

**BEFORE THE ADJUDICATING OFFICER
SECURITIES AND EXCHANGE BOARD OF INDIA
ADJUDICATION ORDER No. Order/GR/HK/2023-24/28062-28064**

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 CONTRACTS REGULATION ACT, 1956 READ WITH RULE 5 OF SECURITIES CONTRACTS (REGULATION) (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 2005.

In Respect of:

S.No.	Name of Noticee	PAN
1	<i>Mukesh Kumar Gupta</i>	<i>AEIPG5741G</i>
2	<i>Manish Goel</i>	<i>AEDPG0138E</i>
3	<i>Ravi Shankar</i>	<i>DYLPS7861H</i>

In the matter of insider trading activities in the scrip of Shilpi Cable Technologies Ltd.,

(The aforesaid entities are hereinafter individually referred to by their respective names/ Noticee numbers and collectively as “**Noticees**”, unless the context specifies otherwise)

BACKGROUND

1. Securities and Exchange Board of India (hereinafter referred to as “**SEBI**”), conducted an investigation into the trading activities in the scrip of Shilpi Cable Technologies Limited (hereinafter referred to as “**Company/SCTL**”), a company listed at BSE Limited (“**BSE**”) and National Stock Exchange India Limited (“**NSE**”), in order to ascertain as to whether the trading activities of certain entities in the scrip of SCTL were based on developments concerning the announcements made on April 30, 2017 and/or on May 11, 2017 regarding the filing of petition under Regulations 8 and 9 of IBC, 2016 by a foreign creditor against SCTL and disclosure

on the consideration of issue of bonus shares, resignation of Key Managerial Persons (KMPs) and Independent Directors of SCTL respectively. The period of investigation is from March 08, 2017 (date when the price sensitive information came into existence) to May 11, 2017 (date when disclosures regarding the resignation of the KMPs i.e. CFO, compliance officer and the independent directors were made to the exchange), (hereinafter referred to as “**Investigation Period / IP**”). However, whenever deemed necessary, reference has been made to outside this period.

FACTS OF THE CASE

2. SCTL was incorporated on July 9, 2006 as a public limited company with the name Rosenberger Shilpi Cable Technologies Ltd. The company was established as 50:50 joint venture between Shilpi Communication Pvt Ltd., and Rosenberger Hochfrequenztechnik GmbH & Co KG, Germany, to take up the project of Radio Frequency (RF) Cables and engaged in manufacturing of radio frequency corrugated feeder cables. It also manufactures telecom, automobile and energy cable in India. In January 2008, the company commenced commercial production at Chopanki Plant.
3. SEBI, after witnessing significant volume aberration in the scrip of SCTL, on May 03, 2017 and May 11-12, 2017 had directed the Stock Exchanges viz. NSE and BSE to carry out an investigation in the scrip of SCTL.
4. Accordingly, NSE and BSE had submitted the Joint Preliminary Analysis Report in the scrip wherein it was stated that during the period between April 26, 2017 and May 19, 2017, the price of scrip of SCTL had fallen from Rs.207.60 to Rs.52.45 i.e. it registered a fall by -74.75% in 17 trading days. There were series of negative announcements during the period of April, 2017 to May, 2017 made by SCTL viz. Filing of petition against SCTL before SCLT, New Delhi under Insolvency and Bankruptcy Code, Resignation of key officials, cancellation of Board Meetings, declaration of bonus which was subsequently not considered, etc., and it was

further alleged in the reports that there was a possibility of certain entities having traded on the basis of Unpublished Price Sensitive Information (“**UPSI**”) thereby avoiding notional losses.

5. Thereafter, SEBI had conducted detailed investigation to ascertain as to whether the trading activities of certain entities in the scrip of SCTL were based on the developments concerning the announcements made on April 30, 2017 and/or on May 11, 2017 regarding the filing of petition under Regulations 8 and 9 of IBC, 2016 by a foreign creditor Macquarie Bank (operational creditor of SCTL) against SCTL and disclosure on the consideration of issue of bonus shares, resignation of KMPs and Independent Directors of SCTL respectively, and to further ascertain and examine if there is any role played by the Mukesh Kumar Gupta (**Noticee No.1**) Director, Manish Goel (**Noticee No. 2**), Managing director and Ravi Shankar (**Noticee No. 3**), who was the compliance officer of SCTL during the IP.
6. Pursuant to the investigation, the following were observed and alleged as per the Investigation Report (**‘IR’**):
 - 6.1. Mukesh Kumar Gupta (**Noticee No.1**), Manish Goel (**Noticee No. 2**), director and managing director of SCTL respectively, being an insider of SCTL had access to and/or possession of UPSI relating to the developments concerning the announcements made on April 30, 2017 regarding the filing of petition under Regulations 8 and 9 of IBC, 2016 by a foreign creditor against SCTL with BSE and NSE, were alleged to have passed the said UPSI to certain suspected entities to trade in the scrip during the UPSI period. Further, it was also alleged against Noticee No. 2 that he had made misleading disclosure regarding the intimation of Board Meeting to consider the bonus issue (disclosure made on May 11, 2017), which was subsequently called off.
 - 6.2. With regard to Ravi Shankar (**Noticee No. 3**), who was the compliance officer of SCTL, it was alleged that, he failed to make timely disclosure regarding the

said material event to the exchange and also failed to close the trading window as per the applicable PIT Regulations.

7. SEBI had, therefore, initiated adjudication proceedings inter alia against Noticee No.1, Mukesh Kumar Gupta, under the provision of section 15G (ii) of the SEBI Act, for the alleged violation of section 12A(e) of SEBI Act, 1992 read with Regulation 3(1) of PIT Regulations, 2015. With respect to Noticee No.2, under the provisions of section 15G (ii) of the SEBI Act for the alleged violation of section 12A(e) of SEBI Act, 1992 read with Regulation 3(1) of PIT Regulations, 2015 and under section 15HA of the SEBI Act, for the alleged violations of Regulations 3(a),3(c),3(d),4(1),4(2)(a),4(2)(f),4(2)(k) and 4(2)(r) of SEBI (Prohibition of Fraudulent and Unfair Trade Practices relating to Securities Market) Regulations, 2003 (hereinafter referred to as '**PFUTP Regulations, 2003**') and Sections 12A(a),(b) and (c) of SEBI Act, 1992.
8. Further with respect to Noticee No.3, the adjudication proceeding was initiated under the provisions of section 23A(a) read with section 24(1) of Securities Contracts (Regulation) Act, 1956 (hereinafter referred to as '**SCRA**'), for the alleged violations of Regulations 6(2)(a),(b) and (c) of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as '**LODR Regulations, 2015**') and under section 15HB of SEBI Act, for the alleged violations of Clause 4 of the Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders as specified in Schedule B read with Regulation 9(1) of PIT Regulations, 2015.

APPOINTMENT OF ADJUDICATING OFFICER

9. Initially, Ms. Maninder Cheema, Chief General Manager was appointed as adjudicating officer("AO") vide order dated March 02, 2022 to inter alia enquire and adjudge under Section 15G(ii), Section 15HA, Section 15HB of SEBI Act and under Section 23A(a) read with section 24(1) of SCRA, as applicable for the alleged

violation specified above. Subsequently, the matter was transferred to Ms. Anitha Anoop, Chief General Manager vide order dated June 06, 2022. Thereafter, it was reassigned to the undersigned which was communicated vide communique dated September 22, 2022 to carry out adjudication proceedings. These proceedings are therefore being carried forward where they had been left off by the previous AO, and an opportunity of personal hearing was granted as detailed hereinafter.

SHOW CAUSE NOTICE, REPLY AND PERSONAL HEARING

10. A common Show cause notice (hereinafter referred to as “**SCN**”) dated July 07, 2022 was issued by the erstwhile AO to the Noticees under Rule 4(1) of the SEBI (Procedure For Holding Inquiry And Imposing Penalties) Rules, 1995 (hereinafter referred to as ‘**SEBI Adjudication Rules**’) and Rule 4(1) of the Securities Contracts (Regulations) (Procedure for Holding Inquiry and Imposing Penalties) Rules, 2005 (hereinafter referred to as ‘**SCR Adjudication Rules**’) to show cause as to why an inquiry should not be held and penalty not be imposed against them under 15G (ii), Section 15 HA, Section 15 HB of SEBI Act and under Section 23 A (a) read with section 24(1) of SCRA, as applicable. The SCN was served to the Noticees initially through SPAD to the addresses available in record which were returned undelivered and subsequently it was served through affixture. Upon transfer of the case to the undersigned, the said SCNs were also served through E-mail dated November 02, 2022 to the Noticees and the same were duly delivered.

11. Subsequently, the Noticees were provided an opportunity of personal hearing on December 08, 2022 which was communicated through the same e-mails where SCNs were earlier served. The said hearing was attended by Noticee No. 2 and 3 through webex. During the hearing Noticee No. 3, sought 2 days’ time to submit the reply to the SCN which was accorded to him. Accordingly, subsequent to the hearing, Noticee No.3 submitted the reply to the SCN vide emails dated December 08 and 13, 2022. However, in respect of Noticee No.2, though the SCN was served through same e-mail ID that he was corresponding with SEBI, he alleged that the

SCN was not received by him. It is therefore as requested, the SCN was once again sent to the present address provided by him, which was duly served and one more opportunity of personal hearing was also granted on January 09, 2023 after serving the physical copy of SCN. However, he failed to appear and also did not submit any reply to the SCN.

12. Further Noticee No.2 has also stated during the hearing that his father Shri. Mukesh Kumar Gupta (Noticee No.1) has expired on April 07,2021 and vide email dated March 16, 2023 submitted certified copy of the Death Certificate bearing no. 0221-22727988 issued by South Delhi Municipal Corporation certifying that Shri. Mukesh Kumar Gupta had expired on April 07, 2021. The death certificate was further verified from the website of South Delhi Municipal Corporation.

13. In view of the same, I am of the view that the present Adjudication Proceeding against Shri.Mukesh Kumar Gupta (Noticee No.1) would be abated. In this context I would like to quote the observations of Hon'ble Supreme Court, in ***Girijanandini Vs Bijendra Narain*** (AIR 1967 SC 2110), wherein the court observed that in case of personal actions, i.e. the actions where the relief sought is personal to the deceased, the right to sue will not survive to or against the representatives and in such cases the *maxim actio personalis moritur cum persona* (personal action dies with the death of the person) would apply. I note that the SCN against him was issued on July,7 2022 and the record shows that he died on April 7, 2021. Thus, the proceedings were initiated against the personal acts of omission and commission of a person who was no more to face the said charges even before initiation of the instant adjudication proceedings against him. Therefore, relying on the aforementioned Order of Hon'ble Supreme Court, I am of the view that the instant proceeding initiated against Noticee No.1 vide SCN dated July 7, 2022 will not survive and is liable to be abated without going into the merits of the case with respect to the said Noticee.

14. In view of the above facts and circumstances I deal with the matter on merits as far the other Noticees are concerned. The summary of the reply submitted by Noticee No.3 is as follows:

- a) The Noticee was appointed as Company Secretary of Shilpi cable Technologies Limited on 12th August, 2016. The Noticee was not aware of any notice received from Macquarie Bank till it came to the Public Domain. All the legal matters were dealt with by Management along with the Legal department of the Company.
- b) Noticee had already resigned from the post of Company Secretary (vide his resignation letter dated April 3, 2017) and which got accepted w.e.f. May 1, 2017 and accordingly had no role in the working affairs of the company after 30 April, 2017.
- c) The intimation to stock exchange related to Macquarie Bank was made on April 30, 2017 which was Noticee's last working date in the Company as a Company Secretary.
- d) Since Noticee was not in possession of UPSI (issue pertaining to Macquarie Bank) before it disseminated publicly. Hence, the Noticee could not close the trading window if he was not aware of or in possession of any UPSI.

15. In view of the above, I note that principles of natural justice have been duly complied with, as SCN and Hearing Notices were duly served upon the Noticees and sufficient opportunity was also granted to them to submit reply to the SCN and appear for personal hearing. Therefore, I deem it appropriate to decide the matter on the basis of facts/material available on record and reply submitted by the Noticee.

ISSUES FOR CONSIDERATION

16. I have carefully perused the submissions made, the documents available on record, and the issues that arise for consideration in the present case are:

- I. Whether Noticee No. 2 and 3 have violated the provisions of SEBI Act, SCRA, PIT Regulations, PFUTP Regulations and LODR Regulations, as applicable?***
- II. Does the violation, if any, on the part of the Noticees attract monetary penalty under section 15G (ii), section 15 HA, section 15 HB of SEBI Act and under section 23 A (a) read with section 24(1) of SCRA, as applicable?***
- III. If so, what would be the monetary penalty that can be imposed?***

17. Before moving forward, it is pertinent to refer to the relevant provisions applicable in the instant case, which reads as under:

SEBI Act, 1992

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

12A. No person shall directly or indirectly—

.....

- a. use or employ, in connection with the issue, purchase or sale of any securities listed or proposed to be listed on a recognized stock exchange, any manipulative or deceptive device or contrivance in contravention of the provisions of this Act or the rules or the regulations made thereunder;***
- b. employ any device, scheme or artifice to defraud in connection with issue or dealing in securities which are listed or proposed to be listed on a recognised stock exchange;***

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

PIT Regulations, 2015

Communication or procurement of unpublished price sensitive information.

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

NOTE: This provision is intended to cast an obligation on all insiders who are essentially persons in possession of unpublished price sensitive information to handle such information with care and to deal with the information with them when transacting their business strictly on a need-to-know basis. It is also intended to lead to organisations developing practices based on need-to-know principles for treatment of information in their possession

Code of Conduct.

9. (1) *The board of directors of every listed company and market intermediary shall formulate a code of conduct to regulate, monitor and report trading by its employees and other connected persons towards achieving compliance with these regulations, adopting the minimum standards set out in Schedule B to these regulations, without diluting the provisions of these regulations in any manner.*

NOTE: It is intended that every company whose securities are listed on stock exchanges and every market intermediary registered with SEBI is mandatorily required to formulate a code of conduct governing trading by its employees. The standards set out in the schedule are required to be addressed by such code of conduct.

SCHEDULE B

Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders

4. *Designated persons may execute trades subject to compliance with these regulations. Towards this end, a notional trading window shall be used as an instrument of monitoring trading by the designated persons. The trading window shall be closed when the compliance officer determines that a designated person or class of designated persons can reasonably be expected to have possession of unpublished price sensitive information. Such closure shall be imposed in relation to such securities to which such unpublished price sensitive information relates. Designated persons and their immediate relatives shall not trade in securities when the trading window is closed.*

PFUTP Regulations, 2003

3. Prohibition of certain dealings in securities

No person shall directly or indirectly—

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

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

4. Prohibition of manipulative, fraudulent and unfair trade practices

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

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

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

.....

f) publishing or causing to publish or reporting or causing to report by a person dealing in securities any information which is not true or which he does not believe to be true prior to or in the course of dealing in securities;

.....

k) an advertisement that is misleading or that contains information in a distorted manner and which may influence the decision of the investors

.....

(r) planting false or misleading news which may induce sale or purchase of securities.

LODR Regulation, 2015

6. Compliance Officer and his Obligations.

- (2) *The compliance officer of the listed entity shall be responsible for-*
- (a) *ensuring conformity with the regulatory provisions applicable to the listed entity in letter and spirit.*
 - (b) *co-ordination with and reporting to the Board, recognized stock exchange(s) and depositories with respect to compliance with rules, regulations and other directives of these authorities in manner as specified from time to time.*
 - (c) *ensuring that the correct procedures have been followed that would result in the correctness, authenticity and comprehensiveness of the information, statements and reports filed by the listed entity under these regulations.*

CONSIDERATION OF ISSUES AND FINDINGS

Issue I - Whether Noticee No. 2 and 3 have violated the provisions of SEBI Act, SCRA, PIT Regulations, PFUTP Regulations and LODR Regulations, as applicable?

18. From the material available on record, I note that SCTL was incorporated on July 9, 2006 as a public limited company with the name Rosenberger Shilpi Cable Technologies Ltd. The company was established as 50:50 joint venture between Shilpi Communication Pvt Ltd., and Rosenberger Hochfrequenztechnik GmbH & Co KG, Germany, to take up the project of Radio Frequency (RF) Cables and engaged in manufacturing of radio frequency corrugated feeder cables. It also manufactures telecom, automobile and energy cable in India. In January 2008, the company commenced commercial production at Chopanki Plant.

19. Board of Directors of SCTL (as per MCA website as on May 30, 2017):

Name of Director	Nature of Directorship	Present Residential Address	Period of service as director
Mukesh Kumar Gupta (PAN : AEIPG5741G)	Director	B-8, Chirag Enclave Greater Kailash New Delhi 110019	08.11.2006- till date
Ghanshyam Pandey (PAN : AEDPP9478A)	Wholetime Director	House no. 277, Pocket –J, Sarita Vihar, New Delhi - 110076	17.08.2006- 06.06.2017
Manish Goel (PAN : AEDPG0138E)	Managing Director	B 8, Chirag Enclave Nehru Place New Delhi 110019	01.03.2017- till date
Sandeep Gupta (PAN : AAOPG5375N)	Director	D-21, East Of Kailash New Delhi 110065	01.10.2008- till date
Manish Bhatt (PAN : AADPB2193A)	CEO(KMP)	Flat No. 1003, Tower-25, Orchid Petals Sector-49 Gurgaon 122001 Haryana	24.05.2014- 31.07.2017
Shailendra Kumar (PAN : AGPPK2052D)	CFO (KMP)	101, Pariwar Apartment 30, IP Ext., Patparganj, Laxmi Nagar, Gandhi Nagar East Delhi 110092	29.05.2017- till date

Shareholding Pattern of SCTL:

Name Of The Share Holder	Jun-17		Mar-17		Dec-16	
	Number of shares	Shares as a percentage of total number of shares/ (shares pledged as a percentage of holding)	Number of shares	Shares as a percentage of total number of shares	Number of shares	Shares as a percentage of total number of shares
Promoters (A)	4,55,72,000	41.19 (99.84)	4,55,72,000	41.19 (73.51)	4,55,72,000	41.19 (73.51)
Public Shareholding(B)	6,50,60,272	58.81	6,50,60,272	58.81	6,50,60,272	58.81
Total (A+B)	11,06,32,272	100	11,06,32,272	100	11,06,32,272	100

20. Further I note from the IR that there were no off market/on market transactions by the promoters/promoter's group during the period January 01, 2016 to December 31, 2017. The details of promoter & Promoter groups of SCTL are as under:

Promoter & Promoter group of SCTL:

Name Of Shareholder	Jun-17		Mar-17		Dec-16	
	Number of shares	% Shares held / (shares pledged as a percentage of holding)	Number of shares	% Shares held / (shares pledged as a percentage of holding)	Number of shares	% Shares held / (shares pledged as a percentage of holding)
Promoter						
Mukesh Gupta	16,000	0.01 (0)	16,000	0.01 (0)	16,000	0.01 (0)
Manish Goel	14,000	0.01 (0)	14,000	0.01 (0)	14,000	0.01 (0)
Sharda Rani	14,000	0.01 (0)	14,000	0.01 (0)	14,000	0.01 (0)
Shilpi Goel	14,000	0.01 (0)	14,000	0.01 (0)	14,000	0.01 (0)
Vishal Goel	14,000	0.01 (0)	14,000	0.01 (0)	14,000	0.01 (0)
Shilpi Communication Private Limited	3,35,00,000	30.28 (100)	3,35,00,000	30.28 (100)	3,35,00,000	30.28 (100)
Shilpi Cables Private Ltd	1,20,00,000*	10.85 (100)	1,20,00,000*	10.85 (0)	1,20,00,000*	10.85 (0)
Total	4,55,72,000	41.19	4,55,72,000	41.19	4,55,72,000	41.19

* Shilpi Cables Private Ltd (SCPL) held 1,20,00,000 equity shares which were locked-in and also held 70,00,000 convertible securities/ warrants

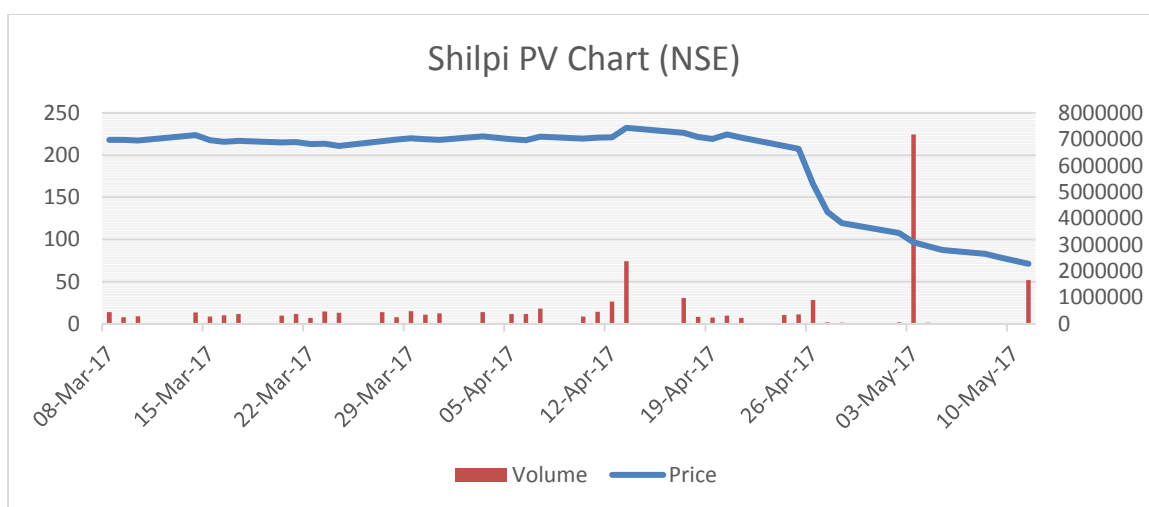
From the above table, I note that there was no change in shareholdings of promoters during IP.

Price Movement in scrip of SCTL

21. During IP, I note that the share price of SCTL had fallen from Rs.218.25 to Rs.71.25 on NSE and from Rs.218.35 to Rs.70.95 on BSE. For most of the investigation period, the share price was in the range of Rs.212.57 to Rs.233.40 on BSE. The share price of SCTL started falling from April 21, 2017 onwards and from April 26, 2017 to May 11, 2017, the share price decreased sharply from Rs.223.53 to Rs.70.95.

22. The price and volume analysis of SCTL at NSE:

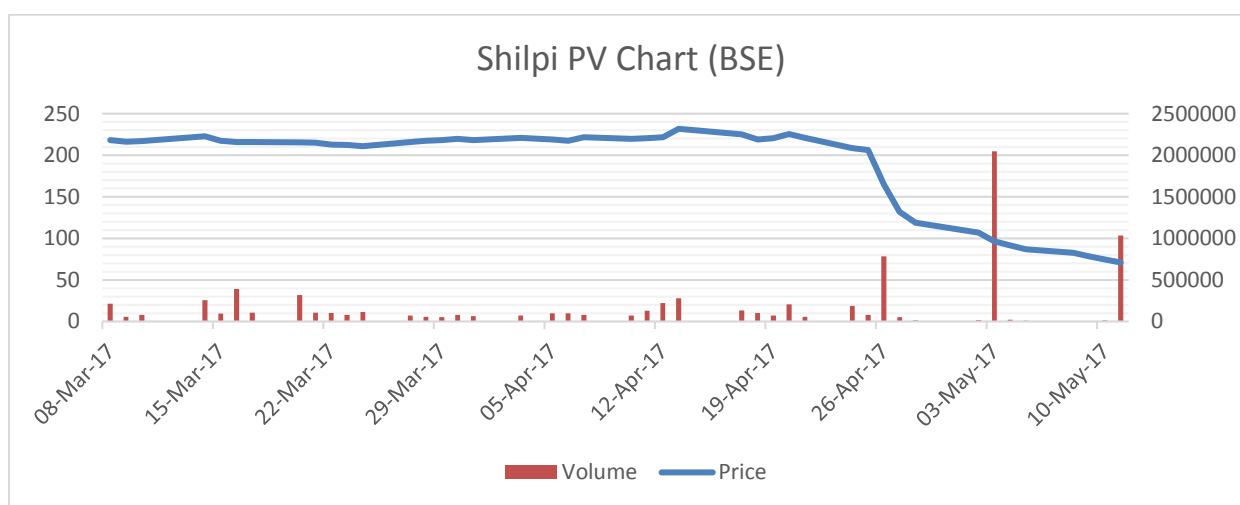
Period	Date		Opening price & volume on first day of the period	Closing Price & Volume on last day of the period (Rs.)	Low Price & Volume during the period (Rs.)	High Price & Volume during the period (Rs.)	Total number of shares traded during the period	Average number of shares traded daily during the period
Before IP	08/12/2016 - 07/03/2017	Price (Rs.)	200.6	218.95	180.15 (02/01/2017)	238.85 (23/01/2017)	22491875	362772
		Volume (shares)	452217	267204	83618 (22/12/2016)	1198709 (10/02/2017)		
During IP	08/03/2017 - 11/05/2017	Price (Rs.)	218.25	71.25	71.25 (11/05/2017)	252 (13/04/2017)	24695132	574305
		Volume (shares)	446993	1657241	13952 (08/05/2017)	7188162 (03/05/2017)		
After IP	12/05/2017 - 11/08/2017	Price (Rs.)	67.7	24.5	20.05 (15/06/2017)	67.7 (12/05/2017)	92731370	1426636
		Volume (shares)	199968	66257	8333 (30/05/2017)	9128423 (20/06/2017)		



The price and volume analysis of SCTL at BSE:

Period	Date		Opening price & volume on first day of the period	Closing Price & Volume on last day of the period (Rs.)	Low Price & Volume during the period (Rs.)	High Price & Volume during the period (Rs.)	Total number of shares traded during the period	Average number of shares traded daily during the period
Before IP		Price (Rs.)	200.1	218.3	178.9	247.7	6292856	101498

	08/12/2016 - 07/03/2017	Volume (shares)	150428	71842	(10/02/2017) (21/12/2016)	(20/02/2017) (10/02/2017)		
During IP	08/03/2017 - 11/05/2017	Price (Rs.)	218.35	70.95	70.95 (11/05/2017)	252 (13/04/2017)	8116729	188761
		Volume (shares)	215148	1034218	7108 (08/05/2017)	2045738 (03/05/2017)		
After IP	12/05/2017 - 11/08/2017	Price (Rs.)	67.45	24.6	20 (15/06/2017)	67.45 (12/05/2017)	26321673	404949
		Volume (shares)	56366	11324	1632 (16/06/2017)	3446150 (19/06/2017)		



Violation of SEBI Act and PIT Regulations

23. As there was sudden sharp movement in the scrip of SCTL (around the period of sudden dip in the scrip, as depicted and tabulated above), the exchanges (NSE and BSE) submitted to SEBI that, there were series of negative announcements made by the SCTL. In particular, there was announcement made by SCTL to BSE on April 30, 2017 regarding initiation of insolvency proceedings by Macquarie Bank against SCTL for default in payment by SCTL. Hence, the trading of certain entities was in suspicion as they might have traded based on the said information, before that was disclosed to the exchanges and became known to public.

24. During the investigation, it was informed by SCTL that Noticee No.1 and 2, the promoter directors of SCTL, had access to and/or were in possession of the petition filed by Macquarie Bank against SCTL under Section 8 and 9 of IBC, 2016. Further at the relevant time Noticee No. 2 was also holding the position of Managing Director of SCTL. As per IR, prior to filing the aforesaid petition a demand notice dated March 08, 2017 was served upon SCTL, seeking payment of USD 3.01 Million (equivalent to approximately INR 19.55 Crore). The said demand notice was received by the SCTL on March 10, 2017. Taking into consideration the applicable provisions of IBC, 2016, wherein serving demand notice is mentioned as a pre-requisite for the initiation of proceedings under IBC, 2016, the receipt of such demand notice by SCTL was considered as a material event. Which needed to be disclosed by SCTL.

25. Further, during the investigation, based on the prior business relations with SCTL and having frequent communication with Noticee No.1 and 2, certain entities who have traded in the scrip of SCTL during the IP namely Dinesh Gupta HUF, Dinesh Gupta, Rajesh Gupta, Nirmala Gupta, Ajay Fincap Consultants Pvt. Ltd. were considered as suspected entities (hereinafter referred as to 'suspected entities') and hence it was alleged that said Noticees might have communicated the receipt of aforesaid demand notice to such suspected entities, and had allegedly violated the Insider Trading norms.

26. Accordingly, I note that Noticee No.2 was alleged to have violated Regulation 3(1) of PIT Regulations, 2015. The text of the said provision is reproduced below:

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

NOTE: This provision is intended to cast an obligation on all insiders who are essentially persons in possession of unpublished price sensitive information to handle such information with care and to deal with the

information with them when transacting their business strictly on a need-to-know basis. It is also intended to lead to organisations developing practices based on need-to-know principles for treatment of information in their possession

27.A perusal of the provisions governing insider trading activities reveals that Regulation 3(1) of the PIT Regulations, 1992 pre-supposes the following essential ingredients to be present and to be satisfied to allege and establish the allegation of insider trading. These essential ingredients or preconditions are as under:

- a) Whether the information regarding receipt of demand notice dated March 08, 2017 by SCTL issued by Macquaire Bank was an UPSI?*
- b) Whether Noticee No. 2 was an 'insider' under Regulation 3(1) of PIT Regulations?*
- c) Whether Noticee No. 2 had communicated the UPSI to deal in the shares of SCTL on the basis of said UPSI?*

a) Whether the information regarding receipt of demand notice dated March 08, 2017 by SCTL issued by Macquaire Bank was an UPSI?

28.In order to determine the nature of such information, I examine the aforesaid question in two parts:

- i) Whether the aforementioned information was price sensitive information?*
- ii) Whether the information was unpublished?*

29.For 28(i) above, it was observed that:

29.1. On April 30, 2017 (Sunday) at around 14:41:14 hours, it was disseminated on BSE that SCTL had made a disclosure dated April 29, 2017 under Regulation 30 of LODR Regulations informing that *"a petition has been filed against the company under Section 8 & 9 of the Insolvency and Bankruptcy Code, 2016 ('IBC 2016') by an overseas Bank claiming to be operational creditor against the company, before the Hon'ble National Company Law Tribunal (NCLT), New Delhi, which is disputed as per our company. The*

company is taking legal recourse in this matter. The matter is listed for hearing at NCLT on May 04, 2017.”

The same disclosure was disseminated on NSE on May 02, 2017 (before next trading hours) at around 08:40:00 hours.

29.2. Upon the aforesaid disclosure regarding the filing of petition before NCLT, the price of the scrip of SCTL fell by 9.80% on NSE and 9.76% on BSE in a single day, which is a significant fall.

29.3. From the above, I note that the scrip of SCTL showed downfall of approximately 10% in single day when the disclosure to the exchanges was made regarding the filing of petition before National Company Law Tribunal ('NCLT') by operational creditor. Hence, it establishes that the said information was a price sensitive information. However, can the serving of demand notice dated March 08, 2017 upon SCTL be as well considered as price sensitive information?

29.4. In this regard, it is pertinent to note that SCTL was served a demand notice vide letter dated March 08, 2017 by Macquarie Bank (operational creditor of SCTL) under Section 8 of the IBC, 2016, calling upon SCTL to pay the outstanding amount (amounting to \$3.01million, appx. Rs. 19.55 crores) within a period of 10 days from the date of receipt of the notice. On the perusal of relevant provisions of IBC, 2016, I note that, this demand notice demonstrates that the company has defaulted in its financial obligations. Further, it is a mandatory pre-requisite for the initiation of Corporate Insolvency Resolution Process (hereinafter referred to as “**CIRP**”), against the company under IBC, 2016. The demand notice was received by SCTL on March 10, 2017.

29.5. Section 8 of IBC, 2016 provides the steps for initiation of insolvency resolution by an operational creditor on occurrence of default. Section 8 (1) of IBC, 2016 provides that, on occurrence of default, the operational creditor shall

serve a demand notice to the operational debtor demanding payment of operational debt in respect of which the default has occurred.

29.6. Section 8(2) of IBC, 2016 provides that the corporate debtor shall, within a period of ten days of the receipt of the demand notice, bring to the notice (dispute notice) of the operational creditor any dispute, if any, in relation to the demand notice or the invoice involved in the default.

29.7. Section 9 of IBC, 2016, provides the steps for filing of application for initiation of corporate insolvency resolution process by the operational creditor. If,

(i) after a period of ten days from the date of delivery of demand notice u/s 8(1) of IBC, 2016 the operational creditor does not receive payment from the corporate debtor; or

(ii) on notice of dispute u/s 8(2) of IBC, 2016 by the operational debtor, the operational creditor may file an application before the Adjudicating Authority (National Company Law Tribunal constituted u/s 408 of the Companies Act, 2013) for initiating the corporate insolvency resolution process against the corporate debtor.

29.8. Section 9(5) of IBC, 2016, provides the conditions for the acceptance or rejection of the application of the Operational creditor within fourteen days of the receipt of the same.

29.9. From the mechanism provided under IBC, 2016 to initiate CIRP, I note that the serving of demand notice is a pre-requisite and may result in initiation of CIRP. Though the serving of demand notice is itself not tantamount to initiation of CIRP but definitely an event which indicates that the debtor has defaulted in their obligation to repay the amount due and may result in initiation of CIRP in near future. Hence, it is a negative event and has the potential of affecting the price of securities of the debtor company if disclosed to public. As seen above, the definition of UPSI under PIT Regulations indicates that it is the likelihood of materially affecting the price of the securities and not the actual materiality itself, which is the criteria to determine UPSI.

29.10. Also, from the IR I note that SCTL vide letter dated March 20, 2017 replied to Macquarie Bank's (operational creditor) demand Notice wherein it mentioned that the demand Notice was received on March 10, 2017. SCTL acknowledged the outstanding amount and requested additional time to settle the accounts on the ground that it was under financial hardship. In response to the same Macquarie Bank vide its letter dated March 28, 2017, declined SCTL's request for time extension. Subsequently, on April 03, 2017, Macquarie Bank filed an application under Sections 8 and 9 of IBC, 2016 before the NCLT, New Delhi for the default in payment by SCTL. Thereafter, NCLT vide its order dated May 24, 2017, inter alia, admitted the application filed by Macquarie Bank and initiated CIRP of SCTL.

29.11. From the above I note that SCTL not only acknowledged the receipt of said demand notice by Macquarie Bank but also admitted that the company is undergoing financial hardship. Further, I also note that at present the company is under liquidation as per the status of MCA website. Hence, it can be safely established that the management of the company were well versed with the deteriorating financial health of the company at the time of receipt of said demand notice.

29.12. Upon a careful perusal of the relevant provisions of PIT Regulations, it is observed that the intent of regulatory framework put in place through the PIT Regulations is two-fold:

- a) to prevent any trading in securities with the advantage of having asymmetrical access to unpublished information, which when published would impact the scrip price; and
- b) to identify such unpublished information within the company and put in place internal controls to prevent its unauthorized use.

29.13. Considering the observations made in Para 29.11, it is established that the information regarding receipt of demand notice by SCTL, specially under the circumstances it was served (while SCTL was undergoing financial

hardship), could be misused and taken advantage of by the persons privy to it. It is already being observed in 29.2 above that the scrip saw significant drop in price when the disclosure regarding filing of petition before NCLT was made, an event which emanated from the service of demand notice dated March 08, 2017.

29.14. Being a listed company, SCTL had to diligently comply with the provisions of LODR Regulations. The intent of the regulatory framework of the LODR Regulations is to ensure that there is “timely and adequate” disclosure of relevant information by listed entities to investors, both at the time of initial filing as well on a continuous basis. Continuous, adequate, accurate and timely disclosure of information on an ongoing basis would achieve parity while enabling investors to make informed investment decisions.

29.15. Therefore, the receipt of demand notice dated March 08, 2017 by SCTL, under the circumstances as mentioned above could have been misused by the persons aware of the same and also had the potential to influence investors’ decision hence can be considered as price sensitive information.

30. For 28(ii) above, in order to regard the aforesaid price sensitive information as unpublished, it is important to refer to the definition of ‘unpublished’ and when a particular information can be considered as published. The term *unpublished* though not defined in the PIT Regulations, same can be derived from Regulation 2(1)(n) of PIT Regulations, 2015. It states:

“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...

....

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."

30.1. From the above definition, I note that unpublished information is referred as 'an information that is not generally available'. The phrase 'generally available information' is defined under 2(1)(e) as:

(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.**

30.2. The above information with respect to receiving of demand notice which led to subsequent filing of petition under sections 8 & 9 of IBC, 2016 by Macquarie Bank against SCTL was UPSI until it was made available to the public through the disclosures made by SCTL to the exchanges i.e., BSE on April 30, 2017 and NSE on May 02, 2017. Further, the receipt of demand notice by SCTL was never disclosed to exchanges. Disclosing the same to the stock exchanges by listed companies is considered as publishing it and subsequent to that only the UPSI becomes published or generally available. Listed companies have an obligation to make such disclosures to the stock exchanges where the securities of the company are listed in time bound manner (within twenty-four hours of the occurrence of the event). Hence, the information, being price sensitive, was unpublished from March 10, 2017 (date of receipt of said demand notice by SCTL) till the disclosure was made on April 30, 2017 to BSE by SCTL.

31. In this regard, Hon'ble Securities Appellate Tribunal (SAT) in its order of **Shruti Vora vs SEBI** (Appeal No. 308 of 2020) decided on March 22, 2021, held that:

“16. The information can be branded as an unpublished price sensitive information only when the person getting the information had a knowledge that it was unpublished price sensitive information.”.

32. In the instant case, the nature of said UPSI i.e. receipt of demand notice dated March 08, 2017 by SCTL has been examined and accordingly brought out in the preceding paragraphs. Further, Noticee No. 2 being the promoter and Managing Director of SCTL was also privy to the said demand notice served to SCTL. As demonstrated above, the serving of demand notice suggests that a company has defaulted in its financial obligations and it is also a mandatory pre-requisite for initiation of CIRP against a company under IBC, 2016. During investigation it was also discovered that the company did not dispute the claim mentioned in the said demand notice and instead vide its reply to the demand notice, dated March 20, 2017, had acknowledged the outstanding amount (approx. Rs.19.55 Cr) and had requested some more time to settle the accounts on the ground that they were under financial hardship. The said request was declined.

33. Here I note and emphasise that the company, SCTL, was undergoing financial hardship when the said demand notice was served. SCTL was also not able to repay the loan and interest to its other creditor M/s. BDR Builders and Developers Pvt. Ltd. (hereinafter referred to as ‘**BDR**’), the details of which is mentioned in the later part of this order. Taking into consideration all these factors, I note that, the service of demand notice upon SCTL made its condition worse as this had the potential to trigger CIRP against SCTL. This would have tumbled the price of shares of SCTL as happened when the disclosures were made on April 30, 2017. Hence, the information was material and price sensitive and till it is disclosed or remains unpublished, all the *insiders* of the company should have been careful while dealing with information of such nature.

UPSI Period

34. In view of the above, the period from the date of receipt of demand notice by SCTL from Macquarie Bank under section 8 of IBC, 2016 i.e., March 10, 2017 till the date

of disclosure on exchanges of the filing of application by Macquarie Bank under Sections 8 and 9 of IBC, 2016 before the NCLT, New Delhi i.e., April 30, 2017 is considered as UPSI period. Hence, the UPSI period is from March 10, 2017 to April 30, 2017.

b) Whether Noticee No. 2 was an 'insider' under Regulation 3(1) of PIT Regulations?

35. In this regard, I would refer to Regulation 2(1)(g) of SEBI (PIT) Regulations, 2015, wherein '*insider*' means any person who is:

- i. *A connected person, or*
- ii. *in possession of or having access to UPSI*

Regulation 2(1)(d) of SEBI (PIT) Regulations, 2015, '*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.***

36. From the above definitions, I gather that all '*connected persons*' are considered as '*insiders*'. Further, every person holding the position of director of a company shall be considered as *connected person* and consequently will be an *insider* under the PIT Regulations, 2015. In this regard, from the IR, I note that Manish Goel (promoter of SCTL) was holding the position of Managing Director of SCTL during the time the said demand notice was served on SCTL by Macquarie Bank. Hence, Manish Goel (Noticee No.2) is an *insider* in terms of 2(1)(g)(i) of SEBI PIT Regulations, 2015.

c) Whether Noticee No. 2 had communicated the said UPSI?

37. As established that Noticee No.2 (promoter and managing director of SCTL) was an insider and was in possession of the UPSI regarding receipt of demand notice dated March 08, 2017 by Macquire Bank and the UPSI period for the same was till April 30, 2017, the issue that needs to be examined now is whether Noticee No.2 communicated the same to suspected entities during the said UPSI period and hence have violated Regulation 3(1) of PIT Regulations.

Close connection with Suspected Entities

38. In this regard, I note that on the basis of the report of NSE and BSE and the announcements made by SCTL to the Exchanges, certain entities viz. Dinesh Gupta HUF, Dinesh Gupta, Rajesh Gupta, Nirmala Gupta, Ajay Fincap Consultants Pvt. Ltd., Atul Malik and Sabita Agarwal were suspected to have traded on the basis of UPSI. However, except Atul Malik and Sabita Agarwal, all other entities were found to be directly/indirectly connected among each other and to SCTL, the details of which are under and also dealt in the succeeding paragraphs.

Sl. No.	Name of Suspected Entity	PAN	Connection with SCTL	Whether related to each other
1	Dinesh Gupta	AAAPG4180D	Yes, Business Relationship	Entity (1) is the karta of Entity (2). Entities (1) and (3) are brothers and Entity (4) is their mother. Entities 1), (2), (3) and (4) together are referred to as "Gupta family". Entity (5) directors – Ajay Kumar Singh and Bechu Singh are in common
2	Dinesh Gupta HUF	AACHD9271Q	-	
3	Rajesh Gupta	AAAPG7884Q	Yes, Business Relationship	
4	Nirmala Gupta	AAKPG7659K	-	
5	Ajay Fincap Consultants Pvt.. Ltd	AAMCA5253G	-	

				<p>directorships with (1) & (3) Email Id and contact no. of Entity (5) is same as that of Entity (3) in its demat account and trading account respectively.</p> <p>Entity (3) is the major shareholder of Entity (5)</p>
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39. During the investigation, it was also observed that aforesaid suspected entities while trading in the scrip of SCTL had only sold the shares in large numbers during the UPSI which was in contrast to their prior trading pattern in the scrip of SCTL. Many of these suspected entities were also found to be connected to each other. In view of the aforesaid, the probability of communicating the UPSI by Noticee No. 2 to these suspected entities was examined during the investigation. For this purpose, the proximity between Noticee No.2 and suspected entities was scrutinized and the following was observed:

39.1 Market Transactions

39.1.1. Off-market purchase of 16 lakhs equity shares of SCTL each by Dinesh Gupta, Dinesh Gupta HUF, Rajesh Gupta and Rajesh Gupta HUF from Shilpi Communication Pvt. Ltd. in 2012: -

- a) From the IR, I note that Noticee No.1 and 2 the promoter directors of SCTL along with Mr. Vishal Goel, (brother of Noticee No. 2) were also the promoter directors of Shilpi Communication Pvt. Ltd. (**SCPL**) which holds 2.41 crore equity shares of SCTL, representing 74.77% of the total paid-up capital of SCTL by the end of March 2012. SCPL transferred in off-market transaction 16 lakhs shares each (total 64 lakhs shares i.e. 19.82% of the total paid up capital) to the demat accounts of the suspected entities

namely Dinesh Gupta, Dinesh Gupta HUF, Rajesh Gupta and Rajesh Gupta HUF on May 02, 2012.

- b) Further, from the disclosure made on the aforesaid off-market transactions by SCPL on May 02, 2012, it was observed that the total sell value for the entire transaction was Rs.12.80 crore at Rs.20/- which was higher than the closing price of each equity share of SCTL on May 02, 2012 i.e. Rs.11.29. The aforesaid entities each made payment of Rs.3.2 crores for the same in May 2014 and remaining in July 2014 i.e. after a period of more than two years.
- c) Hence, from the payment details submitted by the connected entities during the investigation, it was observed that both Dinesh Gupta and Rajesh Gupta had paid the consideration for the off-market purchase after a considerable delay of more than 2 years, without any interest. Further no underlying agreement / deed with SCPL encapsulating the terms of payment of consideration to SCPL was presented during the investigation by the said entities i.e. Dinesh Gupta and Rajesh Gupta. This leads to show that there was an informal common understanding between Dinesh Gupta/ Rajesh Gupta and SCPL regarding the payment of consideration by them to SCPL.

39.2 Bank Transactions

39.2.1. Frequent Bank transactions between BDR and SCTL and its group companies.

- a) Dinesh Gupta and Rajesh Gupta were the promoter directors of BDR during the relevant period. From the bank account statements of BDR– (a) HDFC – 05877570000024 and (b) HDFC – 05872320000353 for the period March 31, 2015 till March 31, 2018, it was observed that BDR had several transactions with SCTL and its promoter company i.e. SCPL.

- b) Further, I note that, Dinesh Gupta admitted during investigation that apart from the loan against pledge / mortgage of equity shares of SCTL, BDR also extended short-term funding to SCTL and Shilpi Cables Pvt. Ltd. as and when required by these entities. Thus, there were frequent movement of funds between BDR and Shilpi group entities during FY 2015-16, FY 2016-17 and FY 2017-18. However, there was no formal agreement for these funding and such transactions were only recorded in the ledgers.

39.3 Loan Transactions

39.3.1. Loans extended by company owned by Dinesh Gupta and Rajesh Gupta to SCTL and SCPL.

- a) In this regard, I note that SCTL and Dinesh Gupta submitted during the investigation that they had business relationship with each other and extended financial facilities between them. The details of which are as under.

Sr. No.	Name of the Borrower	Amount (In INR)/Date of transfer	Date of agreement	Security
I.	Shilpi Cable Technologies Limited (SCTL)	20 Crores on 23/12/2015	05/01/2016	1,04,34,748 equity shares of SCTL
II.	Shilpi Cable Private Limited	(i) 25 Crore on 12/10/2015; (ii) 2 Crore on 13/10/2015; and (iii) 4 Crore on March 30, 2016 Total: 31 Crore	23/12/2015 for an amount of INR 27 Crore	40 Lakh shares of SCTL and 1.5 Crore warrants in SCTL held by Shilpi Cable Private Limited

- Loan extended by BDR to SCTL

- b) BDR had extended loan of Rs.20 crores at the rate of 9% to SCTL for nine months on Dec 23, 2015 against the pledge of 1,04,34,748 equity shares (9.43% of the total paid-up equity shares) of SCTL held by the Shilpi Cable Technologies Ltd. and the same was documented under the loan agreement dated Jan 05, 2016. It was observed that all the securities transaction of SCTL was made through the Securities Trust (SCTL Securities Trust), created by SCTL with the main object of holding the shares for the sole benefit of SCTL. It is pertinent to note that Anand Gupta, elder brother of Mr. Dinesh Gupta, was the Trustee of SCTL Securities Trust since inception of the said Trust.
- c) Further, I note that, though there has been mention of pledge of shares by SCTL Securities Trust with BDR for the aforesaid loan of Rs.20 crores in the terms and conditions mentioned in the loan agreement, it was observed during investigation from the demat transaction statements of SCTL Securities Trust and BDR submitted by CDSL and NSDL vide emails dated October 06, 2021 that no such pledge was marked from the demat account of SCTL Securities Trust to the demat account of BDR. It also observed that no disclosure regarding the pledge made by SCTL Securities Trust by SCTL to stock exchanges. In view of the same, it was observed that no actual pledge took place in reality, which was not in conformity with the terms of the loan agreement.
- d) I also note from IR that SCTL paid interests for the aforesaid loan only till September 2016 – once for the period January-March 2016 and again for the period April – September, 2016, however, it had failed to repay the principal amount upon expiry of nine months since the date of loan and failed to pay any interest on such outstanding loan post September 2016. As per the submission of BDR while investigation, it mentioned that during April 2017 SCTL approached BDR for extension of loan up to last week of April 2017 and issued four cheques, dated April 24, 2017 and April 26, 2017, towards partial discharge of the loan amount. The said cheques

were deposited by BDR with HDFC Bank on April 27, 2017 and those were dishonored by the Bank on April 28, 2017. One of the cheques was dishonored for the reasons '*Exceeds Arrangement*' and the rest three were dishonored for the reasons '*Payment stopped by Drawer*'. Further I note that, SCTL had also failed to pay any interest for the period Oct 01, 2016 till April 30, 2017.

- e) Thereafter, SCTL and BDR *vide* amended loan-cum-guarantee deed dated May 01, 2017 extended the said loan period for further period of three months and at an interest rate of 18% for the extended period and paid on a monthly basis. SCTL offered, as security, pledge of 84,34,748 equity shares (constituting 7.62% of the paid-up equity share capital) of SCTL held by SCTL Securities Trust and a tri-party pledge deed was executed between BDR, SCTL Securities Trust and SCTL on May 01, 2017. The said amended loan-cum-agreement deed dated May 01, 2017 between SCTL and BDR mentioned that *"the lender (BDR) has at the request of the Borrower (SCTL) agreed to extend the loan of Rs.20 crores on interest @ 18% p.a. payable at monthly interest."*
- f) With regard to the above, it was observed that said amended loan-cum-guarantee deed was silent on the interest accrued and unpaid (i.e. approx. Rs.1.05 crore) by SCTL on the outstanding amount for the period October 2016-April 2017 to BDR, though the same had been entered into the ledger of SCTL Share Pledge in the books of BDR. Also, the loan amount as mentioned in the said amended loan-cum-guarantee deed was Rs.20 Crores and was basically the extension of the earlier principal amount which was due in October 2016 and did not include the interest accrued and unpaid on the outstanding amount for the period Oct 2016- April 2017. Therefore, it is inferred that BDR had foregone the interest accrued and unpaid from SCTL on the outstanding amount for the period October 2016-April 2017.

- g) Further, from the demat transaction statement of SCTL Securities Trust submitted by CDSL vide email dated Oct 06, 2021, it is observed that the actual pledge set-up and pledge request form for the pledge of 84,34,748 equity shares was constituted on June 06, 2017 even though the pledge deed was executed on May 01, 2017.
- Loan extended by BDR to Shilpi Cable Pvt. Ltd.
- a) It was observed that a loan of Rs.27 crores at the rate of 9% (Rs.25 crores on Oct 12, 2015 and Rs.2 crores on Oct 13, 2015) granted on Dec 23, 2015 to Shilpi Cable Pvt Ltd. by BDR for a period of nine months against 40,00,000 equity shares and 1.5 crore warrants of SCTL in favour of BDR.
- b) Further, I note that, there was a mention of pledge of shares by Shilpi Cable Pvt Ltd with BDR in the terms and conditions of loan agreement for the aforesaid loan. However, from the demat statements of Shilpi cable Pvt Ltd and BDR submitted by CDSL/NSDL vide emails dated Oct 06, 2021, it was observed that no such pledge flag was marked from the demat account of Shilpi Cable Pvt Ltd against the demat account of BDR in terms of said terms and conditions of the loan agreement.
- c) On Mar 30, 2016, an additional loan of Rs.4 crores was disbursed to Shilpi Cable Pvt Ltd at the rate of 9% per annum. It was observed that the part interest on the said loan was paid on April 12, 2016 and May 22, 2016. Subsequently, Shilpi Cable Pvt Ltd was unable to repay the said loan amount within the stipulated period
- d) In this connection, during investigation Dinesh Gupta vide letter dated July 25, 2020, had submitted that Shilpi Cable Pvt Ltd approached BDR for extension of loan up to last week of April 2017, however, he did not mention the period/ date when Shilpi Cable Pvt Ltd approached BDR for such extension. Shilpi Cable Pvt Ltd issued six cheques, all dated between

April 20-26, 2017 and each amounting Rs.5 crores towards partial discharge of the loan amount with interest. The said cheques were deposited by BDR with HDFC Bank and those were returned dishonored by the bank.

- e) Later, on May 01, 2017, Shilpi Cable Pvt Ltd was again approached by BDR for extension of the said loan for a period of two months vide amended loan-cum-guarantee deed dated May 01, 2017 wherein two pledge deeds dated May 01, 2017 were also executed– one between BDR and Shilpi Cable Pvt Ltd., whereby pledge with respect to 1.2 crore equity shares and 70 lac warrants held by Shilpi Cable Pvt Ltd in SCTL were created in favour of BDR and another between BDR, Shilpi Cable Pvt Ltd, Mukesh Kumar Gupta and Manish Goel whereby pledge with respect to 5000 equity shares held by Mukesh Kumar Gupta and 75.05 lakh equity shares held by Manish Goel in SCTL were created in favour of BDR. From the demat transaction statement of Shilpi Cable Pvt Ltd, it was observed that the actual pledge set-up for the pledge of 80,00,000 equity shares was constituted on May 30, 2017 and 40,00,000 equity shares was constituted on June 14, 2017 even though the pledge deed was executed on May 01, 2017.
- f) The said amended loan-cum-agreement deed dated May 01, 2017 between Shilpi Cable Pvt Ltd and BDR mentions that *“the lender (BDR) has at the request of the Borrower (SCPL) agreed to extend the loan of Rs. 31 crores on interest @ 18% p.a. payable at monthly rest.”*
- g) From the above, I note that, the said amended loan-cum-guarantee deed was silent on the interest accrued and unpaid (i.e. approx. Rs. 1.39 crore) by Shilpi Cable Pvt Ltd on the outstanding amount for the period October 2016- April 2017 to BDR, though the same had been entered into the ledger of Shilpi Cable Pvt. Ltd. in the books of BDR. Also, the loan amount

as mentioned in the said amended loan-cum-guarantee deed was Rs.31 crores and was basically the extension of the earlier principal amount which was due in October 2016 and did not include the interest accrued and unpaid on the outstanding amount for the period October 2016- April 2017. Hence, it is inferred that BDR had foregone the interest accrued and unpaid by Shilpi Cable Pvt. Ltd. on the outstanding amount for the period October 2016- April 2017.

- h) Subsequently, Shilpi Cable Pvt Ltd failed to repay the loan amount and interest on June 30, 2017. The cheques issued by Shilpi Cable Pvt Ltd towards the part repayment of the said loan amount with interest returned dishonored and BDR had invoked the pledge of 1.2 crore equity shares of SCTL pledged by Shilpi Cable Pvt Ltd in two tranches – 80,00,000 shares on May 30, 2017 and 40,00,000 shares on Jun 15, 2017. However, Dinesh Gupta submitted during investigation that the shares pledged by Shilpi Cable Pvt Ltd against the loan extended by BDR to Shilpi Cable Pvt Ltd were never transferred to BDR.

39.4 Suspected Entities' Relatives in Group Companies of SCTL / Trust

39.4.1 Shreyansh Gupta (son of Dinesh Gupta) – Nominee Director of Shilpi Cable Pvt Ltd.

- a) Shreyansh Gupta, son of Dinesh Gupta, vide letter dated Nov 28, 2020 submitted that he was appointed as a Nominee Director in Shilpi Cable Pvt Ltd from January 04, 2016 till May 19, 2017. He submitted that he was appointed as a Director to safeguard the loans provided by BDR to Shilpi Cable Pvt Ltd. Moreover, Shreyansh Gupta was also a director in Shilpi Agro Pvt. Ltd. (SAPL) from April 2017 till May 2018. One of the promoter of SCTL – Vishal Goel, son of Mukesh Kumar Gupta, was also a director in SAPL during May 2011 till April 2017. Vishal Goel was a director in Shilpi Communication, promoter of SCTL since March 2004.

- b) With regard to directorship in SAPL, Shreyansh Gupta during investigation submitted that on the request of his father- Dinesh Gupta and his uncle- Rajesh Gupta and for the purpose of some land transactions, he was appointed as a Nominee Director in SAPL and never attended any Board meetings during his tenure as Nominee Director in SAPL.
- c) In this regard, Dinesh Gupta vide email dated November 12, 2021 informed during investigation that BDR and SAPL entered into an understanding whereby BDR agreed to purchase land from SAPL. A sum of Rs.82 lakhs was paid by BDR to SAPL as advance with respect to the same in December, 2016. In pursuance of the understanding between the said parties, Mr. Shreyansh Gupta was appointed as the director of the SAPL on April 15, 2017 as the nominee of BDR. Hence, the main purpose of appointment of Nominee Director is to safeguard the interest of the nominator, without conflicting with his/ her fiduciary duty as a director. However, Shreyansh Gupta submitted during investigation that he was appointed and gave his consent to act as the director of Shilpi Cable Pvt Ltd on the request of his father- Dinesh Gupta and his uncle- Rajesh Gupta. He had never attended any meeting of the Board of Directors of Shilpi Cable Pvt. Ltd. or any general meeting of Shilpi Cable Pvt Ltd and neither any copy of minutes was circulated to him during his tenure as a Director of Shilpi Cable Pvt Ltd.
- d) Here it is also pertinent to mention that though Shreyansh Gupta was appointed to safeguard the loan provided by BDR to Shilpi Cable Pvt Ltd, he resigned from the directorship of Shilpi Cable Pvt Ltd even before the loan was repaid by Shilpi Cable Pvt Ltd to BDR. However, while he resigned from the directorship of Shilpi Cable Pvt Ltd, he continued to be director of SAPL.

- e) From the above it can be concluded that, the manner in which Shreyansh Gupta and BDR conducted themselves while extending loans to the tune of Rs. 31 crores to Shilpi Cable Pvt Ltd cannot be prudently explained as a genuine loan between two commercial entities. A reasonable financier shall never jeopardize their position and endanger their money by acting in such reckless manner.

39.4.2 Anand Gupta (brother of Dinesh Gupta) - Trustee of SCTL Securities Trust

- a) SCTL vide disclosure dated June 02, 2012 to BSE had disclosed that pursuant to the sanctioning of the scheme of amalgamation of Shilpi Cabletronics Pvt. Ltd. with SCTL by the Hon'ble High Court of Delhi, 52,17,374 equity shares of SCTL were issued to the Trustee – Anand Gupta, of the SCTL Securities Trust, created for the sole benefit of SCTL. Further, Anand Gupta, on June 05, 2012 made a disclosure under Reg. 29(1) of SEBI SAST Regulations, 2011 regarding the allotment of 52,17,374 equity shares of SCTL to the Trust. Dinesh Gupta submitted during investigation that Anand Gupta, the Trustee of SCTL Securities Trust, is his elder brother.
- b) Anand Gupta submitted during investigation that Dinesh Gupta, his younger brother made him the Trustee of SCTL Securities Trust and he was acting on the advice of Dinesh Gupta only and do not have much knowledge regarding the issue.
- c) Hence, I note that, the arrangement regarding appointment of Anand Gupta as the Trustee of SCTL Securities Trust by SCTL indicate that there was close association and trust between Dinesh Gupta and SCTL and its promoter directors (one of which is Noticee No.2).

- 40 With regard to the loan transactions, I note that, SCTL had paid the interest for FY 2015-16 and paid the interest for the period April 2016-Sept 2016 on October 06, 2016. Thereafter, no payment of interest nor repayment of any principal amount was made by SCTL to BDR. Further, from the ledger statement of Shilpi Cable Pvt Ltd in the books of BDR, it was observed that Shilpi Cable Pvt Ltd had made part payment of interest for FY 2015-16 and had made payment of interest for the period April 2016-Sept 2016 on Oct 06, 2016. Thereafter, no further payment of interest nor repayment of any principal amount was made by Shilpi Cable Pvt Ltd to BDR. During investigation, it was observed that BDR, apart from following up over phone or meeting personally, did not take appropriate recourse for recovery of the loan amount after SCTL first defaulted in payment of interest and principal amount after expiry of nine months in term of the loan agreement.
- 41 Further, I note and emphasize that during investigation, Dinesh Gupta and Rajesh Gupta could not provide any formal documentation regarding extension of the loan given by BDR to SCTL till last week of April 2017 and the rationale for forgoing the interest accrued and unpaid by both SCTL and SCPL on the respective outstanding amounts for the period Oct 2016- April 2017. Also, when the cheques provided by SCTL for loan repayment were dishonored, no legal recourse was taken rather fresh agreements were entered thereafter.
- 42 It was only in May 2017, that the amended loan agreement was executed by BDR with SCTL. Such kind of informal extension, without any legal agreement/ documentation, for the entire loan amount of Rs.51 crores (i.e., Rs 20 crore to SCTL and Rs. 31 crores to Shilpi Cable Pvt Ltd) and for a period of more than around 6 months (i.e., from end of Sept 2016 till Apr 2017) and without any appropriate recourse being undertaken by BDR to recover such loans, does not appear to be normal business dealings. Further, Dinesh Gupta and Rajesh Gupta failed to provide any documentary evidence showing that BDR took appropriate corrective action(s) against Shilpi Cable Pvt Ltd, SCTL and their promoter directors to recover the principal and unpaid interest on the loans extended to Shilpi Cable Pvt Ltd and SCTL till May 01, 2017, when they entered into amended loan

agreement with Shilpi Cable Pvt Ltd and SCTL, subsequent to the dishonoring of cheques issued by Shilpi Cable Pvt Ltd and SCTL to BDR.

43 Further, as there was no actual pledge or transfer of shares of SCTL by Shilpi Cable Pvt Ltd/ SCTL Securities Trust in the depository system initially in 2016, when the loan was extended to Shilpi Cable Pvt Ltd and SCTL, therefore, it can be said that BDR had extended loans aggregating to Rs.51 crores to SCTL (Rs.20 crores) and Shilpi Cable Pvt Ltd (Rs.31 crore) without any security. Despite the brother of Dinesh Gupta being trustee of SCTL Securities Trust and son of Dinesh Gupta being the director of Shilpi Cables Private Limited, they were unable to safeguard their interest.

44 Thus, I note that the aforesaid arrangement could not have happened unless there was a tacit understanding and close association between Dinesh Gupta and Rajesh Gupta with SCTL and its promoter directors - Mukesh Gupta and Manish Goel. Further, from the email of Dinesh Gupta dated July 26, 2020, I note that BDR had filed application to initiate corporate insolvency resolution process against SCTL and Shilpi Cable Pvt Ltd on Oct 25, 2017 and Oct 28, 2017 respectively before the Hon'ble NCLT. Though both SCTL and Shilpi Cable Pvt Ltd failed to repay the principal and the interest thereto to BDR on expiry of initial loan duration on September 2016, BDR neither approached the NCLT nor took any legal recourse with respect of the same for a period of more than a year.

45 For the aforementioned loans, both Mr. Dinesh Gupta and Mr. Rajesh Gupta admitted during the investigation that they had frequent communications with the promoter directors of SCTL i.e. Mukesh Kumar Gupta and Manish Goel. As noted that these loan transactions began from 2015 and till 2017, they were involved in many arrangements which also involve short-term undocumented loans. For this purpose, there were frequent visits to each other's offices. Hence, it shows that there were frequent communications between the directors of BDR – Dinesh Gupta and Rajesh Gupta with the promoter directors of SCTL – Mukesh Kumar Gupta

and Manish Goel (insider) during the period prior to and UPSI period. On the basis of this it is established that Mr. Dinesh Gupta and Mr. Rajesh Gupta were 'insider' in terms of Regulation 2(1)(g)(i) of SEBI (PIT) Regulations, 2015 by virtue of being 'connected person' to SCTL. The provisions are reproduced below:

(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.

46 The aforementioned definition of connected person presupposes that if any person is associated with a company in any capacity which includes frequent communication with the officers of the company, then they shall be called as *connected persons*. It is an established fact that Dinesh Gupta and Rajesh Gupta were associated with company and were carrying out multiple transactions with the company since 2015. In the period of 2015-2017 multiple loans were provided by BDR. Further, Dinesh Gupta and Rajesh Gupta admitted that there was constant communication between Noticee No. 2 (promoter and managing director of SCTL) and Dinesh and Rajesh Gupta and were visiting each other's offices frequently. Hence, there was business relationship between SCTL and BDR (companies of Dinesh Gupta and Rajesh Gupta) and also close association as examined in the preceding paragraphs which leads to establish that Dinesh Gupta and Rajesh Gupta can be reasonably expected to have access to UPSI.

47 For other suspected entities, i.e., Ms. Nirmala Gupta, Dinesh Gupta HUF and Ajay Fincap Consultants Pvt. Ltd, I would refer to Regulation 2(1)(d)(ii) of SEBI PIT Regulations, 2015 which contains an exclusive list of entities that shall be deemed as *connected persons*. The relevant extract of said list of entities is reproduced below:

(d) "connected person" means-

i) ...

ii) Without prejudice to the generality of the foregoing, the persons falling within the following categories shall be deemed to be connected persons unless the contrary is established, -

(a).an immediate relative of connected persons specified in clause (i); or

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(j). a concern, firm, trust, Hindu undivided family, company or association of persons wherein a director of a company or his immediate relative or banker of the company, has more than ten percent of the holding or interest; (emphasis supplied)

The term 'immediate relative' is defined in the regulation as:

(f) "immediate relative" means a spouse of a person, and includes parent, sibling, and child of such person or of the spouse, any of whom is either dependent financially on such person, or consults such person in taking decisions relating to trading in securities; (emphasis supplied)

48 With regard to Ms. Nirmala Gupta, I note from IR that in response to the summon sent to her, she in her reply dated September 02, 2021 had mentioned that her trading account was opened on the advice of her sons - Dinesh Gupta and Rajesh Gupta and was managed by her sons, who had placed the trades in the scrip of SCTL on her behalf.

49 For Ajay Fincap Consultants Pvt. Ltd ('Ajay Fincap'), it was discovered during investigation that e-mail id and telephone no. of Rajesh Gupta was provided in the trading and demat accounts of Ajay Fincap and Rajesh Gupta HUF was the major shareholder of Ajay Fincap during the IP. In view of this, it can be conveniently established that Rajesh Gupta held the control of investment decisions of Ajay Fincap and was cognizant of the trades in the shares of SCTL. Hence, Ajay Fincap

being an entity in control of connected person can be considered as *connected person*.

50 Hence Ms. Nirmala Gupta (mother of Dinesh Gupta), Dinesh Gupta HUF (Karta of HUF is connected person) and Ajay Fincap Consultants Pvt. Ltd are also *connected persons* and hence *insiders*.

51 As already brought out in previous paragraphs the manner in which the business was conducted between SCTL and its group companies with Dinesh Gupta and Rajesh Gupta and their company BDR, it appears to be apparently distinct from a traditional creditor and borrower relationship and rather appears an amiable one. In view of the above stated facts, BDR cannot be considered a *bonafide* lender like, the loan was extended before documentation was carried out; a large amount of interest due for a certain period was easily foregone, the purported Nominee Director on the Board of the Company resigned before the loans were secured; the pledge was invoked but the shares were not liquidated to recover the outstanding amount, despite being aware about the financial hardships SCTL. On this ground to further fortify the allegation of communication of UPSI by Noticee No. 2, I shall now examine the trading pattern of said connected persons.

Analysis of trading details of connected persons

A. Dinesh Gupta (PAN: AAAPG4180D):

	Date	Gr Buy Vol	Gr Sell Vol	Net Trd Vol	Gr Buy Value	Gr Sell Value	Avg. buy/ sell rate
Pre-UPSI (Dec 10, 2016- Mar 09, 2017)	10-Feb-17	20000	117400	-97400	4179909	22812505	191.29
UPSI (Mar 10, 2017- Apr 30, 2017)	16-Mar-17	0	169156	-169156	0	36581508	216.25
	16-Mar-17	0	20477	-20477	0	4433290.9	216.5
	05-Apr-17	0	26000	-26000	0	5803319.9	223.2

	10-Apr-17	0	15000	-15000	0	3300222.9	220.01
	11-Apr-17	0	26000	-26000	0	5783508.7	222.44
				-256633	0	55901850	217.82
Post-UPSI (May 1, 2017-Jul 31, 2017)	30-Jun-17	0	43760	-43760	0	1568796	35.85

52 From the demat account statements of Dinesh Gupta and the benpos data provided by the RTA, it was observed that Dinesh Gupta had holding of 3.98 lakhs equity shares of SCTL as on Dec 09, 2016 and had sold off 24.49%, 65.51% and 11% of his holdings in SCTL as on Dec 09, 2016 during pre-UPSI, UPSI and post-UPSI periods respectively.

Particulars	Period	SCTL		Other Scrips		
		Gross traded Value (in Rs. lacs)	% activity in this scrip to gross traded value	Gross traded Value (in Rs. lac)	% activity in this scrip to gross traded value	No of Scrips
Pre-UPSI Period	Dec 10, 2016 to Mar 09, 2017	269.92	2.61%	10081.76	97.39%	42
UPSI Period	Mar 10, 2017 to April 30, 2017	559.02	6.54%	7990.28	93.46%	6
Post UPSI Period	May 01, 2017 to Jul 31, 2017	15.69	3.83%	393.48	96.17%	1

53 It was also observed that during pre-UPSI period, Dinesh Gupta had traded in 42 scrips including SCTL. He had entered into both buy and sell transactions in the shares of SCTL during pre-UPSI. During UPSI period, he had only sold 2.57 Lakhs shares of SCTL having gross traded value of Rs. 5.59 crore which accounted for 6.54% of the total traded value. Post UPSI period, on June 30, 2017, he has sold his remaining 43760 shares of SCTL at the average share price of Rs. 35.85/-.

B. Dinesh Gupta HUF (PAN: AACHD9271Q):

	Date	Gr Buy Vol.	Gr Sell Vol.	Net Trd Vol.	Gr Buy Value	Gr Sell Value	Avg. buy/sell rate
Pre-UPSI (Dec 10, 2016- Mar 09, 2017)	14-Dec-16	0	25000	-25000	0	5075148.9	203.01
	15-Dec-16	0	25000	-25000	0	5030000	201.2
	16-Dec-16	0	24000	-24000	0	4835073.4	201.46
	20-Dec-16	0	26263	-26263	0	5252152.6	199.98
	21-Dec-16	0	25000	-25000	0	4992500	199.7
	23-Dec-16	0	12500	-12500	0	2479998	198.4
	30-Dec-16	0	11500	-11500	0	2278443.8	198.13
	02-Jan-17	0	6678	-6678	0	1329752.3	199.12
	03-Jan-17	5000	0	5000	996029.7	0	199.21
	04-Jan-17	3135	0	3135	624215.25	0	199.11
	06-Jan-17	0	15000	-15000	0	3280307.8	218.69
	09-Jan-17	6400	0	6400	1404412.6	0	219.44
	10-Jan-17	1500	0	1500	332752.55	0	221.84
	11-Jan-17	2700	0	2700	631908.65	0	234.04
	10-Feb-17	20000	6000	14000	3779155.3	1107213.2	190.85
	13-Feb-17	25000	0	25000	5506250	0	220.25
				-113206	13274724	35660590	197.74
UPSI (Mar 10, 2017- Apr 30, 2017)	14-Mar-17	0	25000	-25000	0	5516573.2	220.66
	15-Mar-17	0	18500	-18500	0	4046254.4	218.72
	16-Mar-17	0	21617	-21617	0	4683841.5	216.67
	12-Apr-17	0	216175	-216175	0	47787310	221.06
	13-Apr-17	0	100000	-100000	0	22300000	223
	13-Apr-17	0	75000	-75000	0	16725043	223
	17-Apr-17	0	200000	-200000	0	45188770	225.94
				-656292	0	146247791	222.84
Post- UPSI (May 1, 2017-Jul 31, 2017)	30-Jun-17	0	39626	-39626	0	1420592.1	35.85

54 From the demat account statements of Dinesh Gupta HUF and the benpos data provided by the RTA, it was observed that Dinesh Gupta HUF had holding of 8.09 Lakh equity shares of SCTL as on Dec 09, 2016 and he had sold off 13.99%, 81.11% and 4.90% of his holdings in SCTL as on Dec 09, 2016 during the pre-UPSI, UPSI and post-UPSI periods respectively.

Particulars	Period	SCTL		Other Scrips		
		Gross traded Value (in Rs. lacs)	% activity in this scrip to gross traded value	Gross traded Value (in Rs. lac)	% activity in this scrip to gross traded value	No of Scrips
Pre-UPSI Period	Dec 10, 2016 to Mar 09, 2017	489.35	90.09%	53.84	9.91%	7
UPSI Period	Mar 10, 2017 to April 30, 2017	1462.48	99.62%	5.61	0.38%	1
Post UPSI Period	May 01, 2017 to Jul 31, 2017	14.2	100.00%	-	0.00%	0

55 Further, it was observed that during pre-UPSI period, Dinesh Gupta HUF has traded in 7 scrips including SCTL. He had both bought and sold shares of the SCTL during pre-UPSI period. During the UPSI period, he had only sold 6.56 lakhs shares having gross traded value of Rs.14.62 crores and accounted for 99.62% of the total traded value during UPSI period. Post UPSI period, on June 30, 2017, he had sold his remaining 39626 shares of SCTL at the average share price of Rs.35.85/-

C. Rajesh Gupta (PAN: AAAPG7884Q):

	Date	Gr Buy Vol	Gr Sell Vol	Net Trd Vol	Gr Buy Value	Gr Sell Value	Avg. buy/sell rate
Pre-UPSI (Dec 10, 2016- Mar 09, 2017)	13-Jan-17	0	91000	-91000	0	20196641	221.94
	07-Mar-17	0	82346	-82346	0	18019070	218.82
	08-Mar-17	0	107357	-107357	0	23429563	218.24
	09-Mar-17	0	75000	-75000	0	16303290	217.38
				-355703	0	77948563	219.14
UPSI (Mar 10, 2017- Apr 30, 2017)	10-Mar-17	0	50000	-50000	0	10892832	217.86
	14-Mar-17	0	215000	-215000	0	47419863	220.56
	15-Mar-17	0	27000	-27000	0	5943031.6	220.11
	16-Mar-17	0	5445	-5445	0	1177577.2	216.27

	23-Mar-17	0	59500	-59500	0	12811401	215.32
	24-Mar-17	0	65097	-65097	0	13833868	212.51
	18-Apr-17	0	115000	-115000	0	25869051	224.95
	24-Apr-17	0	80021	-80021	0	17518659	218.93
				-617063	0	135466282	219.53
Post-UPSI (May 1, 2017-Jul 31, 2017)	30-Jun-17	0	60567	-60567	0	2171327	35.85

56 From the demat account statements of Rajesh Gupta and the benpos data provided by the RTA, it was observed that Rajesh Gupta had holding of 10.33 lakhs equity shares of SCTL as on Dec 09, 2016 and he had sold off 34.42%, 59.72% and 5.86% of his holdings in SCTL as on Dec 09, 2016 during pre-UPSI, UPSI and post-UPSI periods respectively.

Particulars	Period	SCTL		Other Scrips		
		Gross traded Value (in Rs. lacs)	% activity in this scrip to gross traded value	Gross traded Value (in Rs. lac)	% activity in this scrip to gross traded value	No of Scrips
Pre-UPSI Period	Dec 10, 2016 to Mar 09, 2017	779.48	99.70%	2.36	0.30%	2
UPSI Period	Mar 10, 2017 to April 30, 2017	1354.66	79.37%	352.02	20.63%	1
Post UPSI Period	May 01, 2017 to Jul 31, 2017	21.71	100.00%	-	0.00%	0

57 It was observed that during pre-UPSI period, Rajesh Gupta has traded in 3 scrips including SCTL. He had sold 3.56 lacs shares of the scrip during pre-UPSI and sold 6.17 lakhs shares having gross traded value of Rs. 13.55 crore and accounted for 79.37% of the total traded value during UPSI period. Post UPSI

period, on June 30, 2017, he has sold his remaining 60567 shares of SCTL at the average share price of Rs.35.85/-.

D. Nirmala Gupta (PAN: AAKPG7659K):

	Date	Gr Buy Vol	Gr Sell Vol	Net Trd Vol	Gr Buy Value	Gr Sell Value	Avg. buy/sell rate
Pre-UPSI (Jan 10, 2017- Mar 09, 2017)	-	-	-	-	-	-	-
UPSI (Mar 10, 2017- Apr 30, 2017)	16-Mar-17	0	15990	-15990	0	3452241	215.9
	20-Mar-17	0	147224	-147224	0	31691996	215.26
	21-Mar-17	0	29000	-29000	0	6260638.4	215.88
	22-Mar-17	0	10895	-10895	0	2327789	213.66
	23-Mar-17	0	100194	-100194	0	21563353	215.22
	24-Mar-17	0	19172	-19172	0	4062091.8	211.88
	27-Mar-17	0	75000	-75000	0	16148712	215.32
	28-Mar-17	0	50000	-50000	0	10943727	218.87
	11-Apr-17	0	100000	-100000	0	22020466	220.2
	12-Apr-17	0	131282	-131282	0	29000233	220.9
	13-Apr-17	0	65409	-65409	0	14532925	222.19
	17-Apr-17	0	25000	-25000	0	5694375	227.78
	24-Apr-17	0	40296	-40296	0	8633915.1	214.26
	26-Apr-17	0	5349	-5349	0	1067414.9	199.55
				-814811		177399876	217.72
Post-UPSI (May 1, 2017-Jun 30, 2017)	30-Jun-17	0	41612	-41612	0	1491790.2	35.85

58 From the demat account statements of Nirmala Gupta and the benpos data provided by the RTA, it's observed that Nirmala Gupta had holding of 8.56 lac equity shares of SCTL as on Dec 09, 2016 and she had not traded in the shares of SCTL during the pre-UPSI period. She had sold off 95.14% and 4.86% of her holdings in SCTL as on Dec 09, 2016 during the UPSI and post-UPSI periods respectively.

Particulars	Period	SCTL		Other Scrips		
		Gross traded Value (in Rs. lacs)	% activity in this scrip to gross traded value	Gross traded Value (in Rs. lac)	% activity in this scrip to gross traded value	No of Scrips
Pre-UPSI Period	Jan 10, 2017 to Mar 09, 2017	-	-	307.9	100%	3
UPSI Period	Mar 10, 2017 to April 30, 2017	1774	43.94%	2263.6	56.06%	3
Post UPSI Period	May 01, 2017 to Jun 30 10, 2017	14.92	100%	-	-	-

59 It was observed that during pre-UPSI period, Nirmala Gupta has traded in 3 scrips and had not traded in shares of SCTL. She had sold 8.15 lacs shares of the scrip having gross traded value of Rs. 17.74 crore and accounted for 43.94% of the total traded value during UPSI period.

60 From the aforesaid trading pattern of suspected entities, it is clear that there was abnormal change in the pattern of trading of said entities. However, the legit question that arises is the motive behind communicating UPSI, which is a negative information regarding borrower. A borrower would not usually communicate such negative information to lender and prejudice their position as a borrower. Hence, it is important to consider the benefit derived by the borrowers of SCTL by virtue of being privy to the said UPSI. In this regard, from the IR I note that the unlawful/wrongful notional loss avoided by the connected persons is tabulated below:

Sr. No.	Name of entity	Shares sold in UPSI period (units)	Avg. sell price per share (Rs.)	Avg. Closing price on May 02, 2017 (NSE)	Notional Loss avoided (in Rs.)
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				and BSE)	
1	Dinesh Gupta	256633	217.82	107.275	2,82,98,920.9
2	Dinesh Gupta HUF	656292	222.84		7,56,63,904.7
3	Rajesh Gupta	617063	219.53		6,90,98,714.7
4	Nirmala Gupta	814811	217.72		8,97,67,727.9
5	Ajay Fincap Consultants Pvt. Ltd.	113000	223.38		13,119,865.0
	Total	2457799			275,949,133.2

61 From the trading pattern of Dinesh Gupta, Dinesh Gupta HUF, Rajesh Gupta and Nirmala Gupta, it is observed that they have only sold the shares of SCTL during the UPSI period and had off-loaded majority of their holding in SCTL during the UPSI period, which is in contrast their trading pattern in the scrip of SCTL during pre-UPSI and post-UPSI periods. It is also observed that their trading by gross value in the scrip of SCTL in comparison to other scrips is substantially higher during the UPSI period. By engaging in the above practise, the connected persons avoided the notional loss to the tune of Rs. 2,75,949,133.2. This amount is approximately equivalent to the amount due from SCTL to BDR.

62 Further, the trading behaviour in the proximate time of the UPSI assumes significance to establish the communication of UPSI by Noticee No. 2. The UPSI period commenced on March 10, 2017 with the receipt of the demand notice by SCTL. Examining the trading pattern of Dinesh Gupta HUF, I note that it had executed the following transactions from January 03, 2017 to February 13, 2017 in the scrip of SCTL:

Date	Gross Buy Vol	Gross Sell Vol	Net Trade Vol
3-Jan-17	5000	0	5000
4-Jan-17	3135	0	3135
6-Jan-17	0	15000	-15000

9-Jan-17	6400	0	6400
10-Jan-17	1500	0	1500
11-Jan-17	2700	0	2700
10-Feb-17	20000	6000	14000
13-Feb-17	25000	0	25000

63 From the details highlighted above, it can be seen that till February 13, 2017 Dinesh Gupta HUF had purchased 25,000 shares of SCTL for a total value of INR 55,06,250. However, after a month, from February 14, 2017, it only sold the shares of SCTL in large quantities.

64 Another factor that is significant to consider, is the time of default of repayment of loan amount and interest by SCTL and the time of selling the shares of SCTL by connected persons. For this purpose, I perused the statement recording of Mr. Dinesh Gupta during the investigation. In the said statement he explained the reason for selling the shares of SCTL during the period January- March 2017 and the relevant extract of the said statement is:

“When SCTL/SCPL started defaulting in payment of interest/principal of loans given to them, I thought that if the company goes into problem, the share price would also go down. Hence, I decided to sell the shares of SCTL in the market to recover as much as possible.”

From the said statement I note that the trigger point for offloading the shares of SCTL was mentioned as default in payment of interest/principal of loans. However, I note that SCTL started defaulting in October 2016 onwards and in contrast to the above statement, the said connected persons were found to have purchased the shares of SCTL on many instances during the pre-UPSI period (December 10, 2016 to March 09, 2017). Hence, the timing of selling the shares of SCTL, around the UPSI period, strongly indicates that the trading decision of connected persons was not based on the default committed by SCTL rather was influenced by the UPSI.

- 65 To conclude the present question regarding possibility of communicating the UPSI by Noticee No. 2 to Dinesh Gupta and Rajesh Gupta, attention is drawn to the fact that in cases of insider trading, direct evidence is seldom available and generally conclusion is arrived by relying on the chain of circumstances.
- 66 However, the Hon'ble Supreme Court in the case of **Balram Garg v. SEBI** [(2022) 9 SCC 425] has emphasised on the reliance of direct evidences for the purpose of establishing violation of insider trading regulations while demonstrating the communication of UPSI. In this regard, it is imperative to mention the comments of N.K. Sodhi Committee¹ which observed that it is simply not possible to obtain direct evidence in all insider trading cases, and the “*facts and circumstances*” of the case have to be assessed to determine if a person can reasonably infer to have access to UPSI.
- 67 On the question of sufficiency of circumstantial evidences, the Hon'ble Supreme Court has in **SEBI v. Kishore R. Ajmera** [(2016) 6 SCC 368] held that “*...It is a fundamental principle of law that proof of an allegation levelled against a person may be in the form of direct substantive evidence or, as in many cases, such proof may have to be inferred by a logical process of reasoning from the totality of the attending facts and circumstances surrounding the allegations/charges made and levelled. While direct evidence is a more certain basis to come to a conclusion, yet, in the absence thereof the Courts cannot be helpless. It is the judicial duty to take note of the immediate and proximate facts and circumstances surrounding the events on which the charges/allegations are founded and to reach what would appear to the Court to be a reasonable conclusion therefrom. The test would always be that what inferential process that a reasonable/prudent man would adopt to arrive at a conclusion...*”
- 68 Comparing the facts of instant case with that of *Balram Garg (supra)*, I note that in *Balram Garg* there was breakdown of communication between the tippers and

¹ N.K. Sodhi, Report of the High Level Committee to Review the SEBI (Prohibition of Insider Trading) Regulations, 1992, SEBI (2013).

tippees who were family members, as the family was partitioned. However, during investigation in the present case, the frequent communication between tipper (Noticee No. 2) and tippees (Dinesh Gupta and Rajesh Gupta) was sufficiently brought out and acknowledged by the tippees. In addition to that, the nature of dealings between both the parties also points towards their close relationship. Hence, I note that the facts in instant case are different than *Balram Garg* and hence the principle laid down in the said judgment may not be squarely applicable. In the absence of direct proof, such inference has to be drawn on the basis of *preponderance of probability*. The Hon'ble Securities Appellate Tribunal (Hon'ble SAT) in the matter of **Ameen Khwaja & Others Vs. SEBI** (date of Decision: 15.06.2022) has clearly explained the position of law by observing the following:

“33. Upon hearing both the sides, in our view, the case essentially rests on its own facts to find out as to whether it can be reasonably expected from the material on record on preponderance of probability that the appellant Ameen Khwaja had access to UPSI.

34. The burden of proof of having reasonable expectation of having access to the UPSI is initially no doubt on respondent SEBI. Once the respondent SEBI place material/probabilities then onus to prove shifts to the other side i.e. the appellants to prove otherwise. Since, admittedly, respondent SEBI is required to establish the facts on preponderance of probability and not beyond reasonable doubt, the similar standard of proof would apply to the appellants to shift the onus.”

- 69 In view of the above observations regarding proximity of Noticee No. 2 with Rajesh Gupta and Dinesh Gupta coupled with the trading pattern of the connected entities, on preponderance of probability, it can be established that such connected entities can reasonably be expected to have access to the UPSI and there trading decisions in the scrip of SCTL were influenced by the same. Further, it can be reasonably established that the UPSI was passed on to them by Noticee No. 2, from whom Dinesh Gupta and Rajesh Gupta had frequent communication and also had close business relationship.

- 70 Since all the ingredients of Regulation 3(1) of PIT Regulations, 2015 are satisfied and found to be present in the facts of the instant case, it establishes that Noticee No. 2 has violated Section 12A(e) of SEBI Act, 1992 read with Regulation 3(1) of PIT Regulations, 2015

Violation of PFUTP Regulations by Noticee No. 2

- Misleading disclosure regarding intimation of Board meeting to consider bonus issue
- 71 On May 11, 2017, at around 14:25:00 hours, SCTL made a disclosure which was signed by Noticee No. 2 (Manish Goel), on BSE that a meeting of the Board of Directors of the Company was scheduled to be held on May 28, 2017, inter alia, to consider and approve issue of fully paid-up Bonus Shares to the Shareholders of the Company on proportionate basis, in such proportion as the Board may deem fit.
- 72 The said announcement regarding the consideration of bonus issue by the Board in its scheduled meeting of May 28, 2017 was made by SCTL on BSE during market hours at 14:25 hours which was post the negative announcement made by SCTL regarding the petition filed against it under Sections 8 & 9 of the IBC by Macquaire Bank, before the Hon'ble NCLT, New Delhi on April 30, 2017 and prior to the other negative announcements made by SCTL around the closing of market hours on May 11, 2017 regarding the resignation of the Chief Financial Officer, the Compliance Officer and the two independent directors. On May 11, 2017, following significant announcements were made by SCTL to NSE and BSE:
- i. *“a meeting of the Board of Directors of the Company is scheduled to be held on May 28, 2017, inter alia, to consider and approve issue of fully paid-up Bonus Shares to the Shareholders of the Company on proportionate basis, in such proportion as the Board may deem fit” – at around 14:25:00 hours on BSE (not disclosed on NSE)*

- ii. *“Mr. Ravi Shankar has resigned from the post of Company Secretary and Compliance officer of the company and the same is accepted and effective with effect from May 1, 2017”* – at around 15:20:07 hours on BSE and at around 15:28:00 hours on NSE.
- iii. *“Mr. Ajay Mahajan has resigned as Chief Financial Officer (CFO) of the company w.e.f. May 01, 2017”* - at around 16:07:40 hours on BSE and at around 15:28:00 hours on NSE.
- iv. *“Mrs. Chitra Sarkar, Non-Executive Independent Director of the Company, due to personal reasons has resigned from the Board of Directors of the Company with effect from May 3, 2017. Further, Mr. Sunil Kala, Non-Executive Independent Director of the Company, due to personal reasons has resigned from the Board of Directors of the Company with effect from May 3, 2017.”* - at around 16:14:55 hours on BSE and at around 16:22:00 hours on NSE.

73 It was observed that the aforesaid positive announcement regarding the consideration of bonus issue by the Board led to volume spurt in the trading of the shares of SCTL on May 11, 2017 which is summarized as under:

Date	Exchange	Open	High	Low	Close	Volume
10.05.2017	BSE	74.65	74.65	74.65	74.65	11883
	NSE	75	75	75	75	40999
11.05.2017	BSE	70.95	70.95	70.95	70.95	1034218
	NSE	71.25	71.25	71.25	71.25	1657241

74 It was observed that the volume traded in the shares of SCTL was an aberration in comparison to the average volume of shares traded (BSE: 11426, NSE: 28092) in the prior week. i.e. May 4, 2017 – May 10, 2017.

75 Further, the price was on a continuous downward fall during the period May 04, 2017 till May 11, 2017 and hit lower circuit on opening on all trading days during the period. On May 11, 2017, the price of share of SCTL opened at lower circuit (BSE: 70.95 and NSE: 71.25) and traded at the same price throughout the day on both the Exchanges. However, post the aforesaid announcement regarding the

consideration of bonus by the Board of SCTL, the volume increased manifold both on BSE and NSE on May 11, 2017 as given below:

	BSE	NSE
Particulars	Traded quantity (% of total traded qty.)	Traded quantity (% of total traded qty.)
09:00-14:25 hrs (before announcement)	16167 (1.56%)	22962 (1.39%)
14:25-15:30 hrs (after announcement)	1018051 (98.44%)	1634279 (98.61%)
Total (during the day)	1034218	1657241

- 76 From the above, it is apparent that the announcement regarding consideration of bonus issue had created buying interest in the market and around 98.44% and 98.61% of the total volume in SCTL were traded post the said announcement on BSE and NSE respectively.
- 77 Subsequently, on May 29, 2017, SCTL had made a disclosure regarding the outcome of the Board meeting dated May 28, 2017 to BSE and NSE, which inter alia mentioned that *“Keeping in view that the Corporate Insolvency Resolution process has been initiated against the company under Section 9 of insolvency and Bankruptcy Code, 2016, the Board didn't consider any agenda item (including proposed issue of Bonus shares) except appointment of Mr. Shailendra Kumar, as Chief Financial Officer and KMP of the Company w.e.f May 29, 2017”*. The disclosure was also signed by Manish Goel.
- 78 In view of the above, I note that the promoter director - Manish Goel, Noticee No.2 was aware of the insolvency proceedings initiated against SCTL, as the same was already disclosed by SCTL on April 30, 2017, should not have made the announcement regarding the consideration of bonus issue (May 11, 2017) by the Board and particularly when the final order regarding the insolvency petition filed before the Hon'ble NCLT against SCTL was pending to be passed.
- 79 The disclosure requirements under the respective regulations serve very important purpose. The stock exchange is informed via disclosures so that the

investing public will come to know of the position enabling them to stick on with or exit from the company. Further, timely disclosures of the details of the shareholding of the persons acquiring substantial stake are of significant importance as such disclosures also enable the regulators to monitor such acquisitions. In this regard, Hon'ble Securities Appellate Tribunal ('SAT') in the matter of **Coimbatore Flavors & Fragrances Ltd. vs SEBI** (Appeal No. 209 of 2014 order dated August 11, 2014), has held that "*Undoubtedly, the purpose of these disclosures is to bring about more transparency in the affairs of the companies. True and timely disclosures by a company or its promoters are very essential from two angles. Firstly; investors can take a more informed decision to invest or not to invest in a particular scrip secondly; the Regulator can properly monitor the transactions in the capital market to effectively regulate the same.*"

80 The definition of 'fraud' provided under PFUTP, 2003 is:

Reg. 2(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;
- (4) a promise made without any intention of performing it;
- (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,
- (7) deceptive behaviour by a person depriving another of informed consent or full participation,
- (8) a false statement made without reasonable ground for believing it to be true.

And "fraudulent" shall be construed accordingly

- 81 In this regard, it would be appropriate to refer to the Order of the Hon'ble Securities Appellate Tribunal ("Hon'ble SAT") dated October 25, 2016 in **Pan Asia Advisors Limited vs. SEBI** (Appeal No. 126 of 2013) wherein, while interpreting the expression of 'fraud' under the PFUTP Regulations, 2003, it was observed that: *"From the aforesaid definition (of 'fraud') it is absolutely clear that if a person by his act either directly or indirectly causes the investors in the securities market in India to believe in something which is not true and thereby induces the investors in India to deal in securities, then that person is said to have committed fraud on the investors in India. In such a case, action can be taken under the PFUTP Regulations against the person committing the fraud, irrespective of the fact any investor has actually become a victim of such fraud or not. In other words, under the PFUTP Regulations, SEBI is empowered to take action against any person if his act constitutes fraud on the securities market, even though no investor has actually become a victim of such fraud. In fact, object of framing PFUTP Regulations is to prevent fraud being committed on the investors dealing in the securities market and not to take action only after the investors have become victims of such fraud."* (Emphasis Supplied)
- 82 Similarly, in the matter of **SEBI v. Kanaiyalal Baldevbhai Patel** (2017) 15 SCC 1, the Hon'ble Supreme Court has observed as under: *"if Regulation 2(c) of the 2003 Regulations was to be dissected and analyzed it is clear that any act, expression, omission or concealment committed, whether in a deceitful manner or not, by any person while dealing in securities to induce another person to deal in securities would amount to a fraudulent act. The emphasis in the definition in Regulation 2(c) of the 2003 Regulations is not, therefore, of whether the act, expression, omission or concealment has been committed in a deceitful manner but whether such act, expression, omission or concealment has/had the effect of inducing another person to deal in securities"*
- 83 The above facts and judgments establish that the disclosure regarding the consideration of bonus shares on May 11, 2107 were made with a mala fide intention to deceive the shareholders of SCTL and was made to negate the

negative developments and to manipulate the volume of the scrip. The Noticee without directly dealing with the securities managed to manipulate the volume in the scrip by engaging in fraudulent practice of making deceiving disclosure. Therefore, by making such misleading disclosure, without any real intention to implement it, Noticee No. 2 (Manish Goel) has violated Reg. 3(a), 3(c), 3(d), 4(1), 4(2)(a), 4(2)(f), 4(2)(k) and 4(2)(r) of PFUTP Regulations, 2003 and Sec 12A(a), 12A(b) and Sec 12A(c) of SEBI Act, 1992.

Violation of LODR Regulations and PIT Regulations by Noticee No.3

- Delayed disclosures to the Exchanges regarding filing of petition against the company u/s 8 & 9 of IBC, 2016 by Macquarie Bank before the NCLT, New Delhi.
- 84 From the IR, I note that, SCTL was in receipt of the intimation from M/s Sibal & Co., Advocates, New Delhi that an application u/s 8 & 9 of IBC, 2016 had been filed by them on behalf of Macquarie Bank Ltd before NCLT. SCTL received the said intimation on April 10, 2017. The matter was deliberated before the NCLT bench on April 21, 2017 and the copy of proceedings was received by the company on April 28, 2017 and the management informed the Stock Exchanges on April 30, 2017.
- 85 Regulation 30 of the LODR Regulations, 2015 states that *every listed entity shall make disclosures of information regarding any material events to the Exchanges on a prompt basis and not later than twenty-four hours of occurrence of the event or information.*
- 86 Further, Para A of Part A of Schedule III of the LODR Regulations, 2015 states events which are considered to be deemed material events. Clause 11 of Para A of Part A of Schedule III of the LODR Regulations, 2015 provides that event related to “*Reference to BIFR and winding-up petition filed by any party / creditors*”. Further, Reg. 30(6) of LODR Regulations, 2015 provides that all events as specified in Part A of Schedule III should be disclosed to stock exchange(s) as

soon as reasonably possible and not later than twenty hours of occurrence of the event or information.

87 In the given matter, SCTL received the petition filed by Macquarie Bank Ltd against it before NCLT, New Delhi under Sections 8 and 9 of IBC, 2016 on April 10, 2017 and in terms of the provisions of Reg. 30 of LODR Regulations, 2015 should have been promptly disclosed to the Exchanges. However, the disclosure in the said matter was made by SCTL after a considerable delay. The said matter was disclosed vide letter dated April 29, 2017 under Regulation 30 of LODR Regulations, 2015 on April 30, 2017 on BSE and May 02, 2017 on BSE.

88 Regulations 4 under Chapter II of LODR Regulations, 2015 lays down the principles governing disclosures and obligations of listed entity. As per Regulations 4(1) (d) and (e) of SEBI LODR Regulations, 2015:

“4 (1) (d) The listed entity shall provide adequate and timely information to recognised stock exchange(s) and investors.

(e) The listed entity shall ensure that disseminations made under provisions of these regulations and circulars made thereunder, are adequate, accurate, explicit, timely and presented in a simple language.

89 Since the company was responsible to make the timely disclosure which they failed to make, the principle provided under Section 24(1) of SCRA needs to be referred which states:

‘24. Contravention by companies

(1) Where an offence has been committed by a company, every person who, at the time when the offence was committed, was in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence, and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment provided in this Act, if he proves that the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence.'

- 90 The responsibility to ensure the compliance of the applicable rules and regulations is bestowed upon the compliance officer. The relevant provision in this regard is Regulation 6 of the SEBI LODR Regulations, 2015. It lays down the indispensable obligations on the compliance officer of a listed entity as it uses the term 'shall'. As per Regulation 6 of SEBI LODR Regulations, 2015:

“(1) A listed entity shall appoint a qualified company secretary as the compliance officer.

(2) The compliance officer of the listed entity shall be responsible for-

(b) ensuring conformity with the regulatory provisions applicable to the listed entity in letter and spirit.

(c) co-ordination with and reporting to the Board, recognized stock exchange(s) and depositories with respect to compliance with rules, regulations and other directives of these authorities in manner as specified from time to time.

(d) ensuring that the correct procedures have been followed that would result in the correctness, authenticity and comprehensiveness of the information, statements and reports filed by the listed entity under these regulations”

- 91 For the aforesaid allegations Noticee No. 3 has submitted that he was not aware about the said petition filed by Macquarie Bank and only came to know about the same when it came in public domain. Further, the Noticee contended that he cannot be held responsible for delayed disclosure as he resigned from the post of company secretary vide resignation letter dated April 3, 2017 and the same was accepted on May 01, 2017.

- 92 From the submission of Noticee, I gather that his resignation was accepted and was effective from May 01, 2017, however the material information regarding filing of petition was received by SCTL on April 10, 2017 itself. Hence the company was liable to disclose the same from April 10, 2017 onwards, when Noticee No. 3 was holding the position of compliance officer. Till the resignation is not accepted the Noticee cannot absolve himself from the responsibilities and claim relief only by virtue of submitting resignation. From the Annual Report of SCTL 2016-17, I note that Noticee No. 3 was mentioned as KMP and Company Secretary of SCTL and held the said position from August 12, 2016 to May 01, 2017. Hence, I am inclined to reject the submission of Noticee No.3.
- 93 The *proviso* of Section 24(1) of SCRA creates an exception and provides remedy to such person if he is able to prove that '*the offence was committed without his knowledge or that he exercised all due diligence to prevent the commission of such offence*'. However, in the instant case nothing is there on record to show that sufficient due diligence was exercised and also Noticee failed to demonstrate that he was not the responsible person at the relevant time when the disclosures were required to be made. As the resignation was only accepted and effective from May 01, 2017.
- 94 The disclosures regarding the receipt of the petition filed by Macquarie Bank Ltd against SCTL before NCLT, New Delhi under Sections 8 and 9 of IBC, 2016 was made by the company after a considerable delay of around 20 days. The implications of such delay has been stated by Hon'ble SAT in *Coimbatore Flavors & Fragrances Ltd. vs SEBI (supra)*. Hence, by failing to file accurate and timely disclosure to the stock exchange(s) by SCTL, the Compliance Officer of SCTL, Noticee No. 3 (Ravi Shankar), has violated of Regulations 6 (2) (a), (b) and (c) of LODR Regulations, 2015.
- Non-closure of trading window

- 95 From the disclosures made by SCTL to the Exchanges, it was observed that there was no trading window closure period for the designated persons, their immediate relatives and other connected persons of the company during the period Jan 01, 2017 – May 31, 2017.
- 96 As discussed previously, the serving of demand notice dated March 08, 2017 to SCTL under Section 8 of the IBC, 2016 by Macquarie Bank and subsequent filing of application before the Hon'ble NCLT, New Delhi under Section 9 of IBC, 2019 by Macquarie Bank for default in payment by SCTL has been considered unpublished price sensitive information (UPSI) in accordance with Regulation 2(1)(n)(vi) of PIT Regulations, 2015. Further, the period from the date of receipt of demand notice viz. March 10, 2017 by SCTL from Macquarie Bank under Section 8 of IBC, 2016 till the date of disclosure viz. April 30, 2017 of the filing of application by Macquarie Bank under Sections 8 and 9 of IBC, 2016 before the NCLT, New Delhi is considered as UPSI period.
- 97 Clause 10 (ii) and 10 (ii) (e) of the Code of Conduct for Prohibition of Insider Trading framed by the Company in terms of the Reg. 9 of PIT Regulations, 2015, states the following:
- “10 (ii) The Compliance Officer shall announce from time to time the closure of Trading Window by way of notice during which time trading in the Securities will not be permissible for the Designated Persons, their immediate relatives and other connected persons. The notice mentioned hereinabove may be by way of e-mail sent to this effect at the official e- mail address of all concerned or by posting a notice on the Company's website and intranet of the Company or through a communication in this regard sent to the stock exchanges.*
- Normally, the trading window will be closed seven days prior to the Board Meeting or when the Compliance officer determines and would reopened only after 48 hours after the information becomes generally available on the following events:*

.....

(e) For such period and for any such other material event (in accordance with the listing agreement) as may be deemed fit by the Compliance Officer;”

98 Further Clause 4 of Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders as specified in Schedule B of SEBI (PIT) Regulations, 2015 provides that-

“4. Designated persons may execute trades subject to compliance with these regulations. Towards this end, a notional trading window shall be used as an instrument of monitoring trading by the designated persons. The trading window shall be closed when the compliance officer determines that a designated person or class of designated persons can reasonably be expected to have possession of unpublished price sensitive information. Such closure shall be imposed in relation to such securities to which such unpublished price sensitive information relates. Designated persons and their immediate relatives shall not trade in securities when the trading window is closed.”

99 However, it was observed that the compliance officer of SCTL, Ravi Shankar failed to notify and close the trading window during the UPSI period i.e. March 10, 2017 to April 30, 2017. In this regard the Noticee has submitted that since he was not aware about the said UPSI he could not take any action on same. However, I note that Noticee No. 3 being KMP and compliance officer of the company during the UPSI period, is considered as *connected person* and hence *Insider* as per PIT regulations.

100 Under LODR Regulations responsibility is cast upon the compliance officer of a company to ensure conformity with the regulatory provisions applicable to the listed entity in letter and spirit. Further from the IR, I note that SCTL vide letter dated September 10, 2018, apprised SEBI regarding the name of persons along

with their designations who were present while the matter regarding filing of application u/s 8 and 9 of IBC, 2016 by Macquarie Bank against SCTL was discussed and in the said list the name of Noticee No. 3 in the capacity of compliance officer is mentioned hence the submission of Noticee that he was not aware about the said UPSI cannot be accepted and is devoid of any merit.

101 In this regard, reference is drawn to the order Hon'ble Securities Appellate Tribunal in the matter of **G Jayaraman v SEBI** (Appeal No. 182 of 2012), where it was held that:

“Model Code contained in PIT Regulations further requires Compliance Officer to keep the trading window closed during the period when information referred to in para 3.2.3 is unpublished. Object of keeping the trading window closed under para 3.2.3 of Model Code in addition to prohibition contained in regulation 3 of PIT Regulations is to doubly ensure that directors/officers and designated employees of the Company do not misuse ‘Price Sensitive Information’ and trade in securities of the Company while in possession of such unpublished price sensitive information. Therefore, Compliance Officer is mandatorily obliged under Model Code to keep the trading window closed when in possession of price sensitive information specified in para 3.2.3 of Mode Code. If Compliance Officer fails to close the trading window inspite of being in possession of price sensitive information, then he would be violating PIT Regulations. In such a case, whether any employee/director by taking undue advantage has traded in securities of that company or not, Compliance Officer would be liable for violating PIT Regulations.

In other words, Compliance Officer would be liable for penalty if he fails to close trading window when in possession of unpublished price sensitive information even if no employee has traded in shares of that company when in possession of unpublished price sensitive information.” (emphasis supplied)

102 In view of the above, by failing to close trading window in relation to the UPSI pertaining to the said disclosure dated April 30, 2017, Compliance officer, Ravi Shankar has violated Clause 4 of the Minimum Standards for Code of Conduct to

Regulate, Monitor and Report Trading by Insiders as specified in Schedule B r/w Regulation 9(1) of PIT Regulations, 2015.

Issue II. Does the violation, if any, on the part of the Noticees attract monetary penalty under section 15G (ii), section 15HA, section 15HB of SEBI Act and under section 23A(a) read with section 24(1) of SCRA, as applicable?

103 I further note that Hon'ble Supreme Court of India, in the matter of ***Chairman, SEBI vs. Shriram Mutual Fund*** {[2006] 5 SCC 361} held that "*In our view, the penalty is attracted as soon as contravention of the statutory obligations as contemplated by the Act is established and, therefore, the intention of the parties committing such violation becomes immaterial. Hence, we are of the view that once the contravention is established, then the penalty has to follow and only the quantum of penalty is discretionary*".

104 In view of the foregoing, I am convinced that Noticee No. 2 and 3 are thus liable for monetary penalty, for the violations established above, under Section 15G (ii), 15HA, 15 HB of SEBI Act and Section 23A(a) read with section 24(1) of SCRA, as applicable, which read as under:

Penalties and Adjudication

15G. Penalty for insider trading.

If any insider who, —

(i) ...

(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;

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.

15HA. Penalty for fraudulent and unfair trade practices.

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.

15HB. Penalty for contravention where no separate penalty has been provided.

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.

23A. Penalty for failure to furnish information, return, etc.

Any person, who is required under this Act or any rules made thereunder, —
(a) to furnish any information, document, books, returns or report to a recognised stock exchange, fails to furnish the same within the time specified therefor in the listing agreement or conditions or bye-laws of the recognised stock exchange or who furnishes 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 for each such failure;

Issue III. If so, what would be the monetary penalty that can be imposed?

105 Since the answer to above issue was in affirmative, while determining the quantum of penalty under Sections 15G, 15HB of the SEBI Act and Section 23A(a) and read with 24(1) of SCRA, it is important to consider the factors relevantly as stipulated in Section 15J of the SEBI Act and Section 23J of SCRA which reads as under:

SEBI Act

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

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

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

Explanation. —For the removal of doubts, it is clarified that the power of an adjudicating officer to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.

SCRA

23J. Factors to be taken into account while adjudging quantum of penalty.

While adjudging the quantum of penalty under section 12A or section 23-I, the the Securities and Exchange Board of India or 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.*

106 The material available on record has not quantified the amount of disproportionate gain or unfair advantage, if any, made by Noticee No. 2 and 3 and the loss, if any, was suffered by the investors as a result of the Noticees' actions/omissions. I also

note that PIT regulations prohibits the trading in the shares of the company by the insiders while in possession of UPSI. Such regulation of trades by the insider is necessary to protect the interest of the investors in the securities market and also for the development of the market. If insider trading is not contained, prohibited and dealt with firmly, it will hamper and jeopardize the interest of gullible investors. This is in line with the protection of the interests of the investors which is the prime objective of SEBI. Further making timely disclosures of material information has been made mandatory under LODR Regulations. The objective behind such requirement is that the investing public should not be deprived of any vital information in respect of their investments in the securities market. SEBI is duty bound to ensure that the investing public are not deprived of any statutory rights available to them. I am of the opinion that, the disregard for the law depicted by the said Noticees, as in this case, may have placed investors in disadvantageous position, which cannot be said to be in the interest of the securities market. Hence, needs to be dealt strictly.

ORDER

107 In view of the above, after considering all the facts and circumstances of the case and the factors mentioned in the provisions of Section 15-I of the SEBI Act, 1992 read with Rule 5 of the Adjudication Rules and Rule 5 of SCR Adjudication Rules, I hereby impose the following penalty on the Noticees;

Noticee Nos.	Name of Noticee	Violation	Penalty in Rs. & Penal provision
2	Manish Goel	Section 12 A (e) of SEBI Act, 1992 read with Regulation 3 (1) of SEBI (PIT) Regulations, 2015, and Regulations 3(a), 3(c), 3(d), 4(1), 4(2)(a), 4(2)(f), 4(2)(k) and 4(2)(r) of SEBI PFUTP Regulations, 2003 and	Rs. 15,00,000/- (Rupees Fifteen Lakhs) under Section 15G(ii) and Section 15HA of SEBI Act, 1992

		Sections 12A(a), 12A(b) and 12A(c) of SEBI Act, 1992.	
3	Ravi Shankar	Regulations 6 (2) (a), (b) and (c) of SEBI LODR Regulations, 2015, and Clause 4 of the Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders as specified in Schedule B r/w Regulation 9(1) of SEBI (PIT) Regulations, 2015.	Rs. 5,00,000/- (Rupees Five Lakhs) under Section 15HB of SEBI Act, 1992 and Section 23A(a) read with Section 24(1) of SCRA.

108 I am of the view that the said penalty is commensurate with the violation committed by the Noticee in this case.

109 The Noticee shall remit / pay the said amount of penalty within 45 days of receipt of this order through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link:

ENFORCEMENT → ORDERS → ORDERS OF AO → PAY NOW

110 The said demand draft and its details or details of online payments made (in the format as given in table below) should be forwarded to “The Division Chief (Enforcement Department -DRA-4), the Securities and Exchange Board of India, SEBI Bhavan II, Plot No. C7, “G” Block, Bandra Kurla Complex, Bandra (E), Mumbai –400 051.

Case Name :	
Name of Payee :	
Date of Payment:	
Amount Paid :	
Transaction No. :	
Bank Details in which payment is made :	
Payment is made for: (like penalties/ disgorgement/ recovery/ settlement amount	

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

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

Date: July 12, 2023

Place: Mumbai

G. RAMAR

ADJUDICATING OFFICER