

SECURITIES AND EXCHANGE BOARD OF INDIA
FINAL ORDER

UNDER SECTION 11(4A), 11B(1) and 11B(2) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH RULE 4 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995.

In respect of:

S.No.	NOTICEE	PAN No.
1.	Surjit Kumar Gupta	AAAPG3515A
2.	Ajay Kumar Gupta	AAPPG8440D
3.	Sadhu Ram Gupta	AAPPG8442B

BACKGROUND

1. Securities and Exchange Board of India (“**SEBI**”) conducted an investigation into trading of scrip of Havells India Limited (“**Havells**”/”**HIL**”/”**the company**”) during the period December 01, 2020 to February 26, 2021 (**‘Investigation Period’ or ‘IP’**) to ascertain whether there is contravention of provisions of the Securities and Exchange Board of India Act, 1992 (“**SEBI Act**”) and the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 (“**PIT Regulations**”).
2. On the basis of findings of investigation, a common Show Cause Notice dated February 22, 2023 (“**SCN**”) was issued to Mr.Surjit Kumar Gupta (“**Noticee No.1**”), Mr. Ajay Kumar Gupta (“**Noticee No.2**”) and Mr. Sadhu Ram Gupta (“**Noticee No.3**”), hereinafter collectively referred to as (“**Noticees**”), inter-alia, alleging that: -

- a. Noticee No. 1 is promoter and one of the directors of HIL. Mr. Ameet Kumar Gupta is son of the Noticee No.1 and promoter director of HIL. The Noticee No.1 and Mr. Ameet Kumar Gupta stayed at the same address. Noticee No. 2 is son in law of Noticee No 1 and brother in law of Mr. Ameet Kumar Gupta. Noticee No.3 is father of the Noticee No.2 and they resided together at the same place.
- b. Mr. Manoj Arora, AVP Accounts, HIL vide email dated January 01, 2020 shared flash report regarding the financials of HIL for the month ending December 2020 with certain designated individuals including the Noticee No.1 and Mr.Ameet Kumar Gupta. The said flash report contained figures of revenue and profit of HIL for the month of December 2020. The flash report dated January 01, 2021 showed that figures of revenue and profits of HIL for the quarter ending December 31, 2020 were available on January 01, 2021. Prior to January 01, 2021, similar monthly flash reports for previous months were shared with top company officials of HIL on the first day of every subsequent month.
- c. On January 20, 2021, HIL disclosed its unaudited financial results for the quarter ended December 31, 2020 through corporate announcement to National Stock Exchange ("NSE") and Bombay Stock Exchange ("BSE") at 16:40 and 16:43, respectively i.e. after close of market hours. On January 21, 2021, price movement in the scrip of HIL was positive by 10.96%.
- d. Information relating to "Unaudited Financial Results of the company for quarter ending December 31, 2020" was the UPSI in terms of provisions of Regulation 2(1)(g) of PIT Regulations. This UPSI came into existence on January 01, 2021. The period of UPSI was January 01, 2021 to January 20, 2021.

- e. Noticee No 1 and Mr. Ameet Kumar Gupta were connected person in terms of regulation 2(1)(d) of the PIT Regulations and insider in terms of Regulation 2(1)(g) of the PIT Regulations.
- f. Noticee no 2 is founder, promoter and director of Svarn Infratel Pvt Ltd (“SIPL”), an unlisted company engaged in the business of manufacturing of electric cables and allied products. SIPL is also one of the clients of HIL as SIPL purchases raw materials/ finished goods from HIL. In view of the contractual relationship of SIPL with HIL, Noticee No. 2 is alleged to be a “connected person” in terms of Regulation 2(1)(d)(i) of the PIT Regulations and insider in terms of Regulation 2(1)(g) of the PIT Regulations. Noticee No.3 shared close relationship and common address with the Noticee No.2, thus, he is alleged to be insider in terms of regulation 2(1)(g)(ii) of PIT Regulations.
- g. The Noticee No 2 from his mobile number i.e. 98xxxxx2260 spoke to the Noticee No. 1 at his mobile number i.e. 98xxxxx564 on following days during the period of UPSI: -
 - i. January 01, 2022 for 166 seconds at 10:16:06 AM,
 - ii. January 03, 2022 for 2132 seconds at 10:04:49 AM,
 - iii. January 17, 2022 for 724 seconds at 08:56:31 and
 - iv. January 17, 2022 for 204 seconds at 9:11:13 AM.
- h. The Noticee No. 1 communicated and passed on UPSI to the Noticee No. 2, thereby, the Noticee No. 1 violated provisions of Sections 12A(d) and (e) of SEBI Act and Regulation 3(1) of PIT Regulations, 2015. The Noticee No. 2 procured the UPSI from his father in law i.e. Noticee No. 1 and traded in the scrip of HIL on the basis of and while in possession of UPSI. Further, Noticee No. 2 communicated the UPSI to his father i.e. Noticee No. 3, thereby, the Noticee No.2 violated provisions of Sections 12A(d) and (e) of SEBI Act and Regulation 3(1), 3(2) and 4(1) of PIT Regulations. The Noticee No. 3 procured the UPSI from his son i.e.

Noticee No. 2 and traded in the scrip of HIL on the basis of and while in possession of UPSI, thereby, the Noticee No. 3 violated provisions of Sections 12A(d) and (e) of SEBI Act and Regulation 3(2) and 4(1) of PIT Regulations;

- i. The Noticee No 2 had traded in the cash segment during and post UPSI. The details of trades of Noticee No.2 in the scrip of HIL in the cash segment is as follows: -

Table No.1 -Pre UPSI Period (01/10/2020 to 31/12/2020)

Date	Buy Qty.	Wt. Avg. Buy Price (in Rs.)	Buy Value (in Rs.)	Sell Qty.	Wt. Avg. Sell Price (in Rs.)	Sell Value (in Rs.)
Noticee no 2						
Nil						

Table No.2 - During UPSI Period (01/01/2021 to 20/01/2021)

Date	Buy Qty.	Wt. Avg. Buy Price (in Rs.)	Buy Value (in Rs.)	Sell Qty.	Wt. Avg. Sell Price (in Rs.)	Sell Value (in Rs.)
Noticee no 2						
05-Jan-2021	31000	931.46	28875140	-	-	-
06-Jan-2021	26,000	948.64	24664717	-	-	-
07-Jan-2021	18,000	964.13	17354378	-	-	-
11-Jan-2021	10,000	1013.01	10130071	-	-	-
15-Jan-2021	-	-	-	6000	989.29	59,35,737

Table No.3 -Post UPSI Period (21/01/2021 to 22/04/2021)

Date	Buy Qty.	Wt. Avg. Buy Price (in Rs.)	Buy Value (in Rs.)	Sell Qty.	Wt. Avg. Sell Price (in Rs.)	Sell Value (in Rs.)
Noticee no 2						
21-Jan-2021	-	-	-	79000	1116.53	88206132

Trading in derivatives segment:

- j. Noticees No. 2 and 3 traded in the scrip of HIL in derivative segment during and post UPSI. The details of trades of Noticees No. 2 and 3 in the scrip of HIL in derivative segment is as follows: -

Table No.4 -Pre UPSI Period (01/10/2020 to 31/12/2020)

Date	Buy Qty.	Wt. Avg. Buy Price (in Rs.)	Buy Value (in Rs.)	Sell Qty.	Wt. Avg. Sell Price (in Rs.)	Sell Value (in Rs.)
Noticee no 2	Nil					
Noticee no 3	Nil					

Table No.5 -During UPSI Period (01/01/2021 to 20/01/2021)

Date	Buy Qty.	Expiry date	Wt. Avg. Buy Price (in Rs.)	Buy Value (in Rs.)	Sell Qty.	Wt. Avg. Sell Price (in Rs.)	Sell Value (in Rs.)
Noticee no 2							
13-Jan-2021	20,000	28-Jan-2021	1029.17	2,05,83,450	-	-	-
15-Jan-2021	4,000	28-Jan-2021	996	39,84,000	-	-	-
15-Jan-2021	8,000	25-Feb-2021	991.35	79,30,800			
18-Jan-2021	5,000	25-Feb-2021	997.40	49,87,000			
20-Jan-2021	26,000	28-Jan-2021	1023.41	2,66,08,750			
Noticee no 3							
06-Jan-2021	6,000	28-Jan-2021	942.13	56,52,800			
14-Jan-2021	6000	28-Jan-2021	1005.40	60,32,400			
15-Jan-2021	8000	28-Jan-2021	982.46	78,59,650			

Table No.6 -Post UPSI Period (21/01/2021 to 22/04/2021)

Date	Buy Qty.	Expiry date	Wt. Avg. Buy Price (in Rs.)	Buy Value (in Rs.)	Sell Qty.	Wt. Avg. Sell Price (in Rs.)	Sell Value (in Rs.)
Noticee no 2							
21-Jan-2021	-	28-Jan-2021	-	-	50,000	1136.02	5,68,01,050
21-Jan-2021	-	25-Feb-2021	-	-	13,000	1136.00	1,47,68,000
01-Feb-2021	10,000	25-Feb-2021	1051.37	1,05,13,650	10,000	1067.50	1,06,75,000
19-Feb-2021	5,000	25-Mar-2021	1145	57,25,000	-	-	-
22-Feb-2021	10,000	25-Mar-2021	1136.50	1,13,65,000	10,000	1143.50	1,14,35,000
23-Feb-2021	10,000	25-Mar-2021	1128	1,12,80,000	6,000	1135	68,10,000
24-Feb-2021	-	25-Mar-2021	-	-	9,000	1149.33	1,03,44,000

Date	Buy Qty.	Expiry date	Wt. Avg. Buy Price (in Rs.)	Buy Value (in Rs.)	Sell Qty.	Wt. Avg. Sell Price (in Rs.)	Sell Value (in Rs.)
26-Feb-2021	10,000	25-Mar-2021	1134.86	1,13,48,550	-	-	-
01-Mar-2021	15,000	25-Mar-2021	1116.88	1,67,53,150	7,000	1118.54	79,29,750
02-Mar-2021	-	25-Mar-2021	-	-	18,000	1153.33	2,07,60,000
05-Mar-2021	5,000	25-Mar-2021	1128	5640000	-	-	-
08-Mar-2021	10,000	25-Mar-2021	1125	11250000	5000	1122	5610000
09-Mar-2021	10,000	25-Mar-2021	1100	11000000	10,000	1111.26	11112600
12-Mar-2021	10,000	25-Mar-2021	1134.90	113490000	-	-	-
15-Mar-2021	5000	25-Mar-2021	1095	5475000	5000	1103	5515000
16-Mar-2021	25000	25-Mar-2021	1093.78	27344450	20000	1092.84	21856850
17-Mar-2021	20000	25-Mar-2021	1077	21540000	10000	1068.03	10680250
18-Mar-2021	30,000	25-Mar-2021	1057	31710000	-	-	-
19-Mar-2021	-	25-Mar-2021	-	-	65,000	995.07	64679550
26-Mar-2021	5000	29-Apr-2021	1035	5175000	5000	1041	5205000
05-Apr-2021	5000	29-Apr-2021	1025.41	5127050	5000	1032	5160000
06-Apr-2021	5000	29-Apr-2021	1030	5150000	5000	1040	5200000
Noticee no 3							
21-Jan-2021	-	28-Jan-2021	-	-	20,000	1123.04	2,24,60,700
1-Feb-2021	6000	25-Feb-2021	1046.78	62,80,650	-	-	-
08-Mar-2021	2000	25-Mar-2021	1118.10	22,36,200	-	--	-

- k. The Noticee No 2 and 3 carried out trades in the scrip of HIL during the period of UPSI on the basis of and while in possession of UPSI, thereby, they made following unlawful gains:-
- Unlawful gain made by the Noticee No.2 in cash segment is Rs.1,31,17,563.
 - Unlawful gain made by the Noticee No.2 in derivatives segment is Rs.74,75,050.
 - Unlawful gain made by the Noticee No.3 in derivatives segment is Rs.29,15,850.

3. The SCN called upon the Noticee No 1 to show cause as to why directions under Section 11B(1) of the SEBI Act should not be passed and penalty under Section 11B(2) and 11(4A) read with section 15G of SEBI Act and provisions of SEBI(Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (“Inquiry Rules”) should not be imposed on him for the alleged violations. Further, the SCN called upon the Noticee No 2 and 3 to show cause as to why directions under Section 11B(1) of the SEBI Act including disgorgement of the unlawful gain, as stated therein, be not passed and why penalty under Section 11B(2) and 11(4A) and 15G of SEBI Act read with provisions of Inquiry Rules should not be imposed on them for the alleged violations.

SERVICE OF SCN AND REPLY OF THE NOTICEE

4. SCN was served on the Noticees through speed post (“SPAD”) as well as email. In response thereto, the Noticee No. 1 submitted reply dated March 16, 2023. The Noticee No. 2 and 3 submitted a common reply dated March 16, 2023.
5. The Noticee No. 1 vide reply dated March 16, 2023 submitted, inter-alia, as follows: -
 - a. He shared a good relationship amongst the family members. He would speak on Sundays and periodically every 10-15 days with his son-in law i.e. the Noticee No.2. Such a pattern of general communication between members of the family, extends not only in the period immediately prior to, during and post the period of UPSI, but for several years. The calls made during the period of UPSI were not unusual or sudden.
 - b. At no point of time in his conversation with the Noticee No.2, he communicated any UPSI whether during the period referred to in the SCN or otherwise.
6. The Noticee No. 2 and 3 vide reply dated March 16, 2023 submitted as follows:-
 - a. The Noticee No.2 and 3 are active traders in the securities market. The Noticee No.2 has been trading in the securities market for last 15 years

and more consistently from July, 2020 and the Noticee No.3 has been an active trader for the last 25 years.

- b. In equity segment, the Noticee No.2 had purchased diverse equity shares to the tune of approximately Rs.35.8 Crore in the first 3 quarters of the FY 2020-2021 (upto December 2020) i.e. prior to acquisition of shares of HIL in January 2021. During the same period, he sold equity shares of amount of approximately Rs.36.26 Crore. During January 01, 2021 to March 31, 2021, he made further purchases of approximately Rs.23.52 Crore including shares of HIL. During the said period, he sold significant amount of equity shares. Overall purchases of equity shares in the FY 2021 -21 were approximately Rs.60 Crores and sales were approximately Rs.53 Crores. The corresponding figures of purchase and sale of equities for the FY 2021-22 and FY 2022-23 were approximately Rs.44 Crore (purchase), Rs.41 Crores (Sale), Rs.81 Crores(Purchase) and Rs.49 Crore, respectively.
- c. The Noticee No.2 purchased equity shares of HIL for approximately Rs.1.29 Crores in FY 2022-23 and sold them in same financial year for approximately Rs.1.3 Crore. He had taken exposure on derivatives of HIL in FY 2021-22 for approximately Rs.1 Crore and in FY 2022-23 for approximately Rs.5 Crore. The impugned transactions of 2021 in the scrip of HIL were neither unusual, unique nor isolated.
- d. The SCN has made adverse inference from the statements made on oath by implying that he does not know how to deal in derivatives. However, the same was not stated in the deposition. It was stated that “*I am not a knowledgeable trader. I am an impatient trader. Whatever my pocket allows, I do that*” which has been misconstrued and misunderstood to suggest that he has no understanding of the derivatives market and could only make money while he had UPSI in his possession.

- e. The Noticee No.3 has been heavily trading in the derivatives market and has been consistently taking exposure for amount of approximately Rs.120 Crore (in the derivative segment) every year since the financial year 2017-18. He has traded in the derivatives of HIL in the FY 2017-18, 2018-19, 2019-20 and 2020-21. Thus, trading in the derivatives of HIL was not novel in any manner whatsoever.
- f. The definition of 'connected persons' under the PIT Regulations does not contemplate that mere contractual relationship gives rise to a presumption that such persons are connected persons. It is only such a contractual relationship *"that allows such person, directly or indirectly, access to unpublished price sensitive information or is reasonable expected to allow such access"* that is covered by the scope of the said provision. Existence of a mere supplier contract relationship between HIL and SIPL cannot be the basis to determine the Noticee No.2 and 3 as connected persons of Noticee No.1.
- g. The call dates referred to in the SCN are neither unusual nor they are isolated incidents. The call made on January 01, 2021, was made on the first day of the new year, and January 3, 2021 and January 17, 2021 are both Sundays, when the Noticee No.1 usually calls. The frequency and pattern of calls does not change prior to, during or after the period of UPSI.

OPPORTUNITY OF HEARING

- 7. In the interest of principles of natural justice, the Noticees were granted an opportunity of hearing on April 20, 2023. In this regard, separate hearing notices dated March 20, 2023 were sent to the Noticees through SPAD as well as email. In response thereto, the Noticee No.1 vide letter dated April 05, 2023 and the Noticee No.2 and 3 vide common letter dated April 05, 2023 sought opportunity to inspect documents, data and or any other information. The scheduled hearing dated April 20, 2023 was cancelled and the Noticees were granted inspection of documents on April 20, 2023,

wherein, Mr. Siddhant Bhasin, Authorised Representative, conducted inspection of documents on behalf of the Noticees.

8. The Noticees were granted opportunity of hearing on June 15, 2023. In this regard, separate hearing notice dated May 15, 2023 were sent to the Noticees through SPAD as well as email.
9. On June 15, 2023, Mr. Ajay Bahl, Authorised Representative of the Noticees, attended the hearing. Vide email dated June 26, 2023, the Noticees filed common post hearing written submissions.

CONSIDERATION

10. I have considered the SCN, replies and written submission filed by the Noticees.
11. Before moving forward, it will be appropriate to refer to the relevant provisions of the SEBI Act, the PIT Regulations: -

PIT Regulations:-

Regulation 2(1)(d)(i)

"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."*

Regulation 2(1)(e)

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

Regulation 2(1)(g)

"Insider" means any person who is:

- (i) *a connected person, or*
- (ii) *in possession of or having access to unpublished price sensitive information.*

Regulation 2(1)(n)

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

i) financial results

ii) ...

v) ...

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

Regulation 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.*

- (2) No person shall procure from or cause the communication by any insider of unpublished price sensitive information, relating to a company or securities listed or proposed to be listed, except in furtherance of legitimate purposes, performance of duties or discharge of legal obligations.*

NOTE: *This provision is intended to impose a prohibition on unlawfully procuring possession of unpublished price sensitive information. Inducement and procurement of unpublished price sensitive information not in furtherance of one's legitimate duties and discharge of obligations would be illegal under this provision.*

Regulation 4(1)

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

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

.....”

Provisions of SEBI Act

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

Section 12A:

“No person shall directly or indirectly—

(a).....

(d) engage in insider trading;

(e) deal in securities while in possession of material or non-public information or communicate such material or non-public information to any other person, in a manner which is in contravention of the provisions of this Act or the rules or the regulations made thereunder;”

Penalty for insider trading.

15G. If any insider who,—

(i) either on his own behalf or on behalf of any other person, deals in securities of a body corporate listed on any stock exchange on the basis of any unpublished price-sensitive information; or

(ii) communicates any unpublished price-sensitive information to any person, with or without his request for such information except as required in the ordinary course of business or under any law; or

(iii).....xxxxxxx.,

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.

12. The SCN has alleged that Mr. Manoj Arora, AVP Accounts of HIL vide email dated January 01, 2021 shared flash report regarding financials of HIL for the month of December 2020 with designated persons including the Noticee No.1, who is promoter director of HIL. The said flash report contained figures of revenue and profit of HIL for the month of December 2020. In terms of Regulation 2(1)(n) of the PIT Regulations, the said flash report is alleged to be unpublished price sensitive information (“**UPSI**”). Further, it is alleged that the Noticee No.1 through mobile call communicated UPSI to the Noticee

No.2, son-in-law of the Noticee No.1, who along with his father i.e. the Noticee No.3 traded on basis of the UPSI.

13. From the replies and written submission of the Noticees, I note that their submissions are as follows: -

- a. Flash Report dated January 01, 2021 was not UPSI as it did not contain extraordinary information;
- b. The Noticee No.1 was in frequent communication with the Noticee No.2 prior to, during as well as after period of UPSI. There was no unusual pattern of mobile phone calls between the Noticee No.1 and 2 during the period of UPSI. There is no evidence of communication of alleged UPSI by the Noticee No.1 to Noticee No.2;
- c. The Noticee No. 2 and 3 are regular traders in securities market and their trading during the UPSI period was not unusual.

I- Flash Report dated January 01, 2021 was UPSI or not:

14. In this regard, the Noticees vide written submissions dated June 26, 2023 have submitted that there was nothing extraordinary in the financial results and performance of HIL for the quarter ended December 2020. Financials of HIL for the quarter ended June 2020, September 2020 and December 2020 were as follows: -

Table: 7

Quarter End	Total income ("TI") (Rs. in Crores)	% change in TI from previous quarter	Profit before tax ("PBT") (Rs. in Crores)	% change in PBT from previous quarter	% of TI and PBT
June 30, 2020	1,511.33	-	85.95	-	5.69%

Quarter End	Total income ("TI") (Rs. in Crores)	% change in TI from previous quarter	Profit before tax ("PBT") (Rs. in Crores)	% change in PBT from previous quarter	% of TI and PBT
September 30, 2020	2,530.99	67.47%	423.55	392.79%	16.73%
December 30, 2020	3,205.02	26.63%	467.71	10.43%	14.59%

15. Further, it is submitted that there is no correlation between the financial results and share price of HIL. When extraordinary results of quarter ended September 2020 were announced the share price of HIL dipped right after the announcement of the results. This lack of correlation between the share price of HIL and its continued performance for the year end 2021 is reinforced by the drop in share price of HIL when its year ended result were disclosed on May 20, 2021. At that time, despite a significant improvement in financials of HIL compared to the previous financial year including factors such as the increase in profit of HIL by 42% from 735.35 crores in FY 2019-20 to Rs.1,044.31 crores in FY 2020-21 and the revenue from operations increased from Rs.9440.26 crores in FY 2019-20 to Rs.10,457.30 crores in FY 2020-21.

16. Further, it is submitted that for an information to be treated as UPSI, the material impact that it may have on the share price has to be determined at the time that the information becomes available to the "insider". The information contained in the flash report was not an information that would have materially impacted the share price of HIL, thereby, failing to meet the requirement set out in Regulation 2(1)(n) of the PIT Regulations.

17. The Noticees have contended that term 'financial results' in the definition of UPSI may not always be considered as unpublished price sensitive

information and would have to be considered on a case-to-case basis as to whether in the given circumstances the financial results were a price sensitive information or not. In this regard, reliance is placed on the Hon'ble Securities Appellate Tribunal ("SAT") Order dated April 19, 2022, in the matter of Rajeev Vasanth Sheth & Ors. v. SEBI, Appeal No. 536 of 2021, wherein, it was observed as follows: -

"10. The UPSI as provided under Regulation 2(n) means any information relating to a company or its security which is likely to materially affect the price of the securities and shall ordinarily include, namely, financial results, etc. It was urged that the word "ordinarily" does not mean that the financial results will always be considered as unpublished price sensitive information and would have to be considered on a case- to-case basis as to whether in the given circumstances the financial results were a price sensitive information or not. In this regard, we find that the losses had increased by 25 times from quarter ended June 2017 to quarter ended September 2017, the net loss increased from Rs.6.62 crores to Rs. 166.80 crores which was a substantial jump and, therefore, in our opinion, the financial results for the quarter ended September 2017 was an UPSI which the appellants had in their possession."

18. The Noticees have contended that insider trading is a serious offence, therefore, higher must be the preponderance of probabilities in establishing the same. In support of the said contention, the Noticees have placed reliance on placed reliance on the SAT order dated October 3, 2012, in the matter of Manoj Gaur Vs. SEBI, Appeal no. 64 of 2012, wherein, it is observed as follows: -

"The charge of insider trading is one of the most serious charges in relation to the securities market and having regard to the gravity of this wrong doing, higher must be the preponderance of probabilities in establishing the same. In Mousam Singha Roy v. State of West Bengal (2003) 12 SCC 377, the learned judges of the Supreme Court in the context of the administration of criminal justice observed that, "It is also a settled principle of criminal jurisprudence that the more serious the offence, the stricter the degree of proof, since a higher degree of assurance is required to convict the accused." This principle applies to civil cases as well where the charge is to be established not beyond reasonable doubt but on the preponderance of probabilities. The measure of proof in civil or criminal cases is not an absolute standard and within each standard there are degrees of probability."

19. I note that Regulation 2(1)(n) of the PIT Regulations define UPSI as any information, relating to a company or its securities, that is not generally available which upon becoming generally available, is likely to materially affect the price of the securities. For an information relating to a company or its securities to be treated as UPSI, it must satisfy two criteria i.e. (1) it must not be generally available (2) Upon coming in public domain, it is likely to materially affect the price of the securities. Thus, information which is not likely to materially affect the price of the securities cannot be treated to UPSI.

20. I note that flash report dated January 01, 2021 contained figures of revenue and profit of HIL for December 2020. I note that HIL was profit making in the quarter ending June 2020, September 2020 and December 2020. From table 7 above, I note that change in revenue and profit before tax of HIL was significant in quarter ending September 30, 2020 in comparison to quarter ending December 30, 2020. Thus, it can be reasonably expected that the market must have already consumed and digested the significant change in financial results of the company through the publication of September 30, 2020 quarterly results. The subsequent financial results pertaining to the quarter ended December 30, 2020, which is alleged to be the UPSI in the present matter, did not show up any relatively significant difference in the results enabling it to be given the status as an UPSI.

21. I also note that financial results are presumed to be UPSI as per the PIT Regulations. It is a common knowledge that such a presumption in law is rebuttable by the Noticees. Of course, SEBI would get the advantage, protection and cover of such rebuttable presumptions initially till adequately defended or rebutted by the Noticees. Once the Noticees bring out defence vitiating the presumption, the said protection vanishes. At this juncture, I would like to rely upon the guidance given by the Hon'ble Supreme Court of India in the matter of Rangappa Vs Sri Mohan (2010) 11 SC 441. In the cited matter, the Hon'ble Supreme Court has held as mentioned below :-

“In the absence of compelling justifications, reverse onus clauses usually impose an evidentiary burden and not a persuasive burden. Keeping this in view, it is a settled position that when an accused has to rebut the presumption under Section 139, the standard of proof for doing so is that of “preponderance of probabilities”. Therefore, if the accused is able to raise a probable defence which creates doubts about the existence of a legally enforceable debt or liability, the prosecution can fail. As clarified in the citations, the accused can rely on the materials submitted by the complainant in order to raise such a defence and it is conceivable that in some cases the accused may not need to adduce evidence of his/her own.”

22. In the present matter as explained elsewhere in this order, I note that the Noticees have raised defence as to how the impugned UPSI cannot be treated as such which shatters the statutory presumption. In light of the arguments of the Noticees and on the basis of Doctrine of preponderance of probabilities, I find that the protection guaranteed by the statute has been wiped away in the matter. Having considered quarterly results of HIL for quarter ending September 30, 2020 and December 30, 2020, flash reports for the month of October 2020, November 2020 and December 2020 and share price movements of HIL post declaration of quarterly results for September 30, 2020 and December 30, 2020, I find that I find that flash report dated January 01, 2021 cannot be treated to UPSI.

II- Whether there was unusual pattern of communication and communication of UPSI by the Noticee No.1 to Noticee No.2.

23. I note that the Noticee No.1 vide his reply dated March 16, 2023 has admitted that the Noticee No.2 is his son-in law. The Noticee No.1 has submitted that he would speak generally on Sunday and periodically every 10-15 days with his son in law. Such a pattern of general communication extends not only in the period immediately prior to, during and post the period of UPSI, but for several years. The calls made during the period of UPSI were not unusual or sudden. To support the said contention, the Noticee No.1 has submitted his call data record for period April 02, 2022 to March 31, 2023. From the call data record of the Noticee No.1, I find that he

is in frequent communication with the Noticee No.2 and such communication generally took place on Sundays.

24. During the course of hearing, the Noticee No.1 placed reliance on the Hon`ble Supreme Court judgment dated April 19, 2022, in the matter of Balram Garg Vs. SEBI, Civil Appeal No. 7054 of 2021, wherein, it is held as follows: -

“40. *We are also of the opinion that in the absence of any material available on record to show frequent communication between the parties, there could not have been a presumption of communication of UPSI by the appellant Balram Garg. **The trading pattern of the appellants in C.A. No.7590 of 2021 cannot be the circumstantial evidence to prove the communication of UPSI by the appellant Balram Garg to the other appellants in C.A. No.7590 of 2021. It would also be pertinent to note here that Regulation 3 of the PIT Regulations, which deals with communication of UPSI, does not create a deeming fiction in law. Hence, it is only through producing cogent materials (letters, emails, witnesses etc.) that the said communication of UPSI could be proved and not by deeming the communication to have happened owing to the alleged proximity between the parties.** In this context, even the show-cause notices do not allege any communication between the Appellant Balram Garg and the other appellants in C.A. No.7590 of 2021.....*

44. *In light of the above principles of law laid down by this Court, it was imperative on the Respondent/SEBI to place on record relevant material to prove that the appellants in C.A. No.7590 of 2021, namely, Mrs. Shivani Gupta, Sachin Gupta, Amit Garg and Quick Developers Pvt. Ltd. were “immediate relatives” who were “dependent financially” on appellant Balram Garg or “consult” Balram Garg in “taking decisions relating to trading in securities.The said appellants in C.A. No.7590 of 2021 were not “immediate relatives” and were completely financially independent of the appellant Balram Garg and had nothing to do with the said Balram Garg in any decision making process relating to securities or even otherwise.”*

25. Further, the Noticee No.1 contended that insider trading is a serious offence, therefore, higher must be the preponderance of probabilities in establishing the same. In support of the said contention, the Noticee has

placed reliance on placed reliance on the SAT order dated November 19, 2009, in the matter of Dilip S. Pendse Vs. SEBI, Appeal No. 80 of 2009, wherein, it is observed as follows: -

“13. The charge of insider trading is one of the most serious charges in relation to the securities market and having regard to the gravity of this wrong doing, higher must be the preponderance of probabilities in establishing the same. In Mousam Singha Roy v. State of West Bengal (2003) 12 SCC 377, the learned judges of the Supreme Court in the context of the administration of criminal justice observed that, “It is also a settled principle of criminal jurisprudence that the more serious the offence, the stricter the degree of proof, since a higher degree of assurance is required to convict the accused.” This principle applies to civil cases as well where the charge is to be established not beyond reasonable doubt but on the preponderance of probabilities. The measure of proof in civil or criminal cases is not an absolute standard and within each standard there are degrees of probability.”

26. In view of the call data record of the Noticee No.1 for the period April 2022 to March 2023, I find that the Noticee was in frequent communication particularly on Sundays with the Noticee No.2. I find that communication of the Noticee No.1 with the Noticee No.2 was not unusual. I find that there is no cogent material on record to evidence communication of UPSI from the Noticee No.1 to Noticee No.2 during the period of UPSI.

III- Whether pattern of trading of the Noticee No. 2 and 3 during and post UPSI was unusual.

27. I note that the Noticee No.2 has submitted that in first 3 quarters of FY 2020-21 he purchased equity shares to the tune of approximately Rs.35.8 Crore and sold equity shares to the tune of Rs.36.26 Crore. During FY 2020-21, the Noticee No.2 purchased equity shares to the tune of Rs.60 crores and sold shares to the tune of Rs.53 crores. The corresponding figures of purchase and sale of equity shares for FY 2021-22 and FY 2022-23 were approximately Rs.44 Crore (purchase) and Rs.41 Crores (Sale), Rs.81 Crores(Purchase) and Rs.49 Crore (Sale), respectively. Total purchases made by the Noticee No.2 in the derivative segment for FY 2020-21, 2021-

22 and FY 2022-23 was approximately Rs.84 Crore, Rs.34 Crores and Rs.16 Crore, respectively.

28. I note that the Noticee No.2 during FY 2020-21 purchased shares of HIL in the equity segment to the tune of Rs.8.1 Crore. The Noticee No.2's dealings in scrip of HIL in the derivative segment was to the tune of Rs.26 Crore.

29. The Noticee No.3 has submitted that he has been taking exposure for amount of approximately Rs.120 Crores in the derivative segment every year since FY 2017-18. He has taken exposure in the scrip of HIL in the derivative segment in FY 2017-18, 2018-19, 2019-20, 2020-21 for amount of Rs.9.3Crore, Rs.11 Lakh, Rs.6.5 Lakh, Rs.4.5 Crore, respectively.

30. I note that dealing of the Noticee No.2 and 3 in the securities market was not confined to trading during or near to UPSI period. From table 6 above, I note that the Noticee No.2 and 3 were dealing in scrip of HIL in the derivative segment even post UPSI period i.e. January 21, 2021 to April 22, 2021. Having considered trading details of the Noticee No.2 and 3 for period prior to, during and post UPSI period, I do not find any unusual pattern of trading in trades of the Noticee No.2 and 3.

31. In view of the above, I find that flash report dated January 01, 2021 did not contain any extraordinary information to be qualified as UPSI. I do not find sufficient evidence to prove communication of alleged UPSI by the Noticee No.1 to the Noticee No.2. Further, I do not find trading pattern of the Noticee No.2 and 3 to be unusual to qualify as being influenced by the alleged UPSI. Accordingly, I find that allegation of violation of provisions of the PIT Regulations and SEBI Act against the Noticee No.1, 2 and 3 are not substantiated.

ORDER–

32. In view of the above, I, in exercise of powers under Section 11(4A) and 11B of the SEBI Act read with Section 19 of the SEBI Act, hereby dispose of the SCN against the Noticee No.1, 2 and 3 without any directions.

33. This order shall come into force with immediate effect.

34. A copy of this Order shall be served on the Noticees.

Date: June 28, 2023

Place: Mumbai

**K SARAVANAN
CHIEF GENERAL MANAGER
SECURITIES AND EXCHANGE BOARD OF INDIA**