

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
(ADJUDICATION ORDER NO: ORDER/BM/RK/2024-25/30586)**

**UNDER SECTION 15 - I OF THE SECURITIES AND EXCHANGE BOARD OF
INDIA ACT, 1992 READ WITH RULE 5 OF SEBI (PROCEDURE FOR
HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995**

In respect of:

Name of the Noticee	PAN
Ashok Kumar Gupta	AACPG1951E

In the matter of **“insider trading activity by certain entities in the
scrip of Shalimar Paints Limited”**

BACKGROUND

1. Securities and Exchange Board of India (**“SEBI”**) conducted an investigation in the matter of insider trading activity by certain entities in the scrip of Shalimar Paints Limited (hereinafter referred to as the **“SPL/Company”**), a company listed on Bombay Stock Exchange Limited (**“BSE”**) and National Stock Exchange of India Ltd (**“NSE”**). The investigation was to ascertain whether trading by certain entities in the scrip of SPL was in violation of the provisions of SEBI Act, 1992 (hereinafter referred as **“SEBI Act”**), SEBI (Prohibition of Insider Trading) Regulation, 2015 (hereinafter referred to as **“PIT Regulations”**) for the period from March 18, 2021 to January 31, 2022 (hereinafter referred to as **“Investigation period/IP”**). However, wherever deemed necessary, reference has also been made to events/timeframes outside the IP.

2. During the course of Investigation, it was observed that Mr Ashok Kumar Gupta (**Noticee**), Managing Director of SPL had not identified the event of raising funds by SPL through issuance of equity shares and optionally convertible debentures as the Unpublished Price Sensitive Information (UPSI) from the date of its existence and allegedly failed to comply with the relevant provisions of the PIT Regulations.
3. SEBI, therefore, initiated adjudication proceedings under the SEBI Act against the Noticee to inquire into and adjudge the alleged violations of the provisions of Regulations 9A(1) and 9A(2)(b) of PIT Regulations by Noticee and to impose penalty under Section 15HB of the SEBI Act.

APPOINTMENT OF ADJUDICATING OFFICER

4. In this regard, SEBI appointed the undersigned as the Adjudicating Officer (“**AO**”) vide order dated February 12, 2024, communicated vide communique dated February 13, 2024 under Sub-section 1 of Section 15-I of the SEBI Act read with Rule 3 of the SEBI (Procedure of Holding Inquire and Imposing Penalties) Rules, 1995 (hereinafter referred to as “**SEBI Adjudication Rules**”) to inquire into and adjudge under Section 15HB of the SEBI Act for the aforesaid violations alleged to have been committed by the Noticee.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

5. A Show Cause Notice (**‘SCN’**) No. SEBI/HO/EAD/EAD-3/P/OW/2024/0000007723/1 dated February 28, 2024 was issued to the Noticee under Rule 4 of the SEBI Adjudication Rules, to show cause as to why an inquiry should not be held against him and why penalty, if any, under Section 15HB of the SEBI Act be not imposed upon him for the aforesaid violation alleged to have been committed by him.
6. The SCN alleged that the event of raising funds by SPL through issuance of equity shares and optionally convertible debentures from the date of its existence was a UPSI and the Noticee allegedly failed to identify the said event of raising funds as UPSI and to ensure necessary compliance in terms of trading window closure, as

per the requirement of SEBI (PIT) Regulations. Thus, it was alleged that the Noticee had violated Regulation 9A(1) and 9A(2)(b) of PIT Regulations.

7. The said SCN was sent to the Noticee through Speed Post AD and digitally signed email dated February 29, 2024 which was duly delivered on the same day. The proof of service is on record. In response, Noticee vide email dated March 18, 2024 sought documents relied upon in the matter. Accordingly, vide email dated March 19, 2024, the relevant and relied upon documents in the matter were provided to the Noticee along with an advise to file reply in the matter by March 26, 2024. Noticee vide email dated March 22, 2024 and March 26, 2024 again impressed for additional documents in the matter. Vide email dated April 01, 2024, the said Noticee was informed that all the relevant and relied upon documents were already provided to him and was advised to submit reply in the matter by April 07, 2024. Noticee again requested to be provided with the additional documents vide email dated April 03, 2024. Accordingly, vide email dated April 04, 2024, Noticee was again informed that all the relevant and relied upon documents in the matter were already provided to him and was advised to submit reply in the matter by April 08, 2024. Noticee vide letter dated April 08, 2024 submitted his reply to the SCN in the matter. In the interest of natural justice, an opportunity of personal hearing was granted to the Noticee on May 14, 2024 vide hearing notice dated April 29, 2024. The said hearing notice was sent to the Noticee via SPAD and through digitally signed email dated April 29, 2024 and was duly served upon the Noticee. The hearing was attended to by the Authorized Representative (AR) of the Noticee wherein he reiterated the submissions made by the Noticee vide his letter dated April 08, 2024. The said AR sought time to make additional submission in the matter, which was accordingly granted. The Noticee made additional submission in the matter vide email dated May 22, 2024. Further, Noticee vide email dated May 27, 2024 apprised of filing Settlement application in the matter in terms of (Settlement Proceedings) Regulations, 2018. However, as per the material available on record, the said application was rejected by SEBI.
8. The Noticee's reply dated April 08, 2024 and May 22, 2024 are summarized as under:

- a) *Noticee submitted that the Company was considering raising funds either in the form of a Working Capital Term Loan, Long Term Loan / Equity infusion or a combination thereof either by a banking institution or private investors. and accordingly, on 18 May 2021, the Company commenced discussions with Ernst & Young LLP (“E&Y”) for the purpose of availing its assistance in finding and potentially inducting a financial/strategic investor for the Company. The assignment was named ‘Project Bello’.*
- b) *Between 18 May 2021 and 26 June 2021, the Company and E&Y were discussing the parameters of the engagement of E&Y and exchanging information relevant for the purposes of crystallizing the engagement letter.*
- c) *That on September 01, 2021, the Company executed an Engagement Letter in favour of E&Y for Project Bello. The scope of the services under this Engagement Letter included but was not limited to the identification of potential investors for loan, equity, debt, or a combination thereof in conjunction with the Company, approaching potential investors on a no-name basis to gauge their degree of interest and execution of confidentiality letters with interested investors.*
- d) *Simultaneously, the Company executed a Non-Disclosure Agreement with another Consultant, Perigon Consilario LLP, on September 02, 2021 for the proposed fund-raising. Perigon Consilario LLP introduced a potential investor by the name of Avenue Asia Capital Management L.P. After a series of meetings, Avenue Asia Capital Management L.P. issued a non-binding term sheet to the Company. However, the Management of the Company did not find this transaction suitable for its needs, and it was accordingly rejected.*
- e) *Pursuant to the aforesaid Engagement Letter dated September 01, 2021, E&Y introduced several potential investors who could have extended debt funding or equity funding or a combination thereof which shows that Hella was not a focused, deliberate and intended potential investor being pursued by the Company; the discussions with all these potential investors were the subject of ongoing discussions and the company entered into confidentiality agreements with following parties.*

Sr. No.	Date/Period	Potential Investor
1.	16 September 2021	CX Advisors LLP

2.	27 September 2021	India Alternatives Investment Advisors Pvt. Ltd.
3.	29 September 2021	MOPE Investment Advisors Pvt. Ltd.
4.	30 September 2021	Edelweiss Alternative Asset Advsor Limited
5.	04 October 2021	Hella Infra Market Private Limited ("Hella")
6.	09 October 2021	BH Advisors Pvt. Ltd.
7.	19 October 2021	Convergent Finance LLP
8.	20 October 2021	Paragon Advisor Partners LLP
9.	25 November 2021	Cerberus Asia Pacific Investments LLC

- f) *That at this stage, the Company was uncertain whether any one of them was keen to extend any type of funding, whether debt or equity. So, the question of a change in capital structure could not arise at this stage.*
- g) *That by the end of October/November 2021, some potential investors began talking with the Company about an infusion of debt or equity. At this stage, E & Y suggested that the Company commission the Financial and Legal Due Diligence work, which potential investors were likely to use to evaluate and take any decisions. Since the Company was deeply keen to facilitate the infusion of funds, it took steps in furtherance of the said advice.*
- h) *Accordingly, on October 25, 2021, the Company began discussions with Deloitte Touche Tohmatsu India LLP ("Deloitte") for conducting financial and tax Vendor Due Diligence and on November 22, 2021, the Company signed an Engagement Letter with Lumiere Law Partners ("Lumiere") for conducting Legal Due Diligence.*
- i) *That throughout the period between October and December 2021, the Company shared information and documents with Deloitte and Lumiere for the due diligence exercise and that even at this stage, no course of action had been finalized, which can be seen from the fact that even the Consultants carrying out Due Diligence works for the Company were in*

the dark about the investor finalized, which is evident from the following correspondences:

- a) Email dated December 13, 2021 between the Company's officers referred to the draft Legal Due Diligence Report shared by Lumiere in an email dated December 11, 2021 as "Good for No Use."*
- b) Emails dated December 15 & 16, 2021 sent by Lumiere to the Company asking for additional documents and a timeline for sharing such documents/responses to plan their review of the draft.*
- c) Email dated December 30, 2021 sent by Deloitte to the Company at 18:50 hours around the close of business hours, which contained a draft Financial Due Diligence Report shared on a 'no-reliance basis'.*
- d) In this email, Deloitte permitted the Company to share their draft report with potential investors to enable them to understand the compliance conditions in the Company, which is a requisite for assessing whether fundraising should take place through debt or equity.*
- e) So, till December 30, 2021, the potential investors did not have the due diligence reports. In this e-mail, Deloitte also stated that the final report will be issued "once the Company finalizes the investor".*
- j) That the Legal, Financial and Tax Due Diligence exercise by the Consultants continued well into January 2022; in fact, the Company arranged for a meeting on January 07, 2022 to discuss the Due Diligence exercise.*
- k) That on January 13, 2022, the Company notified that a Board Meeting was scheduled for January 18, 2022. The intimation of this Board Meeting, along with the Agenda of the Meeting, was uploaded by the Company on the website of Stock Exchanges, which stated that the same was being held to "consider and evaluate proposal for raising of funds by the Company through one or more permissible mechanisms as may be deemed appropriate by the Board, by way of issuance of equity shares and/or other securities including debenture and/or any other equity based instruments/securities including through preferential issue, private placement, or through any other permissible mode or any combination thereof, subject to receipt of regulatory/statutory/shareholders approvals, as may be required."*
- l) That on January 18, 2022, the Company held a Meeting of its Board of Directors where the proposed investment by Hella Infra Market Private Limited was discussed. The Board resolved to grant permission to Hella Infra, subject to requisite approvals including approval of the*

shareholders of the Company, to invest in the Company through preferential issue and private placement.

- m) Noticee submitted that the SCN lacks inherent jurisdiction in light of the letter of caution issued by the Investigating Authority on January 15, 2024 wherein the said letter cautioned him to refrain from certain acts and warned that further action would be taken only if any new violations occurred. The relevant extract is mentioned as

“3. Since, you failed to identify the aforesaid event as unpublished price sensitive information, you are in violation of the provisions of Regulations 9A(1) and 9A(2)(b) of the SEBI (Prohibition of Insider Trading) Regulations, 2015.

4. The above violation by you has been viewed seriously. **You are therefore advised to refrain from such acts in the future, failing which action as deemed fit, will be initiated against you in accordance with the provisions of SEBI Act, 1992 and Rules & Regulations framed thereunder.**”

- n) He also submitted that, no new infractions or violations of the provisions of PIT Regulations or Code of Conduct have occurred, nor has it been alleged in the SCN and the SCN also did not allege that he did not pay heed to the warning letter. Hence, the issuance of the SCN was unwarranted and undermines the purpose and gravity of the initial warning.
- o) Noticee submitted that till date, barring this instance, the Company has not had a single allegation levelled against it for violation of the PIT internal controls system which can be understood from the fact that when SEBI and NSE observed the records showed by him, they were also the opinion that company's internal controls system was existing and intact - as evidenced from the fact that NSE raised no further objections in this regard and SEBI left the matter by issuing a said letter of caution to him on January 15, 2024 and that pursuant to the letter of caution, he had taken all steps to fortify the existing system of internal controls.
- p) The assertion in the SCN that the UPSI should have been recognized from September 01, 2021 is inaccurate because this date marks when the Company enlisted a consultant to explore one of several identified fundraising options, not the date on which the Company decided to fortify its investment with Hella/any potential investor. Mere engagement of a Consultant cannot be understood as a UPSI; this would lead to an extreme scenario where any company, seized by the desperate need to explore fund-raising avenues, that hires a consultant for their expertise

shall inadvertently trigger a UPSI period and shall be bound to keep their trading window closed in perpetuity.

- q) That the trading window was already closed for the financial results of the quarter ended December 31, 2021. Therefore, there was no need to close the trading window once again upon identification of the UPSI.*
- r) Noticee submitted that for the period between June 2021 and January 12, 2022, it was still uncertain as to whether the Company could raise third-party investment.*
- s) In as much as the low capital flow had been identified by the Company, and some possible ways to remedy it (through Bank-issued ECLGS and third-party investments) had been proposed and were under contemplation by its officers, there was absolutely no certainty that the Company could engage in fund-raising through an investor because (i) its sincere attempts to secure adequate Bank-issued ECLGS had failed, (ii) the preliminary discussions it had with a few potential investors had failed, and (iii) another potential investor, Hella was still in the process of screening the Company for the investment.*
- t) That a considerable amount of time went into crystallizing the parameters of the various Consultants' services, exchanging data with them, discussing the investment with potential investors, conducting due diligence exercises, awaiting preparation of the Due Diligence reports, and having a final discussion with the potential investor in light of the due diligence reports received.*
- u) Thus, the UPSI in the present case never concretized until January 13, 2022 when the decision to raise funds through a third-party investor attained a 'reasonably high degree of concreteness/crystallisation/probability of transaction going through.*

CONSIDERATION OF ISSUES AND FINDINGS: -

9. I have carefully perused the charges levelled against the Noticee, the documents / material available on record and submissions of the Noticee. The issues that arise for consideration in the present case are:

Issue No. I: Whether Noticee is in violation of the Regulations 9A(1) and 9A(2)(b) of PIT Regulations?

Issue No. II: If yes, does the violation, on the part of the Noticee would attract monetary penalty under Section 15HB of the SEBI Act?

Issue No. III: If so, what would be the monetary penalty that can be imposed upon the Noticee taking into consideration the factors stipulated in Section 15J of the SEBI Act?

10. Before proceeding further, I would like to refer to the relevant provisions of law alleged to have been violated by the Noticee:

Relevant provisions of PIT Regulations, 2015

Regulations 9A

(1) The Chief Executive Officer, Managing Director or such other analogous person of a listed company, intermediary or fiduciary shall put in place adequate and effective system of internal controls to ensure compliance with the requirements given in these regulations to prevent insider trading.

(2) The internal controls shall include the following:

.....

(b) all the unpublished price sensitive information shall be identified and its confidentiality shall be maintained as per the requirements of these regulations.

Issue No. I: Whether Noticee is in violation of the Regulations 9A(1) and 9A(2)(b) of PIT Regulations?

11. Before I proceed to deal with the matter on merits, I would like to settle preliminary issue raised by the Noticee wherein he has contended that he had not been supplied with the complete set of several documents. To substantiate the said claim, the Noticee has relied upon the judgments of Hon'ble Supreme Court and Hon'ble SAT, like:

- ***Securities and Exchange Board of India vs Price Waterhouse***

- ***Shri B. Ramalinga Raju vs SEBI***
- ***Ms Smitaben N Shah vs SEBI***
- ***T. Takano vs SEBI***

12. In respect of the above contention of the Noticee that the complete set of following documents was not provided to him, I note that the following additional documents were sought by the Noticee pursuant to issuance of SCN in the matter:

- a) *The investigation report and its annexures prepared during the course of the investigation.*
- b) *All correspondences exchanged between SEBI and the Company, including those with its officers, regarding the subject matter at hand.*
- c) *Copies of any statement(s) recorded by SEBI regarding the subject matter at hand.*
- d) *A confirmation of whether SEBI has issued any letter advising caution for the same subject matter. If so, please provide a copy of the same.*
- e) *A copy of the opinion formed by SEBI/Competent Authority to initiate these adjudicating proceedings.*
- f) *Copy of the action matrix, noting(s) and green notes related to the matter at hand*

13. With respect to the documents mentioned at points a and b above, extract of Investigation Report (IR) of the present case along with the Annexures, Email communication between SEBI and SPL was provided to the Noticee. Further, as regards Noticee's request for providing documents mentioned at point c and d above, vide email dated March 19, 2024, Noticee was informed that no such documents were available on record. With respect to documents at point e and f above, vide the said email, the Noticee was provided with the Communique dated February 13, 2024 for initiating adjudication under Rule 3 of the SEBI (Procedure for holding Inquiry and Imposing Penalties) Rules, 1995 and copy of IR which duly contained the action matrix sought by the Noticee. Hence, all the documents which were relied upon for the issuance of SCN and relevant for the Notice were duly provided to the Noticee.

14. Hence, I note that the principle laid by Hon'ble Supreme Court in ***T. Takano Vs SEBI*** i.e. *"all information that is relevant to the proceedings must be disclosed in adjudication proceedings"* was duly followed.

15. Further, I note that the Noticee in his reply has merely made a bald statement that "the complete set of documents were not provided to him". However, in this regard, nothing specific has been brought out by him in support of the said claim. Hence, the instant contention raised by the said Noticee is not tenable.

Alleged Violation: Failure to identify the event of raising funds by SPL through issuance of equity shares and optionally convertible debentures as the UPSI from the date of its existence

16. It was observed that SPL had informed the Exchanges on January 18, 2022 about approval of its Board of Directors for raising of funds to the tune of Rs 270 crores through issuance of equity shares and optionally convertible debentures and the said event of raising funds by SPL was a price sensitive information and therefore, prior to its declaration to exchanges the same was a UPSI as it proposed to change the capital structure of the company in terms of Regulation 2(1)(n)(iii) of PIT Regulations which reads as mentioned below:

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

(i) financial results;

(ii) dividends;

(iii) change in capital structure;

(iv) mergers, de-mergers, acquisitions, delistings, disposals and expansion of business and such other transactions;

(v) changes in key managerial personnel

NOTE: *It is intended that information relating to a company or securities, that is not generally available would be unpublished price sensitive information if it is likely to materially affect the price upon coming into the public domain. The types of matters that would ordinarily give rise to unpublished price sensitive information have been listed above to give illustrative guidance of unpublished price sensitive information.*

Date when Price Sensitive Information (PSI) came into existence

17. It was observed that SPL had initiated preliminary discussions with Ernst and Young (E&Y) on May 18, 2021 to raise funds through issuance of equity and signed a confidentiality agreement dated May 21, 2021. Subsequently, an engagement letter dated September 01, 2021 was jointly signed by E&Y and SPL. It was observed that in the said engagement letter, it was, *inter-alia*, stated that E&Y to perform professional services for SPL in relation to potential induction of a financial/ strategic investor. Further, it was observed that incidentally, SPL had signed another non-disclosure agreement with Perigon Consilario LLP (Perigon) on September 02, 2021 to assist it in relation to the potential induction of a financial/ strategic investor.
18. Further, it was observed that the E&Y team was to commence on the work from the date of execution of the Engagement Agreement i.e. September 01, 2021 and subsequently, on October 04, 2021, SPL had signed a confidentiality agreement with Hella Infra Market Pvt. Ltd. (Hella), a prospective investor. Though, confidentiality agreement with Hella was signed on October 04, 2021 the engagement letter appointing E&Y for induction of a financial/ strategic investor was signed on September 01, 2021. Further, a non-disclosure agreement with Perigon was also signed on September 02, 2021 for induction of a financial/ strategic investor. It was also observed that the discussion of fund raising by SPL was started on May 18, 2021. However, on September 01, 2021, with the signing of an engagement letter for induction of a financial/ strategic investor, it was crystallized that SPL was seeking a financial/ strategic investor. Hence, it was alleged that the price sensitive information to have come into existence on September 01, 2021 and accordingly, the period of UPSI was observed to have

existed from the date of signing of an engagement letter by Ernst & Young (E&Y) and SPL i.e. on September 01, 2021 till the date of dissemination of the information i.e. on January 18, 2022.

Date and Time when the PSI became public

19. It was observed that SPL informed the stock exchanges about the outcome of the Board meeting on January 18, 2022, in which it had, inter-alia, stated that its Board of Directors had considered and approved raising of funds through issuance of equity shares and optionally convertible debentures. Further, on January 18, 2022, SPL had informed the stock exchanges about a press release with a subject 'Infra. Market proposes to invest in Shalimar Paints Ltd.'
20. In this regard, it was observed that aforesaid two announcements were disseminated on NSE and BSE on January 18, 2022 after market hours and the outcome of the board meeting was disseminated at NSE and BSE on January 18, 2022 at 17:38:31 and 17:47:34, respectively and the press release was disseminated at NSE & BSE on January 18, 2022 at 18:04:21 and 18:02:04, respectively.
21. Further, it was observed that post the exchanges' announcement after market hours on January 18, 2022, price of the scrip on NSE moved from the close price of Rs. 134.70 on January 18, 2022 to a close price of Rs. 140.75 (high price being Rs. 151.00) on January 19, 2022, while registering a price rise of 4.50% on January 19, 2022.
22. In view of the foregoing, UPSI period was observed to have existed from September 01, 2021 to January 18, 2022.
23. With regard to the aforesaid, it was observed that the SPL had not identified the aforesaid event as UPSI for necessary compliance under the provision of SEBI (PIT) Regulation since September 01, 2021. Therefore, it was alleged that the said event should have been identified as UPSI by the MD, i.e. the Noticee and he
- Adjudication Order in the matter of insider trading activity by certain entities in the scrip of Shalimar Paints Limited*

should have ensured necessary compliance in terms of identification of UPSI and trading window closure, as per the requirement of SEBI (PIT) Regulations.

24. Accordingly, in view of the aforesaid, it was alleged that the Noticee has violated Regulations 9A(1) and 9A(2)(b) of PIT Regulations by having failed to identify the event of raising funds by SPL through issuance of equity shares and optionally convertible debentures as the UPSI from the date of its existence. Further, it was also alleged that Noticee should have closed the trading window as per the PIT Regulations.

25. Noticee submitted that the UPSI Period was not the same as alleged in the SCN as UPSI never existed until January 13, 2022 i.e. the date on which it had notified exchanges that a board meeting would be held on January 18, 2022 to consider and evaluate proposal for fund raising activity and therefore, that was the correct time when the decision to raise funds through a third-party investor attained a reasonably high degree of concreteness/crystallization of transaction going through and accordingly, UPSI period was from January 13, 2024 to January 18, 2024. He further submitted that Hella infra was not the only investor with which confidentiality agreement was signed rather there were many such potential investors with which SPL had signed confidentiality agreement and at the stage of signing the confidentiality agreement, there exists an uncertainty w.r.t investor getting finalized. Noticee further submitted that a warning letter dated January 15, 2024 has already been issued in the matter and that no new infractions or violations of the provisions of PIT Regulations or Code of Conduct have occurred since the issuance of said warning letter.

26. From the documents available on record, I observe the following chronology of events with regard to the proposed raising of capital by the SPL.

Sr No.	Date	Event
1.	18-05-2021	Preliminary discussions with Ernst & Young with an aim to raise funds and this project was named as "Project Bello"
2	21-05-2021	Signing of confidentiality agreement between Shalimar and E&Y
3	01-09-2021	Signing of Engagement letter between Shalimar and E&Y
4	02-09-2021	Signing of Non-disclosure agreement between Shalimar and Perigon Consario LLP
5	16-09-2021	Confidentiality agreement entered between Shalimar and CX Advisors LLP
6	27-09-2021	Confidentiality agreement entered between Shalimar and India Alternatives Investment Advisors Pvt. Ltd.
7	29-09-2021	Confidentiality agreement entered between Shalimar and MOPE Investment Advisors Pvt. Ltd.
8	30-09-2021	Confidentiality agreement entered between Shalimar and Edelweiss Alternative Asset Advsor Limited
9	04-10-2021	Confidentiality agreement entered between Shalimar and Hella Infra Market Private Limited (" Hella ")
10	09-10-2021	Confidentiality agreement entered between Shalimar and BH Advisors Pvt. Ltd.
11	19-10-2021	Confidentiality agreement entered between Shalimar and Convergent Finance LLP
12	20-10-2021	Confidentiality agreement entered between Shalimar and Paragon Advisor Partners LLP
13	25-10-2021	Shalimar began discussions with " Deloitte " for conducting financial and tax Vendor Due Diligence
14	22-11-2021	Shalimar signed an Engagement Letter with Lumiere Law Partners " Lumiere " for conducting Legal Due Diligence
15	25-11-2021	Confidentiality agreement entered between Shalimar and Cerberus Asia Pacific Investments LLC

16	13-12-2021	Shalimar's officers referred to the draft Legal Due Diligence Report shared by Lumiere in an email dated 11 December 2021 as "Good for No Use."
17	30-12-2021	Deloitte shared a draft Financial Due Diligence Report with Shalimar vide email, stating that it could share this with potential investors so that they can understand the compliance conditions in Shalimar and also mentioned that the final report would be shared with Shalimar as soon as it finalizes the investor.
18	31-12-2021	Shalimar announced that the trading window period would remain closed from 01-01-2022 till 48 hours after the declaration of unaudited Financial Results for the quarter ending 31-12-2021
19	07-01-2022	Shalimar conducted a virtual meeting with E&Y to discuss on due diligence report shared by Deloitte.
20	13-01-2022	Shalimar notified exchanges that a Board Meeting was scheduled for 18-01-2021 to evaluate proposal for raising of funds by it.
21	17-01-2022	Draft Valuation Report was circulated and discussed between E&Y and Shalimar, after which the total value of investment by Hella was finalized
22	18-01-2022	Shalimar held a meeting of its BOD where the proposed investment by Hella was discussed and board resolved to grant permission to Hella.

27. From the above table I observe that SPL signed the engagement letter with E&Y on September 01, 2021 for identification of potential investors for loan, equity, debt or a combination thereof. It was stated that E&Y would approach on a "no-names" basis to the potential investors in order to establish the degree of interest from such parties and if the potential investors were interested, then it would obtain a confidentiality letter from them. Additionally, under the head "Timetable" in Appendix A, it was, inter-alia, stated that E&Y would mobilize their engagement team to commence work on the date of execution of this Engagement Agreement (the 'Start Date'). In fact, the action of identifying the potential investors started right from September 2, 2021 as can be observed from the table above.

28. Thus, with the execution of the said engagement letter the information was born for proposed fund raising activity by SPL, which was a material information in terms of Regulation 2(1)(n) of PIT Regulations. In this regard, for an information to be termed as UPSI, it must :-

- (i) be relating to the company or its securities either directly or indirectly;
- (ii) not be generally available; and
- (iii) likely to materially affect the price of the securities.

29. Further, in terms of the aforementioned definition of UPSI as given in Regulation 2(1)(n), any information relating to a company or its securities which upon becoming generally available is likely to materially affect the price of the securities of the company, is UPSI. In other words, in order to be termed as UPSI, the information relating to a company or its securities, which is likely to materially affect the price, should not be "generally available". As one of the ingredients of the definition of UPSI is that it should not be generally available, it would be appropriate to determine what is considered as generally available information. In this regard, reference may be made to Regulation 2(1)(e) of PIT Regulations, 2015 which defines "generally available information" as follows:

(e) "generally available information" means information that is accessible to the public on a non-discriminatory basis;

NOTE: It is intended to define what constitutes generally available information so that it is easier to crystallize and appreciate what unpublished price sensitive information is. Information published on the website of a stock exchange, would ordinarily be considered generally available.

30. Therefore, in view of the above, the UPSI conspicuously came into existence on September 01, 2021 as the said information was not generally available information and if the same had become public at that moment, it would have impacted the price of the scrip. I observe that the information was made available

on the exchanges on January 18, 2021 by stating that its Board of Directors has considered and approved raising of funds through issuance of equity shares and optionally convertible debentures. Further, on January 18, 2022, SPL had informed the stock exchanges about a press release with a subject 'Infra.Market proposes to invest in Shalimar Paints Ltd.' Both the information was disseminated after market hours and the price of the scrip on NSE moved from the close price of Rs. 134.70 on January 18, 2022 to a close price of Rs. 140.75 (high price being Rs. 151.00) on January 19, 2022, while registering a price rise of 4.50% on January 19, 2022. The UPSI period thus started from September 01, 2021 to January 18, 2022.

31. Thus, the same was not dependent on the fact of the potential investors getting finalized as contended by the Noticee.

32. In terms of Regulation 9A the responsibility of identifying the UPSI is placed on the CEO/ MD of the company. The relevant provision of PIT Regulations is as given below:

Regulations 9A

(1) The Chief Executive Officer, Managing Director or such other analogous person of a listed company, intermediary or fiduciary shall put in place adequate and effective system of internal controls to ensure compliance with the requirements given in these regulations to prevent insider trading.

(2) The internal controls shall include the following:

.....

(b) all the unpublished price sensitive information shall be identified and its confidentiality shall be maintained as per the requirements of these regulations.

33. In the instant case, Noticee who is the MD of the company was under the responsibility to identify the UPSI from September 1, 2021 when it came into existence but he failed to do so. Thus, the Noticee violated 9A(1) and 9A(2)(b) of PIT Regulations.

34. Further with regard to the compliance of closure of trading window, I observe from the submission of the Noticee that the trading window was closed from January 01, 2022 to February 14, 2022 for declaration of financial results for the quarter ended December 2021. Hence, during the period when the UPSI was made public, trading window of the company was already closed.

35. As stated earlier, the Noticee was issued warning letter dated January 15, 2024 for the same violation which came to the notice of the undersigned when Noticee submitted his reply to the SCN. The relevant contents of the warning letter is as follows

"3. Since, you failed to identify the aforesaid event as unpublished price sensitive information, you are in violation of the provisions of Regulations 9A(1) and 9A(2)(b) of the SEBI (Prohibition of Insider Trading) Regulations, 2015.

*4. The above violation by you has been viewed seriously. **You are therefore advised to refrain from such acts in the future, failing which action as deemed fit, will be initiated against you in accordance with the provisions of SEBI Act, 1992 and Rules & Regulations framed thereunder.**"*

36. From the said warning letter, I note that SEBI would have initiated action only in case the violation appeared again. However, after the issuance of the said warning letter as rightly contended by the Noticee, no new infractions were observed as per records on the part of the Noticee.

37. While there has been violation by the Noticee as enumerated above, I observe that for the same set of violation for the same period Noticee has already been warned by SEBI. In view of the fact that no new infractions have been observed, I am of the view that no penalty is warranted in the instant case.

ORDER

38. In view of the above, the SCN dated February 28, 2024 is being disposed of without imposing any penalty.

39. Copy of this Adjudication Order is being sent to the Noticee and also to SEBI in terms of Rule 6 of the Adjudication Rules.

Date: July 25, 2024

Place: Mumbai

BARNALI MUKHERJEE

ADJUDICATING OFFICER