrying out the analysis of trading activity as there was suspicion of Insider trading in the scrip of PSL. Subsequent to which investigation was carried out by SEBI. The investigation got completed in 2021 and subsequent to that SCN was issued to the Noticees.
14. I note that, investigation for insider trading involves very complex and lengthy procedures. Rarely there are direct evidences and often huge amount of transactions need to be examined. Considering the gravity of charge involved in Insider trading which attracts penalty amount higher than other violations under SEBI Act, investigation requires extra diligence and effort. Process of investigation in such cases are complex and involves collecting lots of data, examining that data, appreciation of evidence and communicating the persons involved or related to the

case. This process does take some time as the dependency is often on outside sources. Hence, a well carried out investigation specially in complex issues like insider trading does take considerable time. Further, I note that there is no limitation prescribed in SEBI act for initiating proceedings for violation of securities laws. In view of the above, the objection raised by Noticee No.1 is rejected. I shall proceed with the Issues.

**Issue I(a): Whether Noticee No.1, by entering into the off-market transaction while in possession of UPSI and by non-disclosure, violated the provisions of Section 12A (d) and (e) of SEBI Act, 1992, read with Regulation 4(1) and Regulation 7(2)(a) of the PIT Regulations, 2015?**

15. I note that the aforesaid provisions, among others, prohibits an insider, from dealing in securities of a company listed on any stock exchange when he is in possession of any UPSI and any person who deals in securities in contravention thereof is guilty of insider trading. Further, I note that there is a requirement stipulated under PIT Regulations which makes it mandatory for the Directors of every listed company to disclose transactions in shares of the company amounting to excess of Rupees Ten lakhs per calendar quarter.
16. I am of the view that for proving the charge of insider trading the following questions needs to be answered in affirmative:
  - a. Whether the information was price sensitive information?

- b. If so, whether the same was unpublished?
- c. Whether the Noticee was an 'insider'?
- d. Whether the Noticee had traded in the shares while in possession of or on the basis of UPSI?

17. It was alleged that Noticee No.1 when entered into the transaction of transferring 25,00,000 shares on May 04, 2016, the financial results of PSL for the FY 2015-16 were yet to be announced and were still being prepared and remained unpublished i.e. Noticee traded while in possession of UPSI.

**a. Whether the information was price sensitive?**

18. Addressing the first question, the information in the instant case is the 'financial results' of PSL for the FY 2015-16. Price sensitive information, per se, is not defined in the PIT Regulations but under the definition of '*Unpublished Price Sensitive Information*' the same is explained. As per Regulation 2(1)(n) of PIT Regulations '*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;*

As observed from the definition, I note that '*financial results*' of a company are itself tantamount to information which is price sensitive.

**b. If so, whether the same was unpublished?**

19. Addressing the second question, it is understood that the information remains unpublished till it is made known to the public at large. Disclosing the same to the stock exchanges by listed companies is considered as publishing it and subsequent to that the UPSI period ends. Listed companies has an obligation to make such disclosures to the stock exchanges where the securities of the company are listed in time bound manner (within two trading days).
20. I note that the financial results of PSL for quarter ending March 31, 2016 were announced on May 30, 2016 after market hours. Thus, I hold that the financial results were unpublished during the IP in the instant case and remained UPSI.

**c. Whether the Noticee was an 'insider'?**

21. On the question of Noticee No. 1 being '*Insider*', the relevant provision of PIT Regulations is perused. It states:

*2(g) "insider" means any person who is:*

*i) a connected person; or*

*ii) in possession of or having access to unpublished price sensitive information;*

As per the definition of '*Insider*' a connected person shall be deemed to be an insider. A '*connected person*' as per the PIT Regulations is:

*2 (d) "connected person" means, -*

(i) any person who is or has during the six months prior to the concerned act been associated with a company, directly or indirectly, in any capacity including by reason of frequent communication with its officers or by being in any contractual, fiduciary or employment relationship **or by being a director, officer or an employee of the company** or holds any position including a professional or business relationship between himself and the company whether temporary or permanent, that allows such person, directly or indirectly, access to unpublished price sensitive information or is reasonably expected to allow such access. (emphasis supplied)

22. From the aforementioned definition, it is clear that a director, officer or an employee of the company shall be deemed to be a connected person and hence an Insider for the purpose of PIT Regulations. From the Annual Report of PSL for 2016-17, I note that following persons were in the management of PSL:

Name	Designation	DIN	Original date of appointment	Date of cessation
Prakash C. Kanugo	Chairman and Managing Director	00286366	09/05/1991	NA
Ashok M. Seth	Executive Director and Chief Financial Officer	00309706	09/11/1993	NA
Hemant P. Kanugo	Whole Time Director	00309894	30/09/2003	NA
Himanshu J. Thaker	Independent Director	02325297	25/08/2008	NA
A. Prakashchandra Hegde	Independent Director	02266510	28/05/2012	NA
Neetta K. Bokaria	Independent Director	07101155	30/03/2015	NA

23. From the above table, I note that Noticee No.1, at the relevant point of time was holding the position of Chairman and Managing Director in PSL and has significant influence by virtue of holding the top most position in the company for more than two decades i.e. since 1991. Further, I also note that Noticee No. 1 is one of the promoter of PSL. For this, I hold the Noticee No.1 to be an 'Insider' with respect to the instant UPSI.
24. The above facts establish that, Noticee No. 1, being a Chairman cum Managing Director, is very much related and is reasonably expected to have access to the UPSI related to the said financial results of PSL for quarter ending March 2016.
25. Before moving forward, it is pertinent to mention Regulation 4(2) of PIT Regulations, which states:

*(2) In the case of connected persons the onus of establishing, that they were not in possession of unpublished price sensitive information, shall be on such connected persons and in other cases, the onus would be on the Board.* (emphasis supplied)

**d. Whether the Noticee had traded in the shares while in possession of or on the basis of UPSI?**

26. For the above question, it is pertinent to examine the period of UPSI i.e., financial results of PSL and the events related to the development of financial results of PSL for the quarter ended March 31, 2016.



27. I note that investigation observed the following chronology of events related to financial results for quarter ended March 31, 2016:

S.No.	Events	Date
1.	Finalization of accounts internally	15-04-2016 to 30-04-2016
2.	Commencement of statutory audit for FY 2015-16	03-05-2016
3.	Submission of draft financial accounts to management	18-05-2016
4.	Discussion with management	19-05-2016
5.	Finalization of financial accounts	28-05-2016
6.	Placing before the Board	30-05-2016

28. Based on the chronology of events mentioned above, and from PSL's letter dated September 04, 2020, I note that for finalization of financial result, the updation of data entry for sales, purchases, bank payments/ receipts, petti cash vouchers and journal vouchers were carried out about 15 days after the year end. I note that, the UPSI related to financial results of PSL for the quarter and financial year ended 31st March, 2016 had come into existence on April 15, 2016. Investigation observed that as per the corporate announcement of PSL dated May 20, 2016, the trading window for dealing in the securities of the Company was closed for the purpose of declaration of Audited Financial results of the Company for the quarter and financial year ended March 31, 2016 from May 21, 2016.

29. The corporate announcement of Audited Financial Results (Standalone & Consolidated) for the quarter and FY ended March 31, 2016 was made by PSL to NSE on May 30, 2016, 20:47 hours and to BSE on May 31, 2016, 11:26:10 hours.

In view of the above, I note that the period of UPSI would be April 15, 2016 to May 30, 2016, 20:47 hrs.

30. Further I note from the IR that, Noticee No.1 had entered into off-market trade in the shares of PSL through depository (CDSL). The details of said trade are as follows:

Depository	Scrip Name	Date	Source Client Name	Target Client Name	Transferred Qty.	Market/Off-market
CDSL	Prakash Steelage Limited	04/05/2016	Prakash C Kanugo	Dumet Wire India Pvt. Ltd.	2500000	Off-Market

From above, it can be observed that the shares were transferred by Noticee No. 1 on May 04, 2016 and the period of UPSI was April 15, 2016 to May 30, 2016. On the basis of the above observations, there is strong presumption that the transfer of shares by Noticee No. 1 on May 04, 2016 was on the basis of UPSI as Noticee No. 1 was aware of the said UPSI, as established above. Reg. 4 of PIT Regulations says

“When a person who has traded in securities has been in possession of unpublished price sensitive information, his trades would be presumed to have been motivated by the knowledge and awareness of such information in his possession. The reasons for which he trades or the purposes to which he applies the proceeds of the transactions are not intended to be relevant for determining whether a person has violated the regulation. He traded when in possession of unpublished price sensitive information is what would need to be demonstrated at the outset to bring a charge. Once this is established, it would be open to the insider

to prove his innocence by demonstrating the circumstances mentioned in the proviso, failing which he would have violated the prohibition." [emphasis supplied]

31. I note that Noticee No. 1 has disputed the above claim and termed the said transfer of 25,00,000 shares to Noticee No. 2 on May 04, 2016 as a security for the funds that he wanted to borrow from Noticee No. 2. In this regard, I note that even if it is considered as financing transaction and the shares were pledged, proper mechanism to pledge of the shares (dematerialized) was not followed in the instant case. Therefore, it appears that the said transfer was tried to be disguised as a creation of encumbrance. Further, I note that the definition of the term 'trading' as per the PIT regulations states that '2(l) "*trading*" means and includes subscribing, buying, selling, dealing, or agreeing to subscribe, buy, sell, deal in any securities, and "*trade*" shall be construed accordingly.'

32. I further note that while replying to the SCN, Noticee No. 1 has also submitted a letter dated May 04, 2016 addressed to Noticee No. 2, which states as below:

"I, Prakash C. Kanugo, transferring 2500000 shares of Prakash Steelage Ltd. to your demat account to meet our financial obligations to you.

You are free to sell the same or to make any use of them without referring to us being absolute owner." (emphasis supplied)

With regards to the claim of the Noticee that the shares are given as security, I note that, in general, when shares are given as security then the same can only be sold

in case of default by the borrower and not otherwise. However, from the aforesaid letter, I note that the lender was given rights to freely sell the shares without any condition of borrower being in default.

33. Further, investigation also observed that the Delivery Instruction Slip (DIS), through which the said transaction was done, had no mention of the consideration and any specific reason for the transfer of shares.
34. In view of the above observations, I note that the 2500000 shares of PSL were traded between Noticee No.1 and Noticee No. 2 on May 04, 2016, during which Noticee No. 1 was in possession of UPSI.
35. Since all the questions raised in Para 13 are answered in affirmative, the charge of Insider trading against Noticee No.1 stands established. The relevant provision of PIT Regulations is reproduced below:
- Trading when in possession of unpublished price sensitive information.*
- 4.(1) No insider shall trade in securities that are listed or proposed to be listed on a stock exchange when in possession of unpublished price sensitive information.*
36. I also note that none of the exceptions, provided under provisos of Regulation 4 of PIT Regulations, are neither applicable in the instant case, nor pleaded by Noticee.

In view of the above, I hold that Noticee No. 1 has violated Section 12A (d) & (e) of SEBI Act, 1992 and Regulation 4(1) of PIT Regulations.

37. I note that Noticee No. 1, who is Managing Director and Promoter of PSL, had transferred 2500000 shares of PSL on May 04, 2016 to Noticee No. 2. In this regard, as per Regulation 7 (2)(a) of PIT Regulations, every promoter, employee and director of every company is required to disclose the same to the company within two trading days from the date of transaction, if the amount of such transaction exceeds ten lakh rupees. The relevant provision is reproduced below:

*7. Disclosures by certain persons*

*(2) Continual Disclosures.*

*(a). Every promoter, employee and director of every company shall disclose to the company the number of such securities acquired or disposed of within two trading days of such transaction if the value of the securities traded, whether in one transaction or a series of transactions over any calendar quarter, aggregates to a traded value in excess of ten lakh rupees or such other value as may be specified;*

[emphasis supplied]

38. However, for the aforesaid transaction, I note that the disclosure was made by the Company on May 09, 2016 to the exchange under Regulation 31(1) and 31(2) of SEBI (Substantial Acquisition of Shares & Takeovers) Regulations, 2011 based on the submissions made by the Noticee stating that Prakash C Kanugo has created

an encumbrance over the said 25,00,000 shares of PSL on May 04, 2016. I further note that Noticee No. 1 has submitted that he had given these shares as security to Noticee No. 2 (Dumet Wire India Pvt. Ltd.) in order to raise some fund which he required urgently and as the same could not materialise and due to non-transfer of funds by Noticee No. 2, proper agreement between Noticee No.1 and 2 could not be entered.

39. Further I note from the Investigation Report that the DIS obtained from CDSL (Central Depository Services (India) Limited) for the aforesaid transaction revealed that there was an off-market transaction done between Noticee No.1 and 2. However, the amount of consideration was not mentioned in DIS and in the column to provide reason for the said transaction, 'Others' option was selected by Noticee No.1 without any further remarks. Further, I also note that Noticee No. 1 had submitted the DIS along with a letter mentioning the reason for transfer of shares as 'security' to Noticee No. 2 which is not correct as already established in para 28 - 31 above.

#### **Valuation of shares transferred by Noticee No. 1**

40. Noticee No. 1 and 2 have stated that the consideration for the aforesaid transfer of shares on 04/05/2016 was Rs. 38.75 lakhs. Dumet Wire India Pvt. Ltd. (Noticee No. 2) submitted that the consideration for the transfer of shares was paid to Shri Prakash C Kanugo (Noticee No. 1) from its bank account – 0430102000040178 (Axis Bank). As per the bank account statement of Noticee No. 2, fund transfer of

Rs. 22,00,000 on March 30, 2017 and Rs. 16,75,000 on April 11, 2017 to Noticee No. 1 was observed (closing price of the shares of PSL on May 04, 2016 @Rs. 5.4 each share = Rs.5.4 x 25,00,000 shares = Rs.1,35,00,000).

41. The above facts clearly establish that the value of transaction exceeds more than 10 lakhs. Accordingly, Noticee No. 1 was required to disclose the same under Regulation 7 (2) (a) of PIT Regulations to the company within two trading days which he failed. In view of the same, I hold that Noticee No.1 have violated Regulation 7(2) (a) of PIT Regulations.

**Issue I (b): Whether Noticee No. 1, while entering into the off-market transaction and making wrong disclosure to the company, violated Regulation 4(1) of the PFUTP Regulations, 2003?**

42. Regulation 4(1) of PFUTP Regulations, 2003 states:

*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. (emphasis supplied)*

‘fraud’ is defined under Reg. 2(1)(c) of PFUTP Regulations which states:

*(c) “fraud” includes any act, expression, omission or concealment committed whether in a deceitful manner or not by a person or by any other person with his connivance or by his agent while dealing in securities in order to induce another*

*person or his agent to deal in securities, whether or not there is any wrongful gain or avoidance of any loss, and shall also include—*

*(1) a knowing misrepresentation of the truth or concealment of material fact in order that another person may act to his detriment;*

*(2) a suggestion as to a fact which is not true by one who does not believe it to be true;*

*(3) an active concealment of a fact by a person having knowledge or belief of the fact;*

...

*(5) a representation made in a reckless and careless manner whether it be true or false;*

*(6) any such act or omission as any other law specifically declares to be fraudulent,*

...

*(8) a false statement made without reasonable ground for believing it to be true.*

43. I note that Noticee No. 1 has submitted in his reply that he was badly in need of funds to infuse in the company and therefore the said transfer of 25,00,000 shares of PSL on May 04, 2016 was made as 'security'. He further stated that due to certain dispute between Noticee No. 1 and Noticee No.2, the financial transaction could not immediately materialize. In this regard, I note that though he claims that there was an urgency of funds and till almost one year the said transaction could



not materialize, he could not produce any supportive evidence for the effort made toward the collection of the said amount from Noticee No. 2 except for the letter dated 06.03.2017 stated to have been written to Noticee No. 2 which also almost after lapse of 10 months. In nutshell, the above facts brings out the following:

- a) Considering the urgent requirement of funds by Noticee No.1 it appears unconvincing that the shares were transferred without any agreement between Noticees No. 1 and 2 as no amount of consideration was mentioned in the DIS.
- b) Despite such an urgency a reminder letter was sent only on March 2017 i.e. after lapse of 10 months from transfer of securities (25,00,000 shares of PSL worth Rs. 1.35 Cr on the date of transfer i.e. May 04, 2016).
- c) Also, despite stating the transfer as an encumbrance, Noticee No. 1 vide letter dated May 04, 2016 (content reproduced in Para 29) gave absolute rights to Noticee No. 2 (to sell or deal in any manner) without receiving the funds that are allegedly required on urgent basis.
- d) Noticee No. 1 also failed to elaborate the urgency.

44. In view of the above mentioned observations, I find no merit in the submission of Noticee No. 1.

45. I note that, while creating an encumbrance over shares, the same were not transferred to the lender rather kept with the borrower in frozen state till the loan amount was not repaid or as decided between the parties. It is general corporate

practice to raise funds by pledging shares. More particularly, the promoters of companies often take this route at times of financial trouble when their company is in urgent requirement of funds. However, the ownership of such pledged shares are never transferred to the lender rather the borrower retains ownership and continues to earn dividend and capital gains on those shares.

46. Whereas in present matter, Noticee No.1 by creation of DIS, transferred the shares in the off market and disclosed the same as an encumbrance to the company, that tantamount to fraud. This act is clearly covered under the definition of 'fraud' reproduced above. Hence, I hold that Noticee No. 1 has violated Regulation 4(1) of the PFUTP Regulations, 2003.

**Issue I (c): Whether Noticee No. 1 and 2, by not receiving/ transferring consideration towards the off-market transfer of 25,00,000 shares, violated Section 2(i) read with Section 13, 16 and 18 of the SCRA?**

47. I note that Section 2(i)(a) of SCRA reads as under:

*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 therefor 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 therefor 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; (emphasis supplied)*

48. In this regard, I note that spot delivery contract in securities market is said to be completed only if delivery/transfer of securities and subsequent payment has been made thereof within the prescribed time i.e. on the same day or the next day. In the present case, I note that Noticee No.1 had made off-market transactions of 2,50,000 shares of PSL with Noticee No. 2 (Dumet Wire India Pvt. Ltd.) and no funds were paid by Noticee No.2 to Noticee No.1 from whom the shares were received on the same day or next day. In this regard, Noticee No. 1 and 2 also confirmed and admitted that the funds were transferred only on 30.03.2017 (Rs. 22,00,000) and on 11.04.2017 (Rs. 16,75,000) against the said transfer of shares by Noticee No. 1 on May 04, 2016.

49. In this regard, I note that that there is a gap of almost 11 months between transfer of shares and payment of funds. Further, the submission of Noticee No. 1 and 2 that due to some conflict between them, immediate transfer of funds was not done, fails to justify the aforesaid delay in transfer of fund, as the time gap is considerable and the amount of shares and funds are also huge. As per SCRA, all sorts of off-market transaction of securities are illegal (Section 13 and Section 16) unless they are in the form of spot delivery contract as exempted under Section 18, which requires the transfer of securities and funds on same or next day.

50. The above facts clearly established that Noticee No. 1 and 2 have violated Section 2(i) read with Section 13, 16 and 18 of the SCRA.

**Issue I (d): Whether Noticee No. 3 failed to make disclosure to the stock exchanges under Regulation 7(2)(b) of the PIT Regulations, 2015 with regard to the transaction of Noticee No.1 in the scrip of PSL during the UPSI period?**

51. As per Regulation 7(2) of the PIT Regulations:

*(2) Continual Disclosures.*

*(a).Every promoter, and employee of every company shall disclose to the company the number of such securities acquired or disposed of within two trading days of such transaction if the value of the securities traded, whether in one transaction or a series of transactions over any calendar quarter, aggregates to a traded value in excess of ten lakh rupees or such other value as may be specified;*

*(b). Every company shall notify the particulars of such trading to the stock exchange on which the securities are listed within two trading days of receipt of the disclosure or from becoming aware of such information. (emphasis supplied)*

52. In the instant case, the company made disclosures to exchanges under SAST regulations stating that Noticee No. 1 had created encumbrance over his 25,00,000 shares. The company has submitted that they relied on the Benpos Report which

the company received from their RTA (Registrar and Transfer Agent). Investigation observed that the Benpos Report reported a decrease in shareholding of Shri Prakash C Kanugo by 25,00,000 shares. I note that creation of encumbrance never leads to decrease in shareholding of the borrower unless a default in repayment of the loan amount is observed. Since there was a reduction of shareholding of Noticee No. 1, the same needed to be disclosed under PIT Regulations, which Noticee No. 3 failed to disclose.

53. It is therefore the above facts clearly establishes that the Noticee No. 3 have violated Regulation 7(2) (b) of the PIT Regulations.

**Issue I (e) : Whether Noticee No.4, being the Company Secretary and Compliance Officer of the Company at the relevant point of time was responsible for administering disclosure requirements violated Regulation 2(c) read with 9(3) of the PIT Regulations, 2015?**

54. It is an established fact that the Company failed to disclose under PIT Regulations w.r.t. the transaction of Noticee No. 1 transferring 25,00,000 shares and deduction of share capital to that extant. In this regard, there is a statutory duty imposed upon the Compliance Officer under Regulation 9(3) of PIT Regulations which requires them to ensure that the company complies with all the relevant rules and regulations applicable under the said regulation.

55. As per annual reports of the Company for FY 2015-16 and 2016-17, Ms. Palak Kohli Kocchar was the then Company Secretary and Compliance Officer of Prakash Steelage Ltd. The PIT Regulation defines *compliance officer* as:

*(c)“compliance officer” means any senior officer, designated so and reporting to the board of directors or head of the organization in case board is not there, who is financially literate and is capable of appreciating requirements for legal and regulatory compliance under these regulations and who shall be responsible for compliance of policies, procedures, maintenance of records, monitoring adherence to the rules for the preservation of unpublished price sensitive information, monitoring of trades and the implementation of the codes specified in these regulations under the overall supervision of the board of directors of the listed company or the head of an organization, as the case may be.*

56. In view of the above, I note that there is a high degree of responsibility on compliance officers to ensure that all the rules and regulations applicable over a company are complied with. Further, the compliance officer is required to be financially literate, which implies that they are responsible to understand and make the management aware about the issues that requires financial acumen and hence, they are the one who guides the management of the company in case of any issue involving finances of the company and related compliance under the rules and regulations of PIT Regulations.

57. Accordingly, in the present matter, there was a statutory duty imposed upon Noticee No. 4 under Regulation 9(3) of PIT Regulations which requires her to ensure that the company complies with all the relevant rules and regulations applicable under the said regulation.
58. In this regard, Noticee No. 4 has submitted that, she relied on the information provided by Noticee No. 1 that the 25,00,000 shares of PSL were given as security on May 04, 2016 and not transferred to make them eligible for disclosure under PIT Regulations. As per her submission, the appropriate disclosure under SAST for the creation of encumbrance was made by the company to the exchanges and hence there is no lapse on the part of company or herself.
59. In this regard I note that, being a compliance officer, she had the statutory duty to go into the nitty-gritty of the said transaction undertaken by Noticee No. 1 and to guide the company and management of the company accordingly. However, I note that she had not exercised due skill and care in performing her duties with regards to the aforesaid transaction of Noticee No. 1.
60. The above mentioned facts establish that Noticee No. 4 has violated Regulation 2(c) read with Regulation 9(3) of the PIT Regulations, 2015.

**Issue I (f): Whether Noticee No.5, being the Depository Participant (DP), had failed to comply with the provisions of para 1.9(vii), (viii) of SEBI Master circular CIR/MRD/DP/6/2015 dated May 07, 2015 and failed to exercise due diligence in monitoring the off market transaction between Noticee No.1 and Noticee No.2, and thereby violated the provisions of Clauses 1, 2(b), 3, 4 and 11 of Code of Conduct prescribed for DPs in Schedule III of Regulation 20 AA of the DP Regulations, 1996?**

61. In the instant case, I note that Noticee No. 5 had effected a transfer of 25,00,000 shares of Noticee No. 1 to Noticee No. 2 based on the DIS slip along with the letter attached to it. In this regard, IR observed that the said transfer had been effected without the compliance of provision of Master Circular No. CIR/MRD/DP/6/2015 dated May 07, 2015. In other words, the amount for which the shares were being transferred was not mentioned in the DIS.

62. In terms of para 1.9 (vii) of aforesaid SEBI Master Circular CIR/MRD/DP/6/2015 dated May 07, 2015:

“The DPs shall cross check with the BOs under exceptional circumstances before acting upon the DIS”. (emphasis supplied)

And para 1.9 (viii) inter-alia, states that:



*“The authorized official of the DP verifying such transactions with the BO, shall record the details of the process, date, time, etc., of the verification on the instruction slip under his signature”.* (emphasis supplied)

63. Further, the reason for the transfer was indicated in the DIS as ‘Others’ by Noticee No. 1 and no further comments were provided. From the aforesaid attached letter along with the DIS, it was further noticed that the consideration of the transfer was mentioned as NIL and the purpose of the transfer was indicated as to provide security for some fund raising plans. The said facts clearly show that there were discrepancies in the DIS which requires verification with the BO before allowed to transfer the share in line with the aforesaid circular. However, I note that Noticee No. 5 failed to exercise the above mentioned due diligence before allowing the said transfer of shares from Noticee No. 1 to Noticee No. 2.

64. With regards to the above, the Noticee No. 5 has contended that they carried out the verification and other requirements under the circular. However, with regards to the said claim, I note that they did not produce any documentary evidence in support of the same. In view of the above, it is established that Noticee No. 5 has violated Clauses 1, 2(b), 3, 4 and 11 of Code of Conduct prescribed for DPs in Schedule III of Regulation 20 AA of the DP Regulations, 1996.

**Issue II: Does the violation, if established, attract monetary penalty under Section 15A(b), 15HA, 15G, 15HB of the SEBI Act, 1992, Section 19G of Depositories Act, 1996 and Section 23H of SCRA, as applicable?**

65. The Hon'ble Supreme Court of India in the matter of **SEBI vs. Shri Ram Mutual Fund** {[2006]5 SCC 361} held that:

*“once the violation of statutory regulations is established, imposition of penalty becomes sine qua non of violation and the intention of parties committing such violation becomes totally irrelevant. Once the contravention is established, then the penalty is to follow.”*

66. The violations by Noticees, observed above, make them liable for imposition of penalty under Section 15A(b), 15G, 15HA, 15HB of the SEBI Act, 1992, Section 23H of SCRA and 19G of Depositories Act, 1996 which reads as below –

**SEBI Act, 1992**

**“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 or who furnishes or files false, incorrect or incomplete information, return, report, books or other documents, he*

*shall be liable to penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.”*

**“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 anybody 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.”*

**“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 which shall not be less than five lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of such practices, whichever is higher.”*

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

**15HB.** *Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.*

## **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.*

## ***Depositories Act, 1996***

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

**19G.** *Whoever fails to comply with any provision of this Act, the rules or the regulations or bye-laws made or directions issued by the Board thereunder 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.*

### **Issue III: If yes, then what should be the quantum of penalty?**

67. In this regard, the provisions of Section 15J of the SEBI Act, 1992, Rule 5 of the SEBI Adjudication Rules require that while adjudging the 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.*

68. The material made available on record has not quantified the amount of disproportionate gain or unfair advantage made by the Noticees and the loss suffered by the investors as a result of the Noticees' act. It is an established fact that the Noticee No.1, being Managing Director and Chairman of PSL in the instant case had traded in the shares of PSL while being in possession of UPSI in violation of the SEBI (PIT) Regulations, 2015. It is necessary to take stern action to curb such practice, failing which the object and purpose with which SEBI Act and the PIT Regulations, 2015, are enacted, would be defeated. Further, it is important to note that timely disclosure of information, as prescribed under the statute, is an important regulatory tool intended to serve a public purpose. Trading in securities with knowledge which is yet not present in the public domain is an unethical act and such practices if left unchecked, shall jeopardize the integrity of the securities market.

69. Compliance Officers of listed companies have been given responsibility under the regulations to ensure the market players comply with the rules and regulations. If they fail in their duty to ensure the compliance, then the regulations itself will become useless as the primary purpose of formulating the same is to ensure

compliance and to run the market in fair and competitive manner rather penalizing the violators, which is only a remedial recourse. Noticee No. 4 being compliance officer of PSL failed in her duties and consequently, Noticee No. 3 failed to make appropriate disclosures.

70. Noticee No. 5, as a securities market intermediary, has a higher degree of responsibility and was primarily responsible for the illegitimate transaction that took place between Noticee No. 1 and 2. Lack of due diligence on their part was apparent and inexcusable. If ignored could cause greater peril to the smooth functioning of the securities market and to the proper adherence to the rules and regulations governing the market.

## ORDER

71. After taking into consideration the facts and circumstances of the case, gravity of violations and the material on record, and also the factors stipulated in Section 15J of the SEBI Act, 1992, I, in exercise of the powers conferred upon me under Section 15-I of the SEBI Act, 1992 read with Rule 5 of the SEBI Adjudication Rules, hereby impose the following penalty on the Noticees:

Noticee	Violation and Penal Provisions	Penalty
<b>Shri Prakash C Kanugo (Noticee No. 1) PAN: AFKPK2696F</b>	Penalty imposed under Section 15A(b), 15G and 15HA of the SEBI Act, 1992 and Section 23H of SCRA for violation of the provisions of Section 12A (d) and (e) of SEBI Act, 1992, Reg 4(1) of PFUTP Regulations, Regulation	<b>Rs. 17,00,000/- (Rupees Seventeen Lakhs)</b>

	4(1) and 7(2) (a) of PIT Regulations and Section 2(i) r/w Section 13, 16 and 18 of SCRA.	
<b>Dumet Wire India Pvt. Ltd. (Noticee No. 2)</b> <b>PAN: AAACD4629D</b>	Penalty imposed under Section 23H SCRA for violation of Section 2(i) r/w Section 13, 16 and 18 of SCRA.	<b>Rs. 1,00,000/-</b> <b>(Rupees One Lakh)</b>
<b>Prakash Steelage Ltd. (Noticee No. 3)</b> <b>PAN: AAACP6673K</b>	Penalty imposed under Section 15A (b) of the SEBI Act, 1992 for violation of the provisions of Regulation 7(2)(b) of PIT Regulations.	<b>Rs. 1,00,000/-</b> <b>(Rupees One Lakh)</b>
<b>Ms. Palak Kohli Kochhar (Noticee No. 4)</b> <b>PAN: DACPK5709R</b>	Penalty imposed under Section 15HB of the SEBI Act, 1992 for violation of the provisions of Regulation 2(c) r/w 9(3) of PIT Regulations.	<b>Rs. 1,00,000/-</b> <b>(Rupees One Lakh)</b>
<b>Ajcon Global Services Ltd. (Noticee No. 5)</b> <b>PAN: AABCA1950B</b>	Penalty imposed under Section 15HB of the SEBI Act, 1992 r/w Section 19G of the Depositories Act, 1996 for violation of Clauses 1, 2(b), 3, 4 and 11 of Code of Conduct Schedule III of Reg. 20AA of DP Regulations, 1996 and SEBI Master circular CIR/MRD/DP/6/2015 dated May 07, 2015.	<b>Rs. 1,00,000/-</b> <b>(Rupees One Lakh)</b>

72. The above Noticees shall remit / pay the said amount of penalty within 45 days of 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](http://www.sebi.gov.in) on the following path, by clicking on the payment link.

**ENFORCEMENT →Orders →Orders of AO →PAY NOW**

The Noticee shall forward said Demand Draft or the details / confirmation of penalty so paid to the Enforcement Department – Division of Regulatory Action – 1 of SEBI. The Noticee shall provide the following details while forwarding DD/ payment information:

- a) Name and PAN of the entity (Noticee):
- 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:

73. In the event of failure to pay the said amount of penalty within 45 days of the receipt of this Order, SEBI may initiate consequential actions including but not limited to recovery proceedings under section 28A of the SEBI Act, 1992 for realization of the said amount of penalty along with interest thereon, inter alia, by attachment and sale of movable and immovable properties.



74. In terms of the Rule 6 of the SEBI Adjudication Rules and Rule 6 of SCR Adjudication Rules, copy of this order is sent to the Noticees and also to Securities and Exchange Board of India.

**Place: Mumbai**

**Date: July 29, 2022**

**G. Ramar**

**Adjudicating Officer**