

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER SECTION 11(1), 11(4), 11(4A), 11B(1) AND 11B(2) READ WITH SECTION 15G OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 READ WITH SECURITIES AND EXCHANGE BOARD OF INDIA (PROCEDURE FOR HOLDING INQUIRY AND IMPOSING PENALTIES) RULES, 1995.

IN THE RESPECT OF-

SR. NO.	NAME OF THE ENTITY	PAN
1.	Ms. Jyotiben Kantilal Patel	ABXPP2979H
2.	Mr. Narayanbhai M Patel	ABHPP7111M
3.	Ms. Kantaben Chandubhai Patel	ABXPP2963M

(The aforesaid entities are hereinafter individually referred to by their respective names / Noticee numbers and collectively referred to as Noticees)

IN THE MATTER OF VIMAL OIL & FOODS LIMITED -

BACKGROUND:

- Securities and Exchange Board of India (“**SEBI**”) had conducted an investigation in the scrip of Vimal Oil & Foods Limited (“**VOFL/ Company**”) to ascertain whether certain persons / entities had traded in the said scrip on the basis of the unpublished price sensitive information (“**UPSI**”) during the period July 01, 2015 to August 27, 2015 (“**Investigation Period**”) in contravention of the provisions of the SEBI Act, 1992 (“**SEBI Act**”) read with SEBI (Prohibition of Insider Trading) Regulations, 2015 (“**PIT Regulations**”).
- Pursuant to the investigation, the following was observed:
 - VOFL, on August 27, 2015 after market hours, had announced the financial results for the quarter ended June 30, 2015 wherein it was observed that the company’s standalone Net Profit after Tax had decreased from Rs. 16.51 lakhs in quarter ended March 31, 2015 to a net loss of Rs. 6205.20 lakhs in

quarter ended June 30, 2015 (Q-o-Q decrease of 37684%) and from a net profit of Rs. 572.24 lakhs in quarter ended June 30, 2014 to a net loss of Rs. 6205.20 lakhs in quarter ended June 30, 2015 (Y-o-Y decrease of 1184%).

(ii) As informed by the company, statutory auditors and the accountant, the date of initiation of preparation of accounts for the quarter ended June 30, 2015 started from August 01, 2015.

(iii) It was observed that VOFL had defaulted in repayment of loans amounting to Rs. 47,853,74 lacs from four banks viz. Bank of Baroda, Bank of India, Dena Bank and Andhra Bank. Thus, the financial position of the company had started deteriorating much earlier than the date of initiation of preparation of the company's accounts for the quarter ended June 30, 2015 i.e. August 01, 2015.

(iv) It was observed that price of the scrip had fallen from opening price of Rs. 136.55 on July 01, 2015 to a close price of Rs. 80.65 on August 27, 2015.

(v) In view of the same, both the events i.e. deteriorating financial condition of the company (i.e. July 01, 2015 to August 27, 2015 i.e. the date on which the financial results for the quarter ended June 30, 2015 were published) along with financial results for quarter ended June 30, 2015 reflecting the poor financial results of the company (i.e. August 01, 2015 to August 27, 2015) were considered periods of UPSI.

(vi) During the UPSI period, two entities viz. Jyotiben Kantilal Patel and Narayanbhai M Patel (Noticee Nos. 1 and 2, respectively) were observed to have sold significant number of shares of VOFL, being 'connected persons' who were reasonably expected to have access to the UPSI and therefore, were allegedly 'insiders' who had traded in the scrip of VOFL when in possession of the UPSI during the UPSI period thereby averting losses.

(vii) Further, it was also observed that the amounts received from sale of the shares of VOFL were transferred by Noticee Nos. 1 and 2 in the bank account of Ms. Kantaben Patel, a promoter of VOFL (Noticee No. 3) and also the mother of Jayeshbhai Chandubhai Patel, Chairman and Managing Director of VOFL.

3. In view of the trading in the scrip of VOFL by the Noticees when in possession of the UPSI, being 'connected persons' in terms of Regulation 2(1)(d)(i) and hence 'insiders', the Noticees were alleged to be in violation of -
- (i) The Noticee Nos. 1 and 2 were alleged to have violated the provisions of Regulation 4(1) of the PIT Regulations read with Section 12A(d) & (e) of the SEBI Act and
 - (ii) The Noticee No. 3 was alleged to have violated the provisions of Regulation 3(1) of the PIT Regulations read with Section 12A(d) & (e) of the SEBI Act.

SHOW CAUSE NOTICE, REPLIES AND HEARING:

4. A common show cause notice dated July 26, 2021 ("**SCN**") was issued to the Noticees calling upon them to show cause as to why appropriate directions under Sections 11(4) and 11B(1) read with Section 11(1) of the SEBI Act including debarment for an appropriate period and disgorgement of losses avoided by Noticee Nos. 1 and 2, jointly and severally, along with Noticee No. 3 and why appropriate directions for imposing penalty under Sections 11(4A) and 11B(2) read with Section 15G of the SEBI Act read with SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 ("**Rules**") should not be issued against them for the alleged violations of the provisions of PIT Regulations read with the SEBI Act. The Authorized Representative, ("**AR**"), vide email dated September 10, 2021, while acknowledging receipt of the SCN dated July 26, 2021, sought two weeks' time to file replies on behalf of the Noticees to the said SCN. The said request was acceded to and vide email dated September 16, 2021, the Noticees were granted time till September 24, 2021 to file their replies in the matter. However, by January 24, 2022, the Noticees had filed settlement applications to settle the enforcement proceedings initiated against them in the instant matter. The Internal Committee ("**IC**") Meeting for considering the said applications was held on June 30, 2022 and the Noticees were to file their revised settlement terms within 15 days from the date of the IC meeting. However, as the Noticees failed to submit their revised settlement terms, the settlement applications filed by them were rejected by SEBI in terms of Regulation 6(1)(b) of the SEBI (Settlement Proceedings) Regulations, 2018. It is noted that, vide

email dated July 25, 2022, SEBI had duly intimated the rejection of the settlement applications to the Noticees.

5. As the settlement applications filed by the Noticees were rejected, vide email dated September 13, 2022, the Noticees were granted a last opportunity to file their replies, if any, to the SCN dated July 26, 2021. The AR for the Noticees requested for 14 days' time to file replies in the matter. However, even after lapse of the time requested, the Noticees did not file any replies to the SCN. I note from the available records that after repeated follow-ups, the Noticees have filed their respective replies to the common SCN vide email dated October 06, 2022.
6. The submissions made by each of the Noticees to the SCN are summarized as under:

Jyotiben Kantilal Patel: *(letter dated October 05, 2022)*

6.1 Vide email dated October 06, 2022, the Noticee No. 1 attached the letter dated October 05, 2022 vide which the following submissions have been made:

Preliminary submissions:

- (i) The allegations and the charges made in the SCN against the Noticee are of the year 2015 i.e. almost 7 years ago. The Company has been under liquidation since December 2017 and has been sold in December 2020 to a third party under the said liquidation process. As a result, the Noticee No. 1 does not have access to the documents and records of the Company and the ability to submit a complete and wholesome reply to the allegations and charges made in the SCN is compromised. Therefore, the substantial delay in issuing the SCN has severely prejudiced Noticee No. 1 and it is the case of the Noticee that the present proceedings should be terminated on the basis of delay and laches.
- (ii) The Noticee No. 1 further submits that the SCN does not set out the penalty / action which is proposed to be imposed/ taken and therefore, the said SCN does not fulfil the requirements of the principles of natural justice and therefore, ought to be withdrawn.

Submissions on facts and allegations:

- (iii) The Noticee No. 1 states that she is 84 years old and her health has deteriorated over the years to such an extent that she is unable to sit or walk without any external support. With respect to the Company, she states that the Company was incorporated in 1992 and listed on BSE and NSE and has been providing employment to more than 1000 persons.
- (iv) The Company availed credit facilities from banks and financial institutions, both fund based and non-fund based; until 2015, the Company was regular in repaying its loans and meeting other obligations. However, an increasing liquidity crunch and other factors adversely affected the Company's finances and it defaulted in loan repayments in July 2015. The Company's accounts were classified as Non Productive Assets (NPA) by Banks in September 2015 and thereafter, Corporate Insolvency Resolution Process was initiated on December 19, 2017.
- (v) The Company had two subsidiaries, Vimal Dairy Limited (VDL) and Brinda Exports Limited. VDL became subsidiary of the Company on February 26, 2013 when the company acquired 52% shares. On June 26, 2015, the Company sold its entire shareholding in VDL to various persons who were shareholders of VDL, including Noticee No. 1, at a profit of around Rs. 10/- per share; the Company received Rs. 1.26 Crores from Noticee No. 1 towards the said sale of shares.
- (vi) The Noticee No. 1 admits that she was one of the shareholders of VDL which in turn was one of the promoters of the Company. During the period July 02, 2015 to August 27, 2015, the Noticee has submitted that a total of 1,28,426 shares of VOFL were sold on BSE and NSE in order *inter alia* to raise funds to make payment towards a purchase of land in Mehsana from Mrs. Kantaben Patel (Noticee No. 3). Out of the sale proceeds of Rs. 1,19,44,323, The Noticee No. 1 had transferred Rs. 73,35,000 (around 50.39%) to Noticee No. 3 on July 07, July 10 and July 30, 2015. Thereafter, an agreement for sale was entered into between Noticee No. 3 and Noticee No. 1 and was duly notarized. It is stated by the Noticee No. 1 that the copy of the said agreement dated September 01, 2015 has been provided to SEBI.

- (vii) However, due to certain personal disputes that arose between Noticee No. 3 and Noticee No. 1, Noticee No. 1 did not intend to go forward with the transaction and sought refund of the money already transferred. The Noticee No. 1 has submitted that she is yet to receive the said amount. The dispute between the said Noticee is being mediated through known persons.
- (viii) The Noticee further submits that she was only a shareholder of VDL and not its director or employee nor was she a director or employee of VOFL or related to any of the Directors or employees of the Company. She was not aware of the loans taken by the Company from various banks or their payment schedule and therefore, was not in possession of UPSI as falsely alleged.
- (ix) The incomplete transaction for purchase of land cannot be the basis to assume that the Noticee No. 1 had sold the shares of the Company based on the UPSI, which would be available to the Directors or employees of the Company alone.
- (x) With respect to not responding to the emails and summons dated December 18, 2020 and December 24, 2020, the Noticee has submitted that the same could not be responded due to medical reasons and on account of COVID-19 pandemic.
- (xi) The Noticee submitted that she had purchased 2,52,000 shares of VDL from the company on July 21, 2015 by paying a sum of Rs. 1.25 Crores. However, the said transaction cannot be the basis to allege that the Noticee No. 1 was connected with Mr. Jayeshbhai Patel, Chairman and Managing Director of VOFL.
- (xii) The Noticee states that she is not a regular trader in shares and therefore, it is irrelevant that she has not purchased or sold shares within 3 months of the sale of shares of the Company. The transaction with Noticee No. 3 was after the UPSI period.
- (xiii) The Noticee, therefore, denied being an insider in respect of the Company.

Narayanbhai M Patel: *(letter dated October 06, 2022)*

6.2 Vide email dated October 06, 2022, the Noticee No. 2 attached the letter dated October 06, 2022 vide which the following submissions have been made:

Preliminary submissions:

- (i)** The allegations and the charges made in the SCN against the Noticee are of the year 2015 i.e. almost 7 years ago. A substantial time has lapsed from the impugned transactions and the SCN was the first intimation to the Noticee that the said transactions suffered from some irregularities. The delay has caused prejudice to the Noticee No. 2 as he left the Company in 2017 and the company has been sold in December 2020 to a third party in the course of the liquidation process. As a result, the Noticee No. 2 does not have access to the documents and records of the Company and the ability to submit a complete and wholesome reply to the allegations and charges made in the SCN is compromised.
- (ii)** Noticee No. 2 further submits that Mr. Mukesh Patel, who is Independent and Non-Executive Director of the company, is not a part of the present proceedings. Thus, it is the case of the Noticee that the present proceedings are vitiated by non-joinder of a necessary party.
- (iii)** Further, the Noticee No. 2 submits that the SCN does not set out the exact penalty that is proposed to be imposed on the Noticee for the alleged violations. In support of his submission, the Noticee No. 2 has placed reliance on the judgment of the Hon'ble Supreme Court in the case of *Gorkha Security Services Vs. Government (NCT of Delhi) and others 2014 (9) SCC 105*.

Submission on facts and allegations:

- (iv)** The Noticee No. 2 states that as an employee of the Company, he looked after the maintenance of the manufacturing plant of the Company. The Company availed credit facilities from banks and financial institutions, both fund based and non-fund based; until 2015, the Company was regular in repaying its loans and meeting other obligations. However, an increasing

liquidity crunch and other factors adversely affected the Company's finances and it defaulted in loan repayments in July 2015. The Company's accounts were classified as NPA by Banks in September 2015 and thereafter, Corporate Insolvency Resolution Process was initiated on December 19, 2017.

- (v) Further, the Noticee No. 2 submits that he is a former employee of the company and was associated with the plant maintenance activity of a company. He was not involved in the day-to-day affairs of the Company and therefore, was not aware of the details of loans taken from the various banks of their payment schedule.
- (vi) The Noticee No. 2 stated that he is the father of Mr. Mukesh Patel, an erstwhile Independent & Non-executive Director of the Company. However, the same cannot lead to a presumption that Mr. Mukesh Patel shared the UPSI with the said Noticee.
- (vii) The Noticee also stated that he was not aware of the facts relating to the Letters of Credit (LCs) having devolved, delays in payment of interests to certain Banks and defaults in loan repayments. The Noticee denies having knowledge of the financial results of the company for the quarter ended June 2015.
- (viii) The Noticee has submitted that he was not connected with the accounting or financial functions of the company and cannot be expected to have knowledge of the precarious financial situations of the Company or the commencement of preparation of quarterly financial statements.
- (ix) Being an employee, he had acquired shares of the Company in the year 2010. In and around 2015, the Noticee No. 2 decided to repay Rs 18,25,000/- which was due and payable to Ms. Kantaben Patel towards various loans availed from her by the said Noticee from time to time. He sold total of 14,000 shares of the company on July 2, 2015 on the BSE and NSE and received a total sum of Rs 18,14,862/-. He added funds to the said amount and paid Rs. 18,25,000/- to Mrs. Kantaben Patel around July 2015.

Kantaben Chandubhai Patel: *(letter dated October 06, 2022)*

6.3 Vide email dated October 06, 2022, the Noticee No. 1 attached the letter dated October 06, 2022 vide which the following submissions have been made:

Preliminary submissions:

- (i)** The Noticee No. 3 states that the SCN has alleged that she has communicated the UPSI relating to the Company based on certain transactions which Noticee No. 3 had with Noticee No. 1 and 2 in the year 2015 i.e. almost 7 years ago. Substantial delay in issuing the SCN and the events that took place during the said period has severely prejudiced the Noticee and thus, it is the case of the Noticee that her ability to defend the case has been prejudiced due to the said delay.
- (ii)** The Noticee submits that Shri Jayeshbhai Patel, Chairman and managing Director of the Company, through whom the Noticee No. 3 is alleged to have obtained the UPSI is not a party to the present proceedings and therefore, the said proceedings are vitiated by non-joinder of necessary party.
- (iii)** Further, the Noticee No. 3 submits that the SCN does not set out the exact penalty that is proposed to be imposed on the Noticee for the alleged violations. In support of her submission, the Noticee No. 3 has also placed reliance on the judgment of the Hon'ble Supreme Court in the case of *Gorkha Security Services Vs. Government (NCT of Delhi) and others 2014 (9) SCC 105*.

Submissions on facts and allegation:

- (iv)** The Noticee made similar submissions with respect to the background of the company and that the company went into Corporate Insolvency Resolution Process on December 19, 2017.
- (v)** The Noticee No. 3 states that she is 73 years old and no longer associated with the Company. Until the company was ordered to be liquidated in 2017, she was a promoter of the company and her son, Mr. Jayeshbhai Patel, was the Chairman and Managing Director of the company. Although a promoter, the Noticee has submitted that she was not a Director of the

Company or involved in the day-to-day affairs and because of her age, her son did not trouble her with information relating to the Company and its fortunes or misfortunes.

- (vi)** Even assuming but not admitting that the Noticee No. 3 had access to the UPSI, it is the case of the Noticee that the allegation that she communicated the same to Jyotiben Patel and Narayanbhai Patel is again based on financial transactions which the Noticee has with them, which is nothing but conjecture and surmise.
- (vii)** The Noticee states that she did not know that the funds for the part payment was raised through sale of shares by Jyotiben Patel. The transaction took place after the sale of shares cannot be the basis to allege that parties to the transaction has exchanged UPSI relating to the shares sold. There is nothing else that connects the Noticee No. 3 to Jyotiben Patel or any circumstances that warrants an inference that they had exchanged information relating to the Company, leave alone UPSI.
- (viii)** Narayanbhai Patel was a long time employee of the Company and had been with the Company since its inception. Such financial assistance and its repayment cannot be the basis to allege that the Noticee No. 3 had communicated UPSI to employees who sought financial assistance from the Noticee.
- (ix)** The transaction of sale of plot of land with Jyotiben Patel could not be completed and a dispute regarding her demand to refund the part payment made is currently being mediated by persons known to both of them. It is the case of the Noticee that a transaction that took place after the sale of shares i.e. transfer of funds and execution of the agreement for sale cannot be the basis to allege that the Noticee had communicated UPSI relating to the shares sold to Jyotiben Patel.
- (x)** There is nothing else that connects Kantaben Patel to Jyotiben Patel or any circumstance that warrants an inference that they exchanged any information relating to the Company.
- (xi)** Just because Mr. Jayeshbhai Patel is her son, does not mean that she was aware of the UPSI relating to the Company. The Noticee further states that she is not aware of or connected with the trading pattern adopted by

Jyotiben Patel and/or Narayanbhai Patel or the reasons for their sale of shares of the Company or with loss avoided by them or profit made by them through the sale of shares.

7. In addition to the abovementioned submissions, the Noticees had requested for a copy of the Investigation Report in the matter. Accordingly, copy of the Investigation Report was provided to the Noticees vide separate emails dated October 18, 2022, October 20, 2022 and October 21, 2022. Also, inspection of documents was provided to the said Noticees on November 04, 2022, November 07, 2022 and November 09, 2022 and the record of the same is available on the file. In order to comply with the principles of natural justice, an opportunity of personal hearing was granted to the Noticees on December 13, 2022. The ARs for the Noticees appeared on the scheduled date and reiterated the submissions made by the Noticees vide their letters dated October 05, 2022 and October 06, 2022. As requested, the Noticees were granted time till December 28, 2022 to file their additional replies in the matter. Additionally, Noticee No. 2 was advised to place on record documentary evidence in support of his submission with respect to loans taken from Noticee No. 3 from time to time and repayment of the same by him. Further, during the personal hearing, Noticee No. 3 was advised to submit the shareholding pattern of VDL along with documentary evidence showing giving of loans to Noticee No. 2.
8. Vide letter dated January 21, 2023, Noticee No. 2 made the following submissions:
 - (i) Although as per Regulation 2(1)(d) of the PIT Regulations, he is a connected person, he is not an Insider since he did not have possession of the UPSI relating to deteriorating financial condition of the Company or the quarterly financial statements relating to the Company.
 - (ii) The burden of proof to establish that the Noticee was in possession of the UPSI is on SEBI. In support of his submission, the Noticee No. 2 has placed reliance on the observations of the Hon'ble Supreme Court in the case of *Balram Garg & Others Vs. SEBI 2022 SCC Online SC 472*.

- (iii) No communication with Noticee No. 3 (i.e. Kantaben Patel), frequent or otherwise, has been examined or considered and therefore, the allegation that the UPSI was received by the Noticee from Noticee No. 3 is nothing but conjectures and surmise.
- (iv) The transaction executed by the Noticee was in the normal course and cannot be cited to be circumstantial evidence to show communication of UPSI. In support of his submission, the Noticee has placed reliance on the judgement of the Hon'ble Supreme Court in the case of *Hanumant Vs. State of Madhya Pradesh (AIR 1952 SC 343)*.
- (v) With respect to the loans taken from Noticee No. 3, the Noticee submitted that the transfer of funds by the Noticee to Noticee No. 3 was towards repayment of loans taken by the Noticee in Cash.
- (vi) The Noticee has stated that he does not have any records relating to the loan amount received in case and repayment of the same from time to time.
9. Vide separate letter dated January 21, 2023, Noticee No. 3 made similar submissions as made by Noticee No. 2. With respect to the shareholders of VDL, subsidiary of VOFL, the Noticee No. 3 submitted that she was only a shareholder in VOFL which has gone under liquidation. Further, the Noticee is unable to produce the shareholding pattern of VDL. The Noticee No. 3 also submitted that the loans extended to Mr. Narayanbhai Patel i.e. Noticee No. 2, who was a long time employee of VOFL, were in cash. At present, Noticee No. 3 does not have any records with respect to the same. The transfer of Rs. 18.25 lakhs by Noticee No. 2 to Noticee No. 3 in July 2015 was a repayment of loan taken by him in cash.

CONSIDERATION AND FINDINGS

10. I have carefully perused the allegations levelled against the Noticees in the SCN, their replies to the SCN and other material available on record. I note that the following issues arise for consideration in the case:

(I) Whether the Noticees are 'connected persons' and therefore, can be said to be 'insiders' as per the PIT Regulations?

(II) Whether the periods from July 01, 2015 to August 27, 2015 and August 01, 2015 to August 27, 2015 can be said to be the periods during which the UPSI existed?

(III) Whether the Noticees, when in possession of the UPSI, had traded in the scrip of VOFL during the period when the UPSIs existed, thereby averting losses which warrant disgorgement directions?

11. Before moving forward, I note that it would be apposite to refer to the provisions of SEBI Act and PIT Regulations, which are relevant for determining if the Noticees have violated the same and to understand the implications of them on the present case. The relevant extracts of these provisions are reproduced as under:

PIT Regulations:

Definitions.

2.(1)(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.

(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

(b) a holding company or associate company or subsidiary company; or

(c) an intermediary as specified in section 12 of the Act or an employee or director thereof; or

(d) an investment company, trustee company, asset management company or an employee or director thereof; or

(e) an official of a stock exchange or of clearing house or corporation; or

(f) a member of board of trustees of a mutual fund or a member of the board of directors of the asset management company of a mutual fund or is an employee thereof; or

(g) a member of the board of directors or an employee, of a public financial institution as defined in section 2 (72) of the Companies Act, 2013; or

- (h) an official or an employee of a self-regulatory organization recognised or authorized by the Board; or
- (i) a banker of the company; or
- (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 per cent. of the holding or interest;

NOTE: It is intended that a connected person is one who has a connection with the company that is expected to put him in possession of unpublished price sensitive information. Immediate relatives and other categories of persons specified above are also presumed to be connected persons but such a presumption is a deeming legal fiction and is rebuttable. This definition is also intended to bring into its ambit persons who may not seemingly occupy any position in a company but are in regular touch with the company and its officers and are involved in the know of the company's operations. It is intended to bring within its ambit those who would have access to or could access unpublished price sensitive information about any company or class of companies by virtue of any connection that would put them in possession of unpublished price sensitive information.

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;

NOTE: Since “generally available information” is defined, it is intended that anyone in possession of or having access to unpublished price sensitive information should be considered an “insider” regardless of how one came in possession of or had access to such information. Various circumstances are provided for such a person to demonstrate that he has not indulged in insider trading. Therefore, this definition is intended to bring within its reach any person who is in receipt of or has access to unpublished price sensitive information. The onus of showing that a certain person was in possession of or had access to unpublished price sensitive information at the time of trading would, therefore, be on the person leveling the charge after which the person who has traded when in possession of or having access to unpublished price sensitive information may demonstrate that he was not in such possession or that he has not traded or he could not access or that his trading when in possession of such information was squarely covered by the exonerating circumstances.

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.

Trading when in possession of unpublished price sensitive information.

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

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

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

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

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SEBI Act.

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

12A. No person shall directly or indirectly—

(a).....

(b).....

(c).....

(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;

12. In order to deal with the issues in hand, it is important to understand the financial details of the company and the details with respect to the management and shareholding pattern of VOFL. I note that VOFL was incorporated in the year 1992 and was registered as private limited company. The company has been concentrating on Oil Refinery and Solvent Extraction. In 2002-03 the company expanded the refining capacity from 150 TPD to 350 TPD and the production commenced in the same year itself. The expansion project was funded by way of internal accruals and Bank finance. It was also planning to diversify by foraying into tiles industry. VOFL is listed at BSE and NSE. During the investigation period, the management of the company stood as under:

S No	Name	PAN	Designation	Date of Appointment	Date of cessation
1	Jayeshbhai Chandubhai Patel	ABXPP2978G	Chairman & Managing Director	14/05/1992	NA
2	Mukesh N. Patel	AOTPP3669P	Independent and Non-Executive Director	16/01/2003	NA
3	Alkesh B. Patel	AFUPP7672L	Independent and Non-Executive Director	13/12/2011	01/10/2015

**It was observed that the aforementioned directors of the company did not trade in the scrip of VOFL during the UPSI period.*

13. The shareholding pattern of VOFL which covers the investigation period is as under:

Particular	QE Mar 2015			QE Jun 2015			QE Sep 2015		
	No. of share holders	No. Of shares	%	No. of share holders	No. Of shares	%	No. of share holders	No. Of shares	%
Promoter Holding	9	11112500	73.98%	9	11112500	73.98%	9	11112500	73.98%
Non Promoter Holding	1966	3907500	26.02%	2126	3907500	26.02%	2725	3907500	26.02%
Total share capital	1975	15020000	100%	2135	15020000	100%	2734	15020000	100%

**It was observed that the promoter shareholding remained same from quarter ended March 2015 to quarter ended September 2015*

14. The details of the promoter shareholding of VOFL are as under:

Name	Quarter ended March 2015		Quarter ended June 2015		Quarter ended Sep, 2015	
	No of shares	%	No of shares	%	No of shares	%
Jayesh C. Patel	31,96,300	21.28	31,96,300	21.28	31,96,300	21.28
Chandubhai I. Patel	28,85,100	19.21	28,85,100	19.21	28,85,100	19.21
Pradip C. Patel	27,70,300	18.44	27,70,300	18.44	27,70,300	18.44
Sonalben Jayeshkumar Patel	7,00,000	4.66	7,00,000	4.66	7,00,000	4.66
Kantaben Chandubhai Patel	6,37,000	4.24	6,37,000	4.24	6,37,000	4.24
Jigishaben Pradipkumar Patel	6,24,000	4.15	6,24,000	4.15	6,24,000	4.15
Vimal Dairy Limited	2,20,000	1.46	2,20,000	1.46	2,20,000	1.46
Chandubhai Ishwarlal Patel	42,200	0.28	42,200	0.28	42,200	0.28
Pradipkumar Chandubhai Patel	37,600	0.25	37,600	0.25	37,600	0.25
Total	1,11,12,500	73.98	1,11,12,500	73.98	1,11,12,500	73.98

** It was also observed that the aforementioned promoters of the company did not trade in the scrip of VOFL during the UPSI period*

15. The annual and quarterly financial results of VOFL which covers the Investigation period are as under:

Description	Year Ended			Quarter Ended				
	31-Mar-2014	31-Mar-2015	31-Mar-2016	31-Dec-2014	31-Mar-2015	30-Jun-2015	30-Sep-2015	31-Dec-2015
Net sales	2396.20	3183.57	1763.72	737.29	940.40	615.34	427.25	322.66
Other Income	2.24	0.37	0.82	0.00	0.14	0.00	0.01	0.00
Total income	2398.44	3183.94	1764.54	737.29	940.54	615.34	427.26	322.66
Profit After Tax	18.25	19.35	(243.16)	6.15	0.17	(62.05)	(70.52)	(65.23)

16. It is noted that VOFL registered net profit of ₹ 18.25 Cr, ₹ 19.35Cr for the years ended March 2014 and March 2015, respectively and net loss of ₹ 243.16 Cr for the year ended March 2016.

17. With this background, now I would be dealing with each of the issues at length based on which I will determine whether the instant case warrants issuance of directions under Sections 11(1), 11(4), 11(4A), 11B(1) and 11B(2) of the SEBI Act and imposition of penalty under Section 15G of the SEBI Act.

Issue No. I: Whether the Noticees are ‘connected persons’ and therefore, can be said to be ‘insiders’ as per the PIT Regulations?

18. I note that Mr. Jayeshbhai Patel is the Chairman and Managing Director of the Company who handles the day to day affairs of the company. Mr. Jayeshbhai Patel was also a member of the Audit Committee during the relevant period. Therefore, I note that Mr. Jayeshbhai Patel, being the Chairman and Managing Director and the member of the Audit Committee of the Company and also being involved in frequent communications with the banks regarding the defaults in repayment of debt owed to them was privy to the deteriorating condition of the company. Further, being the Managing Director of the company, he is the person who controls the business and is involved in the day to day affairs of the company. In terms of Regulation 2(1)(g) of the PIT Regulations, an ‘insider’ means any person who is in possession of or having access to the UPSI. Being in such a position in the company, I find that Mr. Jayeshbhai Patel falls well within the definition of an ‘insider’ of the company who is generally in possession of or having access to the UPSI.

19. Further, as per the information provided by the company vide email dated September 26, 2018, letters from the Statutory Auditors and letter from the Accountant of VOFL, the following persons were associated with and privy to the price sensitive information of the quarterly financial results:

S No	Name	PAN	Designation
1.	Jayeshbhai Chandubhai Patel	ABXPP2978G	Chairman & Managing Director
2.	Mukesh N. Patel	AOTPP3669P	Independent Director
3.	Alkeshkumar B. Patel	AFUPP7672L	Independent Director
4.	Jitendrakumar M. Patel	AKHPP5637M	Chief Financial Officer of the Company
5.	Vikrambhai J. Patel	ABHPP5272D	Accountant
6.	Fagesh R. Soni	BNSPS6825B	Company Secretary of the Company
7.	Rajesh R. Shah	ACBPS8901R	(Previous) Statutory Auditors of the Company
8.	Dharit S.Mehta	AXMPM9412D	(At present) Statutory Auditors of the Company

**these insiders did not trade in the scrip of VOFL during the UPSI period.*

20. I find from the legislative Note to the definition of *'insider'* under Regulation 2(1)(g) that the intention of the definition of an insider is to consider anyone in possession of or having access to the UPSI to be an "insider" regardless of how one came in possession of or had access to such information.
21. I further note that Noticee No. 3 is one of the promoters of VOFL and also the mother of Mr. Jayeshbhai Patel, who has already been established to be an insider. I note that in terms of Regulation 2(1)(d)(i) a *'connected person'* is any person who is or has during the six months prior to the concerned act been associated with the company, directly or indirectly, in any capacity. The said definition is an inclusive definition and thus, Noticee No. 3 being in a position of a promoter of the company falls within the ambit of the definition of a connected person under Regulation 2(1)(d)(i) of the PIT Regulation. Further, in terms of Regulation 2(1)(d)(ii) of the PIT Regulations, certain persons shall be deemed to be connected persons, unless established otherwise which includes an immediate relative of the connected person as specified in clause (i) of the said provisions. Mr. Jayeshbhai Patel, being the Chairman and the Managing director of the company, can be said to be a *'connected person'* in terms of Regulation 2(1)(d)(i) of the PIT Regulations. Further, in terms of the definition of *'immediate relative'* under Regulation 2(1)(f), the said term 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.*
22. The legislative note appended to the definition of connected persons under Regulation 2(1)(d) clarifies that the intention of the definition is that a connected person is one who has a connection with the company that is expected to put him in possession of the UPSI. Immediate relatives and other categories of persons specified in the said definition are also presumed to be connected persons but such a presumption is a deeming legal fiction and is rebuttable. This definition is also intended to bring into its ambit persons who may not seemingly occupy any position in a company but are in regular touch with the company and its officers and are involved in the know of the company's operations. It is

intended to bring within its ambit those who would have access to or could access unpublished price sensitive information about any company or class of companies by virtue of any connection that would put them in possession of unpublished price sensitive information.

23. In case of Noticee No. 3, I note that though it is an admitted fact that she is the mother of Mr. Jayeshbhai Patel, there is no material available on record to show whether Noticee No. 3 was either dependant financially on Mr. Jayeshbhai Patel or consulted him in taking decisions relating to trading in securities during the relevant period. Also, just because the said Noticee is a promoter in the company, she cannot be said to a '*connected person*' in the absence of evidence to show that she was involved in the know of the company's operations by virtue of holding such positions in the company which shows her involvement into the affairs and functioning of the company and was in regular touch with the company and its officers and in turn allowed her access to the UPSI of VOFL. Noticee No. 3 has submitted in her reply to the SCN that she was neither a director of the company nor was she involved in the day to day affairs and because of her age, Mr. Jayeshbhai Patel did not trouble her with any information relating to the company and its fortunes or misfortunes. In view of the same and considering the wordings of the legislative note regarding the intention behind bringing in certain persons to be connected persons to the company, I find it difficult to conclude that Noticee No. 3 was a connected person in terms of Regulation 2(1)(d)(i) and 2(1)(d)(ii)(a) of the PIT Regulations which in turn would make her an 'insider' in terms of Regulation 2(1)(g) of the PIT Regulations.

24. With regard to Noticee No. 1, I note that she was one of the top 10 shareholders of Vimal Dairy Ltd, which is one of the subsidiaries and a promoter-company of VOFL (VOFL held 52% stake in Vimal Dairy Ltd during the F.Y. 2014-15). Both Mr. Jayeshbhai Patel and Noticee No. 3 viz. Kantaben Patel were a part of the promoter group of Vimal Dairy Ltd. In addition, Mr. Jayeshbhai Patel was also a director of Vimal Dairy Ltd during the relevant time. I note from the material available on record that on July 21, 2015, Noticee No. 1 had transferred Rs. 126 lacs to VOFL towards consideration for the purchase of 2,52,000 shares of Vimal

Dairy Ltd from VOFL. Therefore, I find that there was an acquisition of shares of Vimal Dairy Limited from VOFL by Noticee No. 1. The same has also been admitted by Noticee No. 1 in her replies to the SCN. Thus, I find that Noticee No. 1 was in contractual relationship and / or business relationship with VOFL.

25. Further, during the investigation period, the bank statements of Noticee No.1 were analysed and it was observed that there were many transactions between herself and an entity named Vimal Marketing. Mr. Jayeshbhai Patel was asked by SEBI about his connection with Vimal Marketing to which, vide email dated January 07, 2021, Mr. Jayeshbhai Patel had stated that he had a land transaction with Vimal Marketing in the past.
26. I note that Regulation 2(1)(d)(i) of the PIT Regulations clearly states that a 'connected person' is 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.
27. I note that Noticee No. 1 was amongst the top 10 shareholders of Vimal Dairy Ltd which was a subsidiary company of VOFL and also one of the promoter company of VOFL. Mr. Jayeshbhai Patel was a director and promoter of Vimal Dairy Ltd and Noticee No. 2 was also a promoter in Vimal Dairy Ltd. Further, various bank transfers have been observed between Noticee No. 1 and Vimal Marketing, the company with which Jayeshbhai Patel had land deal in the past. Considering the facts of the case, I find that Noticee No. 1 can be said to be in a contractual relationship and association with VOFL. Further, in view of the substantial bank transfer of Rs. 126 lacs between Noticee No. 1 and Mr. Jayeshbhai Patel (acting on behalf of the company) on July 21, 2015, Noticee No. 1 had a business relationship with the company. The same has been

admitted by Noticee No. 1 in her reply to the SCN. Therefore, based on the circumstantial evidence and the preponderance of probabilities, Noticee No. 1 was associated with VOFL and Mr. Jayeshbhai Patel by way of having contractual relationship which makes her fall within the ambit of the inclusive definition of a '*connected person*' in terms of Regulation 2(1)(d)(i) of the PIT Regulations as alleged in the SCN.

28. Further, upon perusal of the Audit Report for F.Y. 2015-16, I note that one Mr. Mukesh N Patel was observed to be the Chairman of the Audit Committee of VOFL. Mr. Mukesh N Patel was also the Independent Director of the Company. One of the terms of reference of the Audit Committee as per the Annual Report for F.Y. 2015-16 included '*Scrutiny of inter-corporate loans and investments*' and '*To look into the reasons for substantial defaults, if any, in the payment to depositors...and creditors*'. As per the investigation, in the Audit Committee meeting held on May 30, 2015, Mr. Mukesh Patel was present. Therefore, I note that being the Chairman of the Audit Committee, Mr. Mukesh Patel was privy to the deteriorating financial position of the company and being in an employment relationship with VOFL, Mr. Mukesh Patel is a '*connected person*' in terms of Regulation 2(1)(d)(i) of the PIT Regulations and thus, an '*insider*' in terms of Regulation 2(1)(g) of the PIT Regulations.

29. I further note that Noticee No. 2 i.e. Narayanbhai Patel was the father of Mr. Mukesh Patel and also an employee of VOFL since its incorporation till May 2017. The Noticee has admitted the said fact of being an employee of the Company who looked after the maintenance of the manufacturing plant of the Company. Also, Noticee No. 2 falls into the category of '*deemed to be connected persons*', him being an immediate relative of the connected person i.e. Mr. Mukesh Patel. However, I find that in the absence of any material to show that Noticee No. 2 was either financially dependent on Mr. Mukesh Patel or consulted him in taking decisions relating to trading in securities during the relevant period, just because he is the father of Mr. Mukesh Patel, who was the Chairman of the Audit Committee, cannot bring him under the ambit of the definition of connected persons in terms of Regulation 2(1)(d)(ii) of the PIT Regulations. As mentioned

in the preceding paragraph, the definition of immediate relatives under Regulation 2(1)(f) clearly states that the person said to be an immediate relative has to be either dependant financially on such person or consults such person in taking decisions relating to trading in securities. But, Noticee No. 2, being in an employment relationship with VOFL during the relevant period, also qualifies him to be a 'connected person' in terms of Regulation 2(1)(d)(i) of the PIT Regulations as alleged in the SCN.

Issue No. II: Whether the periods from July 01, 2015 to August 27, 2015 and August 01, 2015 to August 27, 2015 can be said to be the periods during which the UPSI existed?

30. I note that during the investigation period, the corporate announcements made by VOFL mainly pertained to shareholding pattern, meeting of Board of Directors, declaration of Financial results, outcome of Board meeting, advertisement regarding AGM, outcome of AGM, resignation of Company Secretary and Compliance Officer, etc. The financial results for quarter ended June 30, 2015 was published on August 27, 2015 on BSE (at 20:11 hrs) and on August 28, 2015 on NSE (at 10:12 hrs) via corporate announcement. The price of the scrip was observed to have fallen from the opening price of ₹240 on April 01, 2015 to a close price of ₹80.65 on September 27, 2015. The annual and quarterly financial results of VOFL as mentioned in the table in preceding paragraph no. 15 shows that the company had registered a net profit of ₹ 18.25 Cr and ₹ 19.35 Cr for the years ended March 2014 and March 2015, respectively, and net loss of ₹ 243.16 Cr for the year ended March 2016.

31. I note the following chronology of events with respect to the preparation of financial results for the quarter ended June 30, 2015 of VOFL from the correspondence from the company vide its email dated September 26, 2018, from the Statutory Auditors vide letters dated July 10 & July 11, 2019, from the accountant of VOFL vide letter dated July 26, 2019 and the corporate announcements on BSE website.

Date	Event
Aug 01, 2015	Initiation of preparation of company's accounts for the quarter ended June 30, 2015.
Aug 02, 2015	VOFL informed BSE that the meeting of the Board of Directors of the Company will be held on August 14, 2015, which will <i>inter alia</i> , consider, approve and take on record the Unaudited Financial Results (Standalone) for the Quarter ended on June 30, 2015.
Aug 16, 2015	VOFL informed BSE and NSE that the meeting of Board of Directors scheduled on August 14, 2015, has been postponed due to unavoidable causes.
Aug 27, 2015	Completion of preparation of draft Company's Accounts.
Aug 27, 2015	Draft accounts communicated to Management for discussion.
Aug 27, 2015	Company quarterly results prepared for circulation to the Audit Committee and Board of VOFL.
Aug 27, 2015	Company's quarterly results circulated to the Audit Committee.
Aug 27, 2015	Company's quarterly results reviewed by the Audit Committee.
Aug 27, 2015	Company's quarterly results circulated to the Board of VOFL.
Aug 27, 2015	Company's quarterly results approved by the Board of VOFL.
Aug 27, 2015	VOFL published the financial results for the Quarter ended on June 30, 2015 on BSE website.
Aug 28, 2015	VOFL published the financial results for the Quarter ended on June 30, 2015 on NSE website.

32. It is clearly seen from the table above that the preparation of accounts for the quarter ended June 2015 began from August 01, 2015. Also, the company's quarterly results were approved by the Board on August 27, 2015 and on the same date the company published the financial results for the quarter ended June 30, 2015 on BSE website. In terms of Regulation 2(1)(n) of the PIT Regulations, the term "unpublished price sensitive information" means,

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

- (i) *Financial results;*
- (ii) *Dividends;*
- (iii) *Change in capital structure;*
- (iv) *Mergers, de-mergers, acquisitions, delistings, disposals and expansion of business and such other transactions;*
- (v) *Change in key managerial personnel."*

Note: It is intended that information relating to a company or securities, that is not generally available would be unpublished price sensitive information if it is likely to materially affect the price upon coming into the public domain. The types

of matters that would ordinarily give rise to unpublished price sensitive information have been listed above to give illustrative guidance of unpublished price sensitive information.

- 33.** I note from the above definition that any information related to the Company or its securities which is not “*generally available*” to the public and upon becoming public is likely to materially affect the price of the securities is to be treated as UPSI. Regulation 2(1)(e) defines “*generally available information*” which means information that is accessible to the public on a non-discriminatory basis. The legislative note appended to Regulation 2(1)(e) states that “*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.*” I note from the definition of UPSI under Regulation 2(1)(n) of the PIT Regulations that a list of information which contains financial results shall ordinarily be considered as UPSI.
- 34.** Therefore, as the information with respect to financial results for the quarter ended June 2015 was generally available to the public at large only on August 27, 2015 i.e. the date on which it was published on BSE website, the information with respect to preparation of accounts and financial results for the said quarter was an information which was price sensitive information, which upon becoming generally available, was likely to materially affect the price of the scrip. It is noted from the price volume analysis of the shares of VOFL on BSE that after the UPSI was generally available, the price of the scrip decreased from Rs. 80.80 (closing price as on July 01, 2015) to Rs. 47.35 (Closing price as on August 28, 2015). On NSE, the price of the scrip as on June 01, 2015 opened at Rs. 138.65 and on August 28, 2015 closed at Rs. 47.95/-. Thus, I find that the said information on becoming public has impacted the price of the scrip and therefore, I conclusively conclude that the period from August 01, 2015 to August 27, 2015 is a period during which the UPSI existed.
- 35.** Further, upon perusal of the Annual Report of VOFL for the F.Y. 2015-16, it was observed that VOFL had defaulted in payment of loans amounting to

Rs. 47,853.74 lacs from four banks viz. Bank of Baroda, Bank of India, Dena Bank and Andhra Bank. The investigation, on an analysis of the due dates and default dates for the aforesaid loans, has observed that the financial position of the company had started deteriorating much earlier than August 01, 2015 i.e. the date of initiation of preparation of company's accounts for quarter ended June 30, 2015. It was observed that the earliest default was to Dena Bank which started from July 11, 2015. Bank of Baroda, vide email dated February 02, 2021, had stated that *"GujOil is the Associate Concern of M/s Vimal Oil & Foods Ltd. having credit Limits of Rs.105.00 crores, with Bank of India as the Lead Bank. Vimal Oil & Foods Ltd was showing signs of sickness during the period June – Sept, 2015. The account was SMA – II as on 30.09.2015. Therefore our Bank followed up with the company Promoters Mr Jayeshbhai Patel to liquidate the credit limits of Gujoil and release the securities charged to the consortium of Gujoil and made it available to Consortium of Vimal oil & Foods Ltd. as per sanction terms to strengthen the securities of Vimal Oil Foods Ltd."*

36. Further, SEBI had asked the said Bank to clarify as to what it meant by *"showing signs of sickness"* and to provide any specific event which indicated signs of sickness of the Company including irregular payment of interest and instalment, devolvement of LCs, etc. The following reply was provided by the Bank on the queries of SEBI:

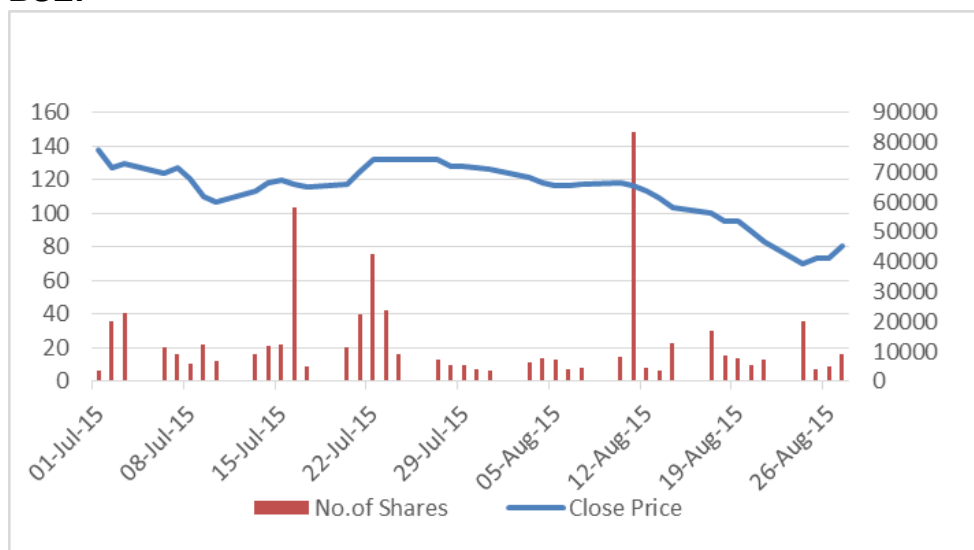
<i>SEBI queries</i>	<i>Reply from bank of baroda</i>
<i>What is meant by "showing signs of sickness" as mentioned by you in the trailing email.</i>	<i>Signs of sickness includes irregular payment of interest and instalment, devolvement of LCs etc.</i>
<i>Is there any specific event which you can mention which indicated signs of sickness of Vimal Oil.</i>	<i>There were instances of frequent devolvement of LC, delaying payment of interest during the period April 2015 to June 2015, which shows there is signs of sickness in the account.</i>

37. The definition of UPSI under regulation 2(1)(n) of the PIT Regulations, as observed in the preceding paragraph, enlists any information, relating to a company or its securities, directly or indirectly, that is likely to materially affect the price of the securities.

38. I find from the response provided by the banks that even though the initial signs of sickness of VOFL had started as early as in April 2015, the company's financial position had been progressively deteriorating and hence, by end of June 2015 the top management of VOFL, which included Mr. Jayeshbhai Patel, Chairman and Managing Director of VOFL, was aware of the frail financial condition of the company on account of the 'frequent devolvement of LC, delayed payment of interest during the period April 2015 to June 2015,' etc., after which the account of the company was declared SMA-II by the banks. Therefore, I find that the deteriorating financial position of the company is an UPSI and the period from July 01, 2015 to August 27, 2015 (i.e. the date on which the financial results for the quarter ended June 2015 were disseminated on BSE) is the period during which the said UPSI existed.

39. It is also pertinent to look into the price volume movement in the scrip of VOFL during the UPSI period on the stock exchanges which is as under:

BSE:

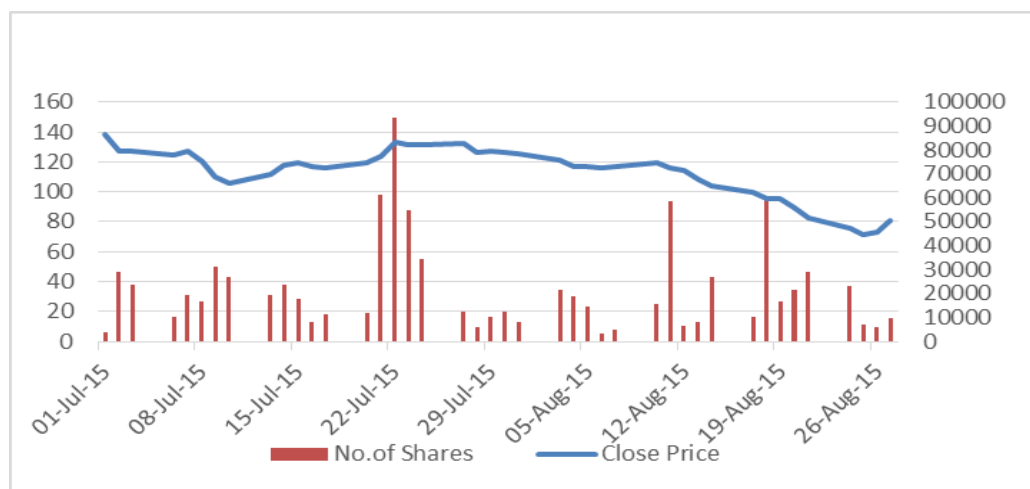


Price-Volume (BSE):

Period	Dates		Opening Price (volume) on first day of the period (₹)	Closing price (volume) on last day of the period (₹)	Low price(volume) during the period (₹)	High Price(volume) during the period (₹)	Avg. no. of (shares) traded daily during the period.
Pre UPSI	01/04/2015 to 30/06/2015	Price (in ₹)	240.00 (01/04/2015)	136.40 (30/06/2015)	130.30 (19/06/2015)	240.40 (01/04/2015)	7174
		Vol	2343 (04/05/2015)	23691 (30/06/2015)	2051 (16/04/2015)	51998 (18/05/2015)	

During UPSI	01/07/2015 to 27/08/2015	Price (in ₹)	136.30 (01/07/2015)	80.80 (27/08/2015)	69.90 (24/08/2015)	137.30 (01/07/2015)	13156
		Vol	3675 (01/07/2015)	8998 (27/08/2015)	3675 (01/07/2015)	83,364 (11/08/2015)	
Post UPSI	28/08/2015 to 27/11/2015	Price (in ₹)	87.00 (28/08/2015)	47.35 (27/11/2015)	43.10 (23/11/2015)	75.60 (28/08/2015)	12907
		Vol	20341 (28/08/2015)	3582 (27/11/2015)	1,277 (11/11/2015)	1,49,145 (27/10/2015)	

NSE:



Price-Volume NSE:

Period	Dates		Opening Price (volume) on first day of the period (₹)	Closing price (volume) on last day of the period (₹)	Low price(volume) during the period (₹)	High Price(volume) during the period (₹)	Avg. no. of (shares) traded daily during the period.
Pre UPSI	01/04/2015 to 30/06/2015	Price (in ₹)	240.00 (01/04/2015)	138.05 (30/06/2015)	130.60 (19/06/2015)	239.40 (06/04/2015)	17273
		Vol	2720 (01/04/2015)	6583 (30/06/2015)	2012 (27/05/2015)	217564 (17/06/2015)	
During UPSI	01/07/2015 to 27/08/2015	Price (in ₹)	136.55 (01/07/2015)	80.65 (27/08/2015)	71.05 (25/08/2015)	138.65 (01/07/2015)	21605
		Vol	3847 (01/07/2015)	9676 (27/08/2015)	3446 (06/08/2015)	93532 (22/07/2015)	
Post UPSI	28/08/2015 to 27/11/2015	Price (in ₹)	83.00 (28/08/2015)	47.95 (27/11/2015)	43.25 (23/11/2015)	75.95 (28/08/2015)	19641
		Vol	48461 (28/08/2015)	6736 (27/11/2015)	1,356 (11/11/2015)	2,03,278 (27/10/2015)	

40. From the above charts and tables, it is noted that during the period from July 01, 2015 to August 26, 2015, the price of the scrip on BSE moved from Rs. 137.30 (closing price as on July 01, 2015) to Rs. 80.80 (Closing price as on August 27, 2015) which clearly shows a decrease of Rs. 56.50 (41.15%) in the price of the scrip. Similarly, during the same period, on NSE, the price of the scrip moved from Rs. 138.65 (closing price as on July 01, 2015) to Rs 80.65 (closing price on August 27, 2015) registering a decrease of Rs 58.00 (41.83%) in the price of the scrip.

41. In view of the above, I do not have any hesitation in concluding that the period from July 01, 2015 to August 27, 2015 was the period during which UPSI with respect to the deteriorating condition of the financials of the company existed and upon the said information becoming generally public by way of dissemination of financial results for the quarter ended June 2015, there was an impact on the price of the scrip.

Issue No. III: Whether the Noticees, when in possession of the UPSI, had traded in the scrip of VOFL during the period when the UPSIs existed thereby averting losses?

Trading details of Jyotiben Patel (Noticee No. 1):

42. The trading details of Jyotiben Patel i.e. Noticee No. 1 were analysed and the allegation against her is that she had traded in the scrip of VOFL during the period when the UPSIs i.e., (i) the deteriorating financial health of the company and (ii) the preparation and finalisation of financial results for the quarter ended June 2015, were in existence; the details of which on exchanges i.e. BSE and NSE, are as under:

Exchange – BSE				
Date	Buy Qty	Wt. Avg Buy Price (in Rs)	Sell Qty	Wt. Avg Sell Price (in Rs)
Prior to UPSI Period (April 01, 2015 – June 30, 2015)				
No trades observed related to Jyotiben Patel				
During UPSI Period (July 01, 2015 – August 27, 2015)				
02/07/2015	-	-	2007	127.98
03/07/2015	-	-	7802	127.28
06/07/2015	-	-	1336	127.29
07/07/2015	-	-	2590	130.23
08/07/2015	-	-	2849	122.98
09/07/2015	-	-	6378	113.75
10/07/2015	-	-	3237	108.78
11/08/2015	-	-	3675	116.19
17/08/2015	-	-	606	100.02
18/08/2015	-	-	800	98.00
19/08/2015	-	-	3176	96.03
20/08/2015	-	-	1000	91.86
21/08/2015	-	-	2037	83.94
24/08/2015	-	-	3720	74.38
27/08/2015	-	-	400	80.80
Total	-	-	41613	106.63
Post UPSI Period (August 28, 2015, – November 27, 2015)				
No trades observed related to Jyotiben Patel				

Exchange- NSE

Date	Buy Qty	Wt. Avg Buy Price (in Rs)	Sell Qty	Wt. Avg Sell Price (in Rs)
Prior to UPSI Period (April 01, 2015 – June 30, 2015)				
No trades observed related to Jyotiben Patel				
During UPSI Period (July 01, 2015 – August 27, 2015)				
02/07/2015	-	-	7,619	127.97
03/07/2015	-	-	12,948	127.62
06/07/2015	-	-	1,707	127.09
07/07/2015	-	-	7,410	129.48
08/07/2015	-	-	11,961	121.89
09/07/2015	-	-	17,370	114.73
10/07/2015	-	-	9,197	108.03
11/08/2015	-	-	7,595	116.62
17/08/2015	-	-	493	100.00
19/08/2015	-	-	3,824	95.36
20/08/2015	-	-	1,326	91.99
21/08/2015	-	-	2,963	83.18
24/08/2015	-	-	1,500	72.70
27/08/2015	-	-	900	80.65
Total	-	-	86,813	106.95
Post UPSI Period (August 28, 2015, – November 27, 2015)				
No trades observed related to Jyotiben Patel				

43. Thus, it has been alleged in the SCN that the Noticee No. 1 had sold a total of 1,28,426 shares of VOFL on BSE and NSE during the period when the UPSIs relating to the company were in existence and when the said Noticee was in possession of the said UPSIs thereby, violating the provision of Regulation 4(1) of the PIT Regulations read with Section 12A(d) & (e) of the SEBI Act, 1992.
44. Further, it was also observed that out of the sale proceeds of shares of VOFL (Rs. 1,45,53,847/-), 50.39% of the funds i.e. Rs. 73,35,000/- were transferred by Noticee No. 1 in tranches to Noticee No. 3 viz. Kantaben Chandubhai Patel (Promoter of the company), immediately on receipt of funds (funds transferred to Kantaben Patel on July 07, July 10 and July 30, 2015). Therefore, it has been further alleged in the SCN that Jyotiben Patel, being a 'connected person' and in turn an 'insider', who reasonably was expected to have access to the UPSI as per Regulation 2(1)(d)(i) of the PIT Regulations, had traded in the scrip of VOFL when in possession of the UPSI (communicated by Jayeshbhai Patel through his mother i.e. Noticee No. 3). Further, the allegation with respect to Noticee No. 3 is that of communicating the UPSI to Noticee No. 1 based on which Noticee No. 1 has traded in the scrip during the UPSI periods thereby violating the provision of Regulation 3(1) of the PIT Regulations read with Section 12A(d) & (e) of the SEBI Act, 1992.

Trading details of Narayanbhai Patel (Noticee No. 2):

45. The trades executed by Noticee No. 2, during the period when the UPSI was in existence, were analysed and the following trades were observed to have been executed by him on the exchanges i.e. BSE and NSE during the investigation period:

Exchange - BSE

Date	Buy Qty	Wt. Avg Buy Price (in Rs)	Sell Qty	Wt. Avg Sell Price (in Rs)
Prior to UPSI Period (April 01, 2015 – June 30, 2015)				
No trades observed related to Narayanbhai Patel				
During UPSI Period (July 01, 2015 – August 27, 2015)				
02/07/2015	-	-	6555	129.56
Post UPSI Period (August 28, 2015, – November 27, 2015)				
No trades observed related to Jyotiben Patel				

Exchange - NSE

Date	Buy Qty	Wt. Avg Buy Price (in Rs)	Sell Qty	Wt. Avg Sell Price (in Rs)
Prior to UPSI Period (April 01, 2015 – June 30, 2015)				
No trades observed related to Narayanbhai Patel				
During UPSI Period (July 01, 2015 – August 27, 2015)				
02/07/2015	-	-	7445	130.81
Post UPSI Period (August 28, 2015, – November 27, 2015)				
No trades observed related to Narayanbhai Patel				

46. From the above, it has been alleged in the SCN that Noticee No. 2, by trading in the scrip of VOFL during the period from July 01, 2015 to August 27, 2015 during which UPSI existed i.e. deteriorating condition of the Company and preparation and finalization of financials for quarter ended June 2015, has violated the provisions of Regulation 4(1) of the PIT Regulations read with Section 12A(d) & (e) of the SEBI Act, 1992.

47. I note that Noticee No. 1 has submitted that the shares of VOFL were sold during the period from July 02, 2015 to August 27, 2015 to raise funds to make part payment towards purchase of land in Mehsana from Noticee No. 3. Further, the examination of the bank account of Noticee No. 1 shows that Rs. 73,35,000/- i.e. around 50.39% of the sale proceeds have been transferred by Noticee No. 1 in the account of Noticee No. 3 on July 07, 2015, July 10, 2015 and July 30, 2015. The Noticee submitted that an agreement was entered into by her with Noticee

No. 3 for the said land deal. She has produced a notarized agreement in support of the same. However, no registered sale agreement has been produced by Noticee No. 1.

48. Further, Noticee No. 2 has submitted that 14000 shares of VOFL were held by him for a very long time and the same were sold to repay the loans taken from Noticee No. 3 from time to time. The Noticee has further submitted that just because he was the father of Mr. Mukesh Patel does not establish that he was in possession of any UPSI based on which he traded in the shares of VOFL during the relevant period.
49. Here, I find it important to refer to Regulation 3(1) and 4(1) of the PIT Regulations. On a plain reading of Regulation 3(1), which states communication or procurement of unpublished price sensitive information, it can be unambiguously said that the said provision imposes a statutory bar on an insider to communicate, provide or allow access to any UPSI 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 purpose, performance of duties or discharge of legal obligations. Therefore, the pre-requisites which need to be satisfied for a person to fall under the rigors of the said provisions are (a) the person has to be an insider as defined under Regulation 2(1)(g) of the PIT Regulations, (b) the person must be in possession of the UPSI relating to the company and (c) the said person i.e. the insider must communicate, provide or allow access of such UPSI to any person including other insiders.
50. Further, Regulation 4(1) of the PIT Regulations imposes a statutory bar on an insider to trade in securities that are listed or proposed to be listed on a stock exchange when in possession of UPSI. The explanation to the said provision further clarifies that when a person trades in securities when in possession of the UPSI then, his trades would be presumed to have been motivated by the knowledge and awareness of such information in his possession. Thus, for levelling a charge of insider trading, the trading has to be done in the securities when the person is in possession of the UPSI relating to the company and that UPSI has motivated him to execute such trades.

51. Upon examining the facts of the instant case, I find that the charge of trading in the scrip of VOFL during the period when the UPSIs were in existence would survive only when such trades are established to have been executed when the 'insider' is in possession of the UPSI relating to the company. As already concluded, the period from July 01, 2015 to August 27, 2015 and the period from August 01, 2015 to August 27, 2015 were the periods during which the UPSIs with respect to the company were in existence. Also, the fact that the trades have been executed by both Noticee Nos. 1 and 2 during the existence of the UPSIs relating to the company can be clearly seen from the tables at paragraph nos. 42 and 45 above. The execution of trades in the scrip of VOFL has not been disputed by the said Noticees. In addition, with respect to Noticee No. 1, it is submitted by her that the said trades were executed in order to make payment for the purported land purchase deal which she had entered into with Noticee No. 3. Copy of the notarized sale agreement has been submitted by Noticee No. 1 in support of her submission. However, despite seeking for a copy of registered sale agreement with respect to the sale of land at Mehsana, the Noticee Nos. 1 and 3 have not placed on record any such document to substantiate their claim. Further, the transfer of 50% of the funds received by Noticee No. 1 upon sale of shares of VOFL during the UPSI period to the bank account of Noticee No. 3 claimed to be towards part payment for the land deal strongly supports the charge of insider trading in the given set of facts. In addition, despite the land deal being cancelled due to certain dispute between Noticee Nos. 1 and 3, the fact that the money paid by Noticee No. 1 to Noticee No. 3 as part payment towards the purported purchase of land has not been returned by Noticee No. 3 also leaves one with doubts regarding the charge of insider trading.

52. With respect to Noticee No. 2, I find that the said Noticee has traded in the scrip of VOFL and sold all his shareholding in the said company, i.e. 14000 shares, on July 02, 2015 i.e. when the UPSI was in existence. The fact that the said Noticee has not traded in the market in, either the shares of VOFL or any other company preceding the UPSI period and after the UPSI period is also a fact which strongly supports the charge of insider trading with respect to the said Noticee. However, I note that the Noticee has denied of being in possession of any UPSI relating to

the company which had motivated him to trade in the scrip during the relevant time. Rather, the said shares have been claimed by the Noticee to have been sold in order to repay the loan amounts taken from Noticee No. 3 from time to time in cash.

53. Having examined the facts of the instant case and the provision of the PIT Regulations, I find that there does not appear to be enough evidence to conclude that the Noticees were in possession of the UPSI which motivated them to execute the trades they did during the relevant period.

54. In this context, I note that the Noticee No. 2 has placed reliance on the judgement of the Hon'ble Supreme Court in the case of **Balram Garg Vs. SEBI**¹ and submitted that the burden of proof to establish that the Noticee was in possession of the UPSI is on SEBI. I find it relevant to refer to the relevant paragraphs of the said judgment wherein while dealing with the issue of insider trading and communication / possession of UPSI, it was observed as under:

"32..... the onus was actually on SEBI to prove that the appellants were in possession of or having access to UPSI. The legislative note to Regulation 2(1)(g) makes the above position of law explicitly clear. It states that:

"... The onus of showing that a certain person was in possession of or had access to unpublished price sensitive information at the time of trading would, therefore, be on the person leveling the charge after which the person who has traded when in possession of or having access to unpublished price sensitive information may demonstrate that he was not in such possession or that he has not traded or he could not access or that his trading when in possession of such information was squarely covered by the exonerating circumstances."

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

¹ Civil Appeal No. 7054 of 2021 dated April 19, 2022 available at link: https://www.sebi.gov.in/enforcement/orders/apr-2022/judgment-of-the-hon-ble-supreme-court-in-civil-appeal-no-7054-of-2021-balram-garg-vs-sebi-and-civil-appeal-no-7590-of-2021-ms-shivani-gupta-and-ors-vs-sebi_59462.html

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.

55. Thus, it can be seen that from the above extracts of the judgment that the Hon'ble Supreme Court has clearly observed that the onus to prove the charge of insider trading when in possession of the price sensitive information which is unpublished is on the person levelling the said charge. Further, to prove the charge under Regulation 3 of the PIT Regulations, cogent material is required to be in place to conclude that there has been a communication of UPSI and it cannot be deemed that the communication has happened owing to the alleged proximity between the parties. Also, evidence is required to show that those who executed trades did so when in possession of the UPSI.
56. I note that as mentioned in the preceding paragraphs, under the PIT Regulations, in order to establish the charge of insider trading and / or communication of UPSI, there is a requirement of having enough material and / or circumstantial evidence to show the movement of information which is price sensitive and not generally available to flow from one insider to another based on which the recipient trades during the period of UPSI thereby violating the provisions of the said Regulations.
57. In the instant case, although it has been alleged that Noticee Nos. 1 and 2 were 'connected persons' in terms of Regulation 2(1)(d)(i) of the PIT Regulations, and therefore, 'insiders' in terms of Regulation 2(1)(g) of the PIT Regulations and based on the preponderance of probabilities from the trading pattern and transfer of consideration upon sale of shares to Noticee No. 3 it can be said that Noticee Nos. 1 and 2 may have traded in the scrip of VOFL during the periods of the UPSIs, there is no evidence available on record to show how they came in possession of the said UPSIs. Also, one cannot lose sight of the fact that Noticee No. 3 is already found not to be a connected person by me in the preceding paragraphs and therefore, cannot be said to be an insider in terms of Regulation 2(1)(g) of the PIT Regulations. Thus, based on the material available on record and the observations of the Hon'ble Supreme Court in the case of *Balram Garg*

(*Supra*), I am constrained to conclude that Noticee Nos. 1 and 2 cannot be said to be in violation of Regulation 4(1) of the PIT Regulations read with Section 12A(d) and (e) of the SEBI Act, 1992 and Noticee No. 3 cannot be said to be in violation of Regulation 3(1) of the PIT Regulations read with Section 12A(d) and (e) of the SEBI Act, 1992.

58. In view of the findings in the preceding paragraphs, I do not find the instant case fit for issuing any directions under Sections 11(1), 11(4), 11(4A), 11B(1) and 11B(2) of the SEBI Act, 1992 and / or imposing any monetary penalty under Section 15H(ii) of the SEBI Act, 1992.

ORDER:

59. In view of the facts and circumstances of the case, I, in exercise of the powers conferred upon me under Sections 11(1), 11(4), 11(4A), 11B(1) and 11B(2) read with Section 19 and further read with Section 15H(ii) of the SEBI Act, 1992 and SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995, hereby state that the Show Cause Notice dated July 26, 2021 issued against Noticee Nos. 1 to 3 i.e., Ms. Jyotiben Kantilal Patel, Mr. Narayanbhai M Patel and Ms. Kantaben Chandubhai Patel, is hereby disposed of without any direction.

60. This Order shall come into force with immediate effect.

61. A copy of this Order shall be served upon the Noticees for information.

Date: March 24, 2023

Place: Mumbai

Dr. ANITHA ANOOP
CHIEF GENERAL MANAGER
SECURITIES AND EXCHANGE BOARD OF INDIA