

**BEFORE SECURITIES AND EXCHANGE BOARD OF INDIA
ORDER**

UNDER SECTIONS 11(1), 11(4), 11B(1), 11B(2) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 IN THE MATTER OF INSIDER TRADING BY CERTAIN ENTITIES IN THE SCRIP OF ARCOTECH LTD.

IN RESPECT OF:

Noticee No.	Name	PAN
1	Mr. Arvind Kumar Saraf	AJVPS2259K
2	Mr. Rishabh Saraf	BUDPS4226G
3	Vasudha Commercial Pvt. Ltd.	AAACV8664L
4	Hiland Enclave Pvt. Ltd.	AACCH0903Q

(The aforesaid entities are referred to by their corresponding names/numbers and collectively referred to as "Noticees")

Background

1. The Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") conducted an investigation to ascertain as to whether the entities, Vasudha Commercial Pvt. Ltd. (hereinafter referred to as "**Vasudha**" **Noticee No.3**") and Hiland Enclave Pvt. Ltd., (hereinafter referred to as "**Hiland**" **Noticee No.4**), who sold the shares in the scrip of Arcotech Ltd. (hereinafter referred to as "**Arcotech Ltd./ Arcotech/ company**"), did so while in possession of Unpublished Price Sensitive Information (hereinafter referred to as "**UPSI**") relating to financial results for the quarter and year ending March 31, 2018, in violation of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as

“**SEBI Act, 1992**”), and SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as “**SEBI PIT Regulations**”). The investigation was carried out for the period February 01, 2018 to June 30, 2018 (hereinafter referred to as “**Investigation Period/ IP**”). However, whenever deemed necessary, reference has been made to outside this period.

Facts of the case

2. On approval of the Board of directors of Arcotech Ltd., in their meeting held on May 29, 2018, post market hours the Audited Financial Results for the Quarter and Financial year ending March 31, 2018 were disseminated at BSE at 19:49:11 and NSE at 19:39:20 on May 29, 2018. The standalone profit after tax for the quarter ended December 31, 2017 was Rs.651.07 lakhs, whereas during quarter ended March 31, 2018, the loss after tax was Rs.(-1543.52) lakhs. Hence, in the post announcement of financial results, the price of the scrip at NSE moved from a close price of Rs.23.95 on May 29, 2018 to a close price of Rs.22.95 on May 30, 2018, registering a decline of 4.17%.
3. Subsequent to the dissemination of Financial Result for the year ending March 31, 2018, the close price of the scrip continued to fallen significantly from Rs.24.05 at BSE on May 29, 2018, to a low of Rs.14.40 on June 29, 2018. Similarly, the close price of the scrip at NSE fell down from Rs.23.95 on May 29, 2018 to a low of Rs.14.35 on June 29, 2018.
4. Thereafter, SEBI had conducted detailed investigation to ascertain as to whether there was any violation of the provisions of Prohibition of Insider Trading, Regulation, 1992 (hereinafter referred to as ‘the **PIT Regulations**’) during the period of Investigation particularly the sale of shares of the scrip by the Noticee No.3 & 4 while in possession of UPSI relating to financial results for the quarter and year ended March 31, 2018.

5. In the investigation, it was observed that with a view to overcome the liquidity tightness, the company had tied up with J M Financial Products Limited (herein after referred to as “**JMFPL**”) and got the sanction of Rs.100 crores loan at the better interest with 2 years’ moratorium on the capital repayment to pay off the existing loan of IFCI Limited with condition that the company have to obtain NOC from the consortium banks. In this connection, the company had requested the bank to give NOC and charge on securities created out of term loan vested with IFCI Limited in favor of J M Financial. However, it was observed that the company could not obtain the same.
6. Further, it was observed that there was discussion in the Board Meeting of Arcotech Ltd., on February 14, 2018 on the aforesaid development along with other factors such as impact on production due to non-availability of working capital limits from consortium banks, higher interest cost and disturbance in cash flow wherein Noticee No.1 and 2 were present.
7. Taking into consideration on the above said fact, investigation observed and alleged that the aforesaid discussion that took place on February 14, 2018 Board Meeting was considered as material information relating to the financial performance of the company which was not known to public/ its shareholders.
8. In view of the above said facts, investigation observed and alleged that Mr. Arvind Kumar Saraf (Noticee No.1), Chairman of Arcotech Ltd. and Mr. Rishabh Saraf (Noticee No.2), non-executive director, being insiders of the company, had access to and/or possession of the aforesaid information relating to financial results for the quarter and year ending March 31, 2018. Investigation further observed that Noticee No.1 and Noticee No.2 were also the directors of Vasudha Commercial Pvt. Ltd. (Noticee No.3) and Hiland Enclave Pvt. Ltd. (Noticee No.4) who were also part of the promoter group of Arcotech and considered Noticee No.3 and 4 as connected person. In view of the said facts, Noticee No. 1 and 2,

while in possession of UPSI, were alleged to have passed on the same to Noticee No.3 and 4 who had sold the shares of Arcotech Ltd.

9. Investigation further observed that Noticee No.1, being the Chairman and Director of Arcotech as well as the Director of Noticee No.3 and 4, admittedly took the decision to sell the shares held by Noticee No.3 and 4 in Arcotech, while in possession of UPSI.
10. In view of the aforesaid alleged violations, the Noticees were called upon to show cause as to why proceedings under Sections 11(1), 11(4) & 11B(1) for directions, and under Section 11(4A) and 11B(2) read with Section 15G of SEBI Act, 1992 for imposing penalty, should not be initiated, for the alleged violation of Regulation 3(1) of SEBI (PIT) Regulations, by Noticee No.1, Section 12A(d) & (e) of SEBI Act and Regulation 4(1) of PIT Regulations read with Section 27(1) of SEBI Act by Noticee No. 1 and 2, and Section 12A(d) and (e) of SEBI Act and Regulation 4(1) of SEBI PIT Regulations by Noticee No. 3 and 4.

Management of Arcotech:

11. Arcotech Ltd. was promoted in 1981 for manufacturing of Non-Ferrous Engineering products. The company established itself as one of the leading Non-Ferrous Engineering Industry mainly in Copper/Brass Strips and Foils in the Country by creating a niche in producing micro thin foils up to 0.035 mm. The company produces all Non-Ferrous alloys i.e. Copper, Brass, Phosphor Bronze, Nickel Silver, Nickel Brass, Cupro Nickel, Aluminium Bronze, Tin Bearing Copper and Silver Bearing Copper etc.
12. The directors of Arcotech Ltd. during the IP were as follows:

Table No. 1

Sr. no.	Name of the Director	Designation	Date of appointment	Date of cessation
1	Mr. Arvind Kumar Saraf	Chairman & promoter	22/03/2006	NA
2	Mr. Radha Nath Pattanayak	Whole Time Director	18/12/2006	NA
3	Mr. Rameshwar Dayal Tayal	Independent Director	12/11/2005	NA
4	Mr. Sham Lal Mohan	Independent Director	20/09/2014	NA
5	Mr. Maninder Kohli	Non – executive director	22/11/2013	13/08/2019
6	Mr. Suresh Thakur	Independent Director	07/05/2014	13/06/2019
7	Ms. Sonia Dube	Independent Director	12/08/2014	11/11/2019
8	Mr. Rishabh Saraf	Non – executive director	08/02/2015	27/09/2018

13. The category wise shareholding pattern of the company for the quarters ending December 2-17, March 2018 and June 2018 is given below:

Table No. 2

Particular	Quarter ended December – 17			Quarter ended March – 18			Quarter ended June – 18		
	No of shareholders	No of shares	%	No of shareholders	No of shares	%	No of shareholders	No of shares	%
Promoter Holding	14	78066172	74.35	14	75766172	72.16	14	71945907	68.52
Non-Promoter/Public holding	22761	26933828	25.65	32275	29233828	27.84	33100	33054093	31.48
Total Share capital	22775	105000000	100	32289	105000000	100	33750	105000000	100

14. The quarter-wise breakup of promoters' shareholding is given below:

Table No. 3

Sr No	Name	QE December 2017		QE March 2018		QE March 2018	
		No of shares	% of share holding	No of shares	% of share holding	No of shares	% of share holding
Indian							
1	Rishabh Saraf	386225	3.68	386225	3.68	4363594	4.18
2	Atashi Singhania	3800000	3.62	3800000	3.62	3800000	3.62

3	Arvind Kumar Saraf	3525097	3.36	3525097	3.36	3525097	3.38
4	Renu Saraf	2118845	2.02	2118845	2.02	2118845	2.02
5	Sidhant Distributors Pvt Ltd	23785700	22.65	23785700	22.65	23684667	22.58
6	Vasudha Commercial Pvt Ltd	20994600	19.99	18694600	17.80	15294600	14.57
7	Arco Infoway Pvt Ltd	4986400	475	4686400	4.75	4986400	4.75
8	Cloast Trade and Services Pvt Ltd	4000145	3.81	4000145	3.81	4000145	3.81
9	Siddhivinayak Stockist Pvt Ltd	3830035	3.65	3830035	3.65	3830035	3.65
10	Arco IT Solutions Pvt Ltd	2500000	2.38	2500000	2.38	2079599	1.98
11	Arcotech Info Ltd	2120325	2.02	2120325	2.02	2120325	2.02
12	Sarathi Infrastructure Pvt Ltd	1242600	1.18	1242600	1.18	1242600	1.18
13	Hiland Enclave Pvt Ltd	1200000	1.14	1200000	1.14	800000	0.76
14	Jeevan Vihar Properties Pvt Ltd	100000	0.10	100000	0.10	100000	0.10
Foreign							
	NA	NA	NA	NA	NA	NA	NA
		78066172	74.35	75766172	72.16	71945907	68.52

Show Cause Notice, Reply and Personal Hearing:

15. Pursuant to the investigation, Show Cause Notice dated May 25, 2023 (hereinafter referred to as “**SCN**”) was issued to the Noticees for the alleged violations stated therein. The said SCN was served to the Noticees vide Speed Post (SPAD) as well as via digitally signed email dated May 26, 2023, which were delivered through both the mediums. The summary of allegations made in the SCN are as under:

15.1. It was observed that on approval of Board of Directors of Arcotech Ltd., in their meeting on May 29, 2018 (commenced at 4:15 p.m. and concluded at 7:20 p.m.), the Audited Financial Results for the Quarter and Financial year

ending March 31, 2018 were disseminated at BSE at 19:49:11 and NSE at 19:39:20 on May 29, 2018.

15.2. Post the announcement of results, the price of the scrip at BSE moved from a close price of Rs.22.55 on May 29, 2018, to a close price of Rs.23 i.e. 4.4% decline. Similarly, at NSE, it moved from a close price of Rs.23.95 on May 29, 2018 to a close price of Rs.22.95 on May 30, 2018, registering a decline of 4.17%.

15.3. Thereafter, it was observed that the close price of the scrip continued to fall significantly from Rs.24.05 at BSE on May 29, 2018, to a low of Rs.14.40 on June 29, 2018. Similarly, the close price of the scrip at NSE fell down from Rs.23.95 on May 29, 2018 to a low of Rs.14.35 on June 29, 2018.

15.4. In this connection, during the investigation, it was observed from the minutes of Board Meeting held on September 11, 2017 that the company had expanded the plant and there was need for enhanced working capital limits. In this regard, the company had even submitted a draft of Consortium Member Agreement (hereinafter referred to as “**CMA**”) to consortium of Banks for enhancement of working capital limits. In order to meet the working capital limits, company had also obtained Rs.36 crore loan from FIs/ NBFCs.

15.5. On October 5, 2017, the rating agency vide a press release had downgraded the company’s long term and short term Bank facilities from “CARE BB to CARE BB-” for the reason “Issuer not cooperating”. Also, it was mentioned that the rating was revised on account of decline in profitability margins, elongated working capital cycle and deterioration in debt coverage metrics.

15.6. Further, it was observed from the J M Financial's forwarded Memorandum dated November 30, 2017, that Mr. Arvind Kumar Saraf had mortgaged his immovable properties with them to avail the loan. In this connection, Mr. Arvind Kumar Saraf had also given unconditional & irrevocable personal guarantee for availing the said term loan. In this regard, a share pledge agreement dated November 30, 2017 was created between the said 3 promoters and J M Financial and the same was also shared by J M Financial.

15.7. This apart, the minutes of Board Meeting held on December 11, 2017, inter-alia, states that due to the introduction of GST, there were severe dislocations in the cash flow which affected the industry, hence, the company had been affected adversely. Further, company was sanctioned a loan of Rs.100 crore by J M Financial with a moratorium of 2 years for principal repayment. With the loan amount of Rs.100 crore, it was anticipated that JM Financial would take over the balance of IFCI loan of Rs.70 crores and also top up the balance portion of loan Rs.30 crores to the company.

15.8. In the Board Meeting held on February 14, 2018, Mr. R N Pattanayak, the Whole Time Director informed the Board that production was affected due to non-availability of need based working capital limits and profits of the company were also declined on account of higher interest cost. The issue of non-availability of funds/ working capital still persisted.

15.9. Further, Mr. R. N Pattanayak, also informed that the company had requested for NOC from consortium of banks and charge on securities created out of term loan vested with IFCI Limited in favour of J M Financial for the sanctioned loan of Rs.100.00 crores to pay off the existing IFCI Limited to overcome the liquidity tightness. In this regard, the Chairman i.e. Noticee No.1 informed the Board that *"we have followed up for NOC from*

the consortium banks. However, it has not been obtained so far. Hence, the company is unable to switchover the IFCI loan to J M Financial Products Ltd.”

15.10. In view of the above said fact, investigation observed that the discussion on the following issues that took place on February 14, 2018 Board Meeting of Arcotech Ltd. in the presence of Noticee No. 1 and 2 was considered as material information relating to the financial performance of the company and the same was not known to public/ its shareholders:

- a Non availability of NOC from consortium of banks to switchover of outstanding loan to J M Financial on favourable terms
- b impact on production due to non-availability of working capital limits from consortium banks,
- c higher interest cost; and
- d disturbance in cash flow.

15.11. Taking the above in consideration, SCN further observed that all the above said material information had direct impact on the financial result of the company for the QE March 2018 as well as FY 2017-18 and therefore the Audited Financial Results for the Quarter and Financial year ending March 31, 2018 of Arcotech Ltd., was considered as an **UPSI** and the period of UPSI was considered as from February 14, 2018 to 29 May 2018 (“**UPSI Period**”).

15.12. Pursuant to the investigation, it was observed and alleged that Mr. Arvind Kumar Saraf (Noticee No.1), Chairman of Arcotech Ltd. and Mr.Rishabh Saraf (Noticee No.2), non-executive director, being an insiders of the company had access to and/or possession of UPSI relating to financial results for the quarter and year ending March 31, 2018 and were alleged to have passed on the same to **Noticee No.3** and **Noticee No.4**, who had

allegedly sold the shares of Arcotech Ltd. while in possession of UPSI during the UPSI period.

16. It is noted from the record that SCN was sent to the Noticees by SPAD as well as email. Since the Noticees did not submit any reply within the stipulated time, a reminder letter dated July 04, 2023 was sent to the Noticees and further time of two weeks was also granted to submit their reply. Subsequently, as requested by the Authorised Representative ('AR') of the Noticees vide letter dated July 17, 2023, the relied upon documents in the instant matter were forwarded to the Noticees on July 21, 2023. Finally, the Noticees submitted their written submissions, which were duly taken on record.

17. An opportunity of personal hearing was provided to the Noticees on September 11, 2023 vide hearing notice dated August 29, 2023. However, the same was adjourned to September 20, 2023 at the request of the Noticees. On September 20, 2023, the AR appeared for the Noticees and made submissions in line with the aforesaid replies of the Noticees.

Summary of written submission by the Noticees

Noticee No 1, 3 and 4 in their common reply have submitted:

- a. *The UPSI alleged is itself uncertain and vague and does not fall within the purview of the definition of UPSI under section 2(1)(n) of the PIT Regulations.*
 - i. *It can be seen that two distinct piece of information/ instances have been inter-mingled and presented as UPSI in the SCN. On one hand, it is the case of SEBI that the Audited Financial Results of the Company for the Quarter and Financial year ending March 31, 2018 of Arcotech, was the UPSI in terms of Regulation 2(1)(n)(i) of SEBI PIT Regulations. On the other hand, the entire case of SEBI regarding the germination of alleged UPSI, is based upon the discussion held in the Board Meeting of Arcotech dated February 14, 2018.*
 - ii. *It is observed that the information discussed in the said board meeting allegedly had a direct impact on the financial results. It is however pertinent to note herein that the said event is not explicitly treated and termed as*

UPSI anywhere in the SCN. There is no correlation between the alleged UPSI and the alleged discussions transpired in the board meeting dated February 14, 2023. Thus, the charges levelled in the SCN itself are vague in nature and have been levied based on surmises and conjectures.

b. The SCN is vague and uncertain on when UPSI came into existence.

- i. As per the SCN, the crystallization of the information related to financial statements for the financial year ending March 31, 2018 (considered explicitly as UPSI) commenced from May 14, 2018, implying that, the period of alleged UPSI, if any, should have started from May 14, 2018. However, in the SCN the commencement of the UPSI period is taken from February 14, 2018. The said correlation has been drawn without any basis and substantial piece of evidence and is purely based on surmises and conjectures.*
- ii. SEBI has failed to establish the first and most important element to constitute the charge of insider trading i.e., the existence of UPSI when the alleged trades were executed. Further the observation of Hon'ble Supreme Court in the case of **Balram Garg vs. SEBI** (2022 SCC OnLine SC 472) was mentioned, wherein it was observed that where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. The circumstances should be of a conclusive nature and they should be such as to exclude every hypothesis but the one proposed to be proved.*

c. Financial statements were not UPSI as it did not contain extraordinary information;

- i. The financial statements during this period were consistent with the past performance and market expectations. The suffering of the Company was generally known to the public and hence, the alleged negative impact on the financials of the Company could reasonably be anticipated by the Investors. The quarterly analysis of the Financials of Arcotech for the financial year ended March 2018 are as follows:-*

	<i>Mar-17 (Quarterly)</i>	<i>Jun-17 (Quarterly)</i>	<i>Sep-17 (Quarterly)</i>	<i>Dec-17 (Quarterly)</i>	<i>Mar-18 (Quarterly)</i>
<i>Revenue (Net of Excise Duty)</i>	25,631.36	18,608.20	17,122.20	20,851.48	21,840.23
<i>Finance Cost</i>	1,218.79	1,321.38	1,377.48	1,477.86	2,229.47

- ii. *The company had to incur a higher finance cost since the beginning of the quarter because of the Capital Expenditure, which the company had incurred. The said finance cost of the Company was continuously rising. This information pertaining to the increasing trend of interest cost was available in public domain as all the previous year Annual reports and the quarterly financial statements captured the said information. Thus, there was nothing substantial disclosed in the financial statements for quarter ending March 31, 2018.*
- iii. *It was further highlighted that the downward price movement observed in the scrip of Arcotech post publication of financial statements on May 29, 2018 was not a sudden event but rather a trend that had been ongoing for some time. The price of the scrip was continuously falling during the relevant time period. when the financial results for quarter and year ending March 2018 were announced there was no significant change in the share price of Arcotech after the announcement of the results. Post the announcement of results, price of the scrip at NSE moved from a close price of Rs.23.95 on May 29, 2018 to a close price of Rs.22.95 on May 30, 2018. Thus, there was no sudden downfall in the price post the said disclosure.*
- d. *There was no UPSI that came into existence in the meeting concluded on February 14,2018.*
 - i. *It is observed in the SCN that though, the process of the audit began on May 14,2018, the information shared by the Noticee in the Board Meeting on February 14, 2018 marked a significant development relating to financial performance of the company, bringing on record allegedly the information of inability to switchover of outstanding loan to J M Financial on favourable terms. The said information had a direct impact on the financial performance of the company during the QE March 2018 as well as FY 2017-18. In regards to the same, it is submitted that SEBI herein is trying to inter-relate two separate pieces of information to establish its case of existence of UPSI against the Noticee. The SCN has failed to mention that there was nothing extraordinary discussed in the Board meeting dated February 14, 2018, which allegedly had a direct impact on the financial performance, which is considered UPSI in present case.*
- e. *Even assuming, that the Noticee nos. 3 and 4 are 'connected persons' the sale of shares by them is not motivated by UPSI.*
 - i. *The SCN itself admits the fact that the funds received out of the sale of Arcotech's shares by the Noticee no. 03 i.e., Vasudha were indirectly*

transferred to Arcotech by Vasudha. The bank statements of Arcotech, which would clearly reveal that the Noticees for their personal use or gain did not retain the sale amount of the shares, substantiate the same. But the substantial portion of the said sale proceeds was infused in Arcotech. Arcotech urgently requested that promoter financial support would be needed and Vasudha provided the same, being a promoter entity of Arcotech. Accordingly, the financial planning of the said Companies was done to render support for the smooth conduct of Arcotech's business and are still doing within their capacity to support Arcotech's revival.

- ii. Noticee no. 01 decided to sell the shareholding of the Noticee no 03 and 04 to enable them to infuse funds in the Company so that the working capital requirements of the Company can be fulfilled. While selling shares, the Noticees made disclosures as required under the Securities and Exchange Board of India (Listing Obligations and Disclosure Requirements) Regulations, 2015.
 - iii. SEBI has failed to consider that the actual gain or loss is immaterial, but the motive for making a gain is essential. Further, SEBI has also failed to take note of the existing jurisprudence on the issue that in circumstances like the present case where the money is infused back in the Company only for its working capital requirement and where in order to avoid the company from down-graded to a nonperforming asset, it is justified to sell the shares of the company even during the UPSI period and the accused cannot be charged for insider trading.
 - iv. Reliance is placed upon the judgement of **Rajeev Vasanth Seth vs SEBI**, wherein it was held by the Hon'ble Securities Appellate Tribunal that in case where the sale amount of the shares was not retained by the appellants for their personal use or gain but the said money was infused in the company for its working capital, the accused cannot be charged of insider trading.
- f. The surrounding circumstances and the requirement of working capital by Arcotech ex facie demonstrate that the sale of only a small percentage of the holding of the Promoters was not motivated by the UPSI.
- i. Even during the period of USPI, the Noticee no. 03 and 04 sold only a miniscule number of shares, which is divergent from what typically insiders do when they have access to the confidential price sensitive insider information. The quantum of shares traded by an alleged insider during the UPSI period is a necessary fact, which needs to be considered by the regulator. The same is necessary because the type of trading (passive or

aggressive) by the Insider in the scrip during the UPSI period indicates whether the trading was based on UPSI or not. The quantum of shares dealt by the alleged Insider is a necessary fact which needs to be considered by your goodself in the present case.

Noticee No 2:

- a. The SCN is completely silent on whether there was any alleged trading by the Noticee himself in his personal trading account or whether someone else executed the alleged trades based on the Noticee's instructions. In the SCN itself it has been noted that the trades on behalf of the promoter entities were executed by its other Director, Mr, Arvind Kumar Saraf. The SCN does not allege that it was the Noticee who issued instructions or placed orders in regard to the trades executed by the promoter entiites.*
- b. It becomes necessary to identify whether there was any knowledge on part of the Noticee regarding the commission of the contravention alleged against the Noticee No. 3 and 4 or whether there was any role played by the Noticee which there by enabled the said promoter entities to allegedly trade while in possession of the UPSI.*
- c. Merely because the Noticee was a director of the promoter entities during the relevant period does not make the Noticee deemed to have knowledge of the each and every affair and management of the Company. This presumption is totally erroneous, misconceived and cannot be sustained.*
- d. Upon a bare perusal Section 27(1) of the SEBI Act, it can be seen that the said provision prima facie indicates that every person who was responsible for the conduct of the business of the Company would be deemed guilty of the offence and would be liable to be proceeded against but such person would not be punished if he proves that the offence was committed without his knowledge or that he has exercised due diligence to prevent the commission of the offence. nothing has been brought on record to show that the Noticee had any knowledge or even the slightest of the information regarding the irregularities alleged to have been committed by the Company.*
- e. It is pertinent to note that no emails pertaining to the receipt of ECN were sent to the Noticee on behalf of the promoter entities, Vasudha and Hiland, to his registered email address by any of the intermediaries. Nor did the Noticee received any trade confirmation messages on behalf of Vasudha and Hiland on his mobile number. These notifications regarding trade confirmation and the ECN were exclusively dispatched to the other director, Mr. Arvind Kumar Sara£, Noticee no. 01.*

- f. The submissions are made without prejudice to the fact that there existed no UPSI during the relevant time period when the trades were executed in the trading accounts of the promoter entities.*

18. In view of the above, I note that the SCN and Hearing Notice were duly served to the Noticees and sufficient time was also provided to submit their replies. Thereafter, an opportunity of personal hearing was given to the Noticees, which was availed by them. Hence, the principles of natural justice were complied with respect to the Noticees and I shall now proceed to deal with the key issues involved in the instant matter.

Issues for consideration:

19. On a perusal of the observations and allegations brought out in the SCN, the replies filed by the Noticees, oral / written submissions filed by them and other material available on record, the following issues arise for consideration in the present proceedings:

- (1) Whether the Audited Financial Results for the Quarter and Financial year ending March 31, 2018 was “unpublished price sensitive information” in terms of the provisions of PIT Regulations and if so, what was the period during which it remained in existence?***
- (2) Whether Noticees are “insiders” within the definition of the term under the PIT Regulations?***
- (3) If the answer to issues No. 1 and 2 is in affirmative, whether the Noticees by communicating / procuring the UPSI and trading in the scrip of Arcotech, have violated the provisions of SEBI Act and PIT Regulations, as alleged in the SCN?***

(4) If the violations alleged against the Noticees were established, what directions are required to be issued and what is the amount of monetary penalty that is required to be imposed on the Noticees?

20. I now proceed to address the above issues in light of the facts of the case and the submissions made by the Noticees.

Findings on issues

Issue No. 1 - Whether the Audited Financial Results for the Quarter and Financial year ending March 31, 2018 was “unpublished price sensitive information” in terms of the provisions of PIT Regulations and if so, what was the period during which it remained in existence?

21. From the SCN, I note that, Arcotech Ltd. made an announcement dated May 29, 2018 relating to financial results for the quarter and year ending March 31, 2018 to the stock exchanges. Further, I note that the said announcement allegedly had an impact on the price of the scrip of Arcotech Ltd as post the announcement of results, the price of the scrip at BSE moved from a close price of Rs.22.55 on May 29, 2018, to a close price of Rs.23 on May 30, 2018, i.e. 4.4% decline in close price. Similarly, at NSE, it moved from a close price of Rs.23.95 on May 29, 2018 to a close price of Rs.22.95 on May 30, 2018, registering a decline of 4.17%.

22. Further, I note that the investigation observed that the discussion on the following issues that took place on February 14, 2018 Board Meeting of Arcotech Ltd. in the presence of Noticee No. 1 and 2 was considered as material information relating to the financial performance of the company and the same was not known to public/ its shareholders:

- a Non availability of NOC from consortium of banks to switchover of outstanding loan to J M Financial on favourable terms

- b impact on production due to non-availability of working capital limits from consortium banks,
- c higher interest cost; and
- d disturbance in cash flow.

23. In view of the above, I note that the investigation observed that as all of the aforesaid issues had direct impact on the financial result of the company for the QE March 2018 as well as FY 2017-18, the said financial result was alleged to be the UPSI in terms of Regulation 2(1)(n)(i) of SEBI PIT Regulations. Further, I note from the investigation that though the process of preparation of financial results began later, information on negative financial performance of the company was available as early as February 14, 2018 and accordingly, the period of UPSI was identified as February 14, 2018 to May 29, 2018 i.e. the day of dissemination of financial result on exchanges. It is further noted that Noticee No. 1 and 2, who were alleged to be in possession of information relating to UPSI, were alleged to have passed on the same to Noticee No. 3 and 4 based on which they had sold a total of 48,00,000 shares of Arcotech Ltd., between March 26, 2018 to April 18, 2018 i.e. during the UPSI period, at an average sale price of Rs.33.67 per share and avoided loss of Rs.5,38,14,533/-. In view of this, SCN alleged that Noticee No. 3 and 4, who had traded in the scrip of Arcotech Ltd while in possession of the UPSI, have violated Section 12A(d) & (e) of SEBI Act and Regulation 4(1) of PIT Regulations, 2015.

24. From the above, it is noted that Section 12A(d) of SEBI Act, 1992, provides that no person shall directly or indirectly indulge in insider trading. The word used indulge in this clause is of wide import. This clause seeks to prohibits any assistance/aiding of insider trading, by any person either directly or indirectly. Section 12A(e) of SEBI Act which refers to PIT Regulations, 2015, provides that no person shall directly or indirectly 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. Further, Regulation 4(2) provides that if the “insider”, as envisaged under Regulation 4(1), is a connected person then the onus of establishing that he was not in possession of UPSI, shall be on such connected persons and in other cases, the onus would be on the SEBI. The Note to Regulation 4(1) clarifies that when a person trades in securities when in possession of UPSI, his trades would be presumed to have been motivated by the knowledge and awareness of such UPSI in his possession. Proviso to Regulation 4(1) provides that despite presence of all the ingredients of Regulation 4(1) of PIT Regulation, 2015, the insider may prove his innocence by demonstrating the circumstances including those, which are mentioned in the said proviso. Further, the Note to Regulation 4(1) states that once it is established that an insider traded when in possession of UPSI, 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.

25. Further, I note that in terms of Regulation 2(1)(n)(i) of the PIT Regulations, “financial results” of a company are covered within the definition of “unpublished price sensitive information”. As defined in the said regulation, *“unpublished price sensitive information” means any information, relating to a company or its securities, directly or indirectly, that is not generally available which upon becoming generally available, is likely to materially affect the price of the securities and shall, ordinarily including but not restricted to, information relating to the following: –*

(i) financial results;

(ii) dividends;

(iii) change in capital structure;

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

(v) changes in key managerial personnel;

(vi) material events in accordance with the listing agreement.

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.....”

26. A perusal of the aforesaid definition, for an information to be termed as UPSI, it must,-

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

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

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

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

28. On the subject of “*financial results*” being UPSI, the following findings of Hon’ble SAT in the matter of **Rajeev Vasant Sheth and others v. SEBI** (Order dated April 19, 2022) are noteworthy:

“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 ₹6.62 crores to ₹ 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.”

29. In the present matter, I note that the financial results for quarter and year ending March 31, 2018 by Arcotech Ltd was considered as UPSI in the SCN. As observed from the financials of the company, the company had booked profit on a preceding quarters of the FY 2017-18. However, only in March 2018 quarter, the company booked substantial loss. The YoY profit after tax was also reduced to the tune of Rs.2340 Lakhs. In view of the above, the financial results of Arcotech Ltd. for quarter and year ending March, 2018, which was disclosed to the stock exchanges on May 29, 2018, was UPSI as per Regulation 2(1)(n)(i) of PIT Regulations, 2015. I also note that the Noticees in their reply do not dispute the said UPSI i.e. the financial results of Arcotech Ltd. for quarter and year ending March, 2018.

Period of UPSI-

30. During the investigation the company submitted the chronology of events vide letters dated September 23, 2019, March 01, 2022, May 02, 2022 and June 08, 2022 relating to aforesaid corporate announcement is as follows:

Table no. 4

Sl. No.	Event	Date
1	The process of Audit for FY 2017-18 began	May 14,2018
2	Directors were informed about the scheduled board meeting via E-mail	May 21,2018
3	Intimation of scheduled Board meeting was filed with stock exchanges	May 21,2018
4	Draft financial statement post completion of Audit was provided to company	May 29,2018
5	Audit Committee meeting and Board meeting of the company	May 29,2018
6	Arcotech Ltd., informed the exchange on the outcome of Board meeting held on May 29,2018	May 29,2018
7	Arcotech Ltd., letter to BSE and NSE, intimating the Financial Results for 2017-18	May 29,2018

8	BSE disseminated the details of financial results under corporate announcement	May 29,2018 [Time-19:49:11(BSE)]
9	NSE disseminated the details of financial results under corporate announcement	May 29,2018 [(Time-19:39:20 (NSE)]

31. I note from the SCN that it was observed and alleged that the discussion w.r.t. certain material information relating to the financial performance of the company was held on February 14, 2018 in the Board Meeting, in the presence of Noticee No. 1 and 2, which is already detailed in the preceding paras. The said material information had a direct impact on the financial performance of the company for the QE March 2018 as well as FY 2017-18 and therefore, the period of UPSI was considered as February 14, 2018 to May 29, 2018 when the financial result was announced at the exchanges and the trading taken place during this period was alleged to be insider trading.

32. SCN also brought out the following facts w.r.t. aforesaid:

32.1. From the Board Meeting held on September 11, 2017, it emerged that the company had expanded the plant and so there was a need for enhanced working capital limits. The company had even submitted a draft of Consortium Member Agreement ("CMA") to consortium of Banks for enhancement of working capital limits. In order to meet the working capital limits, company had obtained Rs.36 crore loan from FIs/ NBFCs.

32.2. Further, on October 5, 2017, the rating agency through a press release had also downgraded the company's long term and short term Bank facilities from "CARE BB to CARE BB-" for the reason "*Issuer not cooperating*". Also, it was mentioned that the rating was revised on account of decline in

profitability margins, elongated working capital cycle and deterioration in debt coverage metrics.

32.3. Further, it was also observed from the Memorandum dated November 30, 2017, forwarded by JMFPL, that Noticee No.1 had mortgaged his immovable properties to J M Financial for creation of mortgage to avail the loan. In this connection, Noticee No.1 had also given unconditional & irrevocable personal guarantee for availing the term loan. In this regard, a share pledge agreement dated November 30, 2017 was created between the said 3 promoters and J M Financial.

32.4. This apart, the minutes of Board Meeting held on December 11, 2017, *inter-alia*, states that due to the introduction of GST, severe dislocations in the cash flow affected the industry, hence, the company had been affected adversely. Further, the minutes stated that the company was sanctioned a loan of Rs.100 crores by J M Financial with a moratorium of 2 years for principal repayment. With the loan amount of Rs.100 crores, it was anticipated that JM Financial would take over the balance of IFCI loan of Rs.70 crores and also top up the balance portion of loan Rs.30 crores to the company.

32.5. In the Board Meeting held on February 14, 2018, Mr. R N Pattanayak, Whole Time Director, informed the Board that production was affected due to non-availability of need based working capital limits and profits of the company were also declined on account of higher interest cost. The issue of non-availability of funds/ working capital still persisted.

32.6. Further, Mr. Pattanayak also informed that the company requested NOC from consortium of banks and charge on securities created out of term loan vested with IFCI Limited in favour of J M Financial for the sanctioned loan of Rs.100.00 crores to pay off the existing IFCI Limited to overcome the

liquidity tightness, could not obtain. The Chairman i.e. Noticee No.1 in the same meeting had also confirmed that the company was unable to switchover the IFCI loan to J M Financial.

32.7. Lastly, it was observed from the Minutes of Board Meeting held on May 29, 2018 that there was no discussion about switching of loan to J M Financial. Further, the Whole Time Director pointed out *“the company has incurred huge losses during last quarter as explained earlier effect of Inverted duty structure, higher interest cost, market destruction due to GST had severely started affecting the working of the company. Profits of the company for the financial year 2017-18 was also declined due to the above reason.”* (emphasis supplied)

33. With regard to the said UPSI period, I note that the Noticees have contended that the SCN is vague and uncertain on the date when the UPSI came into existence. Further, the Noticees have also questioned the effect of the information shared in the Board Meeting dated February 14, 2018 on the financial results of the Arcotech Ltd. as there was no correlation between the alleged UPSI i.e. the Financial Results of Arcotech Ltd. for the quarter and financial year ending March 31, 2018 and the alleged discussion transpired in the said board meeting.

34. The Noticees further stated that as per the SCN, the crystallization of the information relating to financial statements for the financial year ending March 31, 2018 mentioned as commencing from May 14, 2018 and accordingly, the period of alleged UPSI, if any, should have been started from May 14, 2018. Further, the Noticees have also contended that nowhere in the minutes of the said meeting dated February 14, 2018 it was recorded that the switchover of the loan was out rightly rejected by the consortium banks, nor there was any indication of communication received by the Company from the consortium banks to the effect that it was rejected. Hence, the Noticees have stated that the

UPSI as mentioned in the SCN i.e. financial result, was not in existence when the alleged trades were executed and the identification of UPSI period from February 14, 2018 to May 29, 2018 in the SCN, is not correct.

35. Finally, with regard to the financial performance impacting the financial result of the Arcotech Ltd., the Noticees have submitted that the public generally knew the suffering of the company and hence there was nothing extraordinary in the financial results and performance of the Arcotech Ltd., Additionally, it is stated that there is no correlation between the financial results of Financial Year ending March 2018 and the share price of Arcotech Ltd. during the alleged UPSI period.

36. In view of the allegations raised in the SCN and the contentions raised by the Noticees, few important questions regarding the said UPSI period arose, which are:

- a. Whether there was any material available with the Board of Arcotech Ltd. during the February 14, 2018 meeting to conclude that the company will suffer loss in the March 2018 quarter?*
- b. Whether the financial hardship of the Arcotech Ltd. during March 2018 quarter, was a new development or it was already existing and whether it was known to the public before the declaration of financial results?*

a. Whether there was any material available with the Board of Arcotech Ltd. during the February 14, 2018 meeting to conclude that the company will suffer loss in the March 2018 quarter?

37. With regard to the question (a) above, I note from the SCN that the company had expanded the plant and there was a need for enhanced working capital. The said issue was discussed during the Board Meeting held on September 11, 2017. In this regard, to meet the said requirement, the company submitted a draft CMA to consortium of Banks for enhancement of working capital limits. I further note

from the minutes of the meeting held on December 2011, 2017, that the Noticee No.1 in the said meeting informed the Board of Arcotech Ltd. about the sanction of loan of Rs.100 crores (taking over the balance of IFCI loan of Rs.70 crores and top up of Rs.30 crores) to the company by JM Financial. Hence, I note that the Board was made aware about the proposed sanctioning of loan by JM Financial in December 2017 meeting itself, the purpose of which was to address the issue of shortfall of working capital.

38. Further, from the available record, I note that, in order to materialise the said loan transaction from JM Financial, Arcotech Ltd. was required to secure a No Objection Certificate (NOC) from the Consortium Banks. In this regard, during the Board meeting of February 14, 2018, when Noticee No.1 made aware to the Board of Arcotech Ltd., regarding the fact that the '*NOC has not been obtained so far*', the same was treated in the SCN as a '*Roadblock*' and as a failure in switching over the IFCI loan to JM Financial. In this connection, I note that the SCN considered various facts as material information that were not available to the general public/investor. In this regard, I note that out of the said facts, except the information on non-availability of the NOC, all other information such as issues related to working capital, higher interest cost and disturbance in cash flow were already known to public. However, to consider that the only information w.r.t. non-availability/not obtaining the NOC as material information which would affect the financial performance of the company and in turn would impact the upcoming quarter and financial year end result as negative, there is no material brought out to show what was the exact road block or constrain i.e. it is not clear what was the actual material information available with the board and what was the discussion happened, based on which one could arrive in certainty in the month of February itself that the outcome of the financial result would be negative for the quarter ended March 2018 and based on which the insider trading would be undertaken to take the advantage of the material information with the insider.

39. Further in this regard, the Noticees have also argued by submitting that “*the conclusive determination regarding the NOC for the transfer of the Capital Expenditure Loan from IFCI Limited to JM Financial was conveyed to the Company by Punjab National Bank (PNB) via communique dated October 03, 2018. This communication from PNB explicitly stated that the Company's request for the NOC to shift the loan had been denied. ...*”. This significant communication transpired after the conclusion of the Board Meeting held on February 14, 2018, a meeting that has been central to the allegations under consideration.”
40. This apart, the available records also do not show that the directors present in the Board meeting of February 14, 2018 were provided with any report or statistics from which it can be assumed that they can estimate the financial performance of the company with certain degree of accuracy. The SCN only suggests that the circumstances and the financial hardship of the company in the recent months owing to the expansion of plant capacity, introduction of GST, inverted duty structure, downgrading of credit rating by CARE, made the Board of Arcotech Ltd. sceptical about the financial wellbeing of the company. To overcome the same, the sanctioning of loan by JM Financial was considered to give some relief, as it would lower the burden of financial cost and at the same time provide Arcotech Ltd. with the working capital to run its business. Hence, I note that the impact of sanctioning of loan by JM Financial to Arcotech Ltd. upon the financial results of Arcotech Ltd. was only circumstantial in nature, in absence of any report or data placed before the board of Arcotech Ltd during the aforesaid meeting of February 14, 2018.
41. To address such issue where the evidence is only of a circumstantial nature, I would refer to the Hon'ble Supreme Court judgment of ***Hanumant Govind Nargundkar & Anr. v. State of Madhya Pradesh*** (AIR 1952 SC 343) wherein it stated:

“It is well to remember that in cases where the evidence is of a circumstantial nature, the circumstances from which the conclusion of guilt is to be drawn should in the first instance be fully established, and all the facts so established should be consistent only with the hypothesis of the guilt of the accused. Again, the circumstances should be of a conclusive nature and pendency and they should be such as to exclude every hypothesis but the one proposed to be proved. In other words, there must be a chain of evidence so far complete as not to leave any reasonable ground for a conclusion consistent with the innocence of the accused and it must be such as to show that within all human probability the act must have been done by the accused.” (Emphasis supplied)

42. From the aforesaid judgment, I note that in absence of any cogent proof, the circumstances surrounding the conclusion needs to be fully established. From the SCN, I note that the company submitted during investigation that the formal process to prepare the financial results of Arcotech Ltd. for the year and quarter ending March 2018 began on May 14, 2018. To assume that the Board of Arcotech Ltd. were able to predict the upcoming financial results during the meeting of February 14, 2018, the information before the Board of the company needs to be final and conclusive. However, nothing has been brought on record to suggest the same. During the discussion of February 14, 2018, the Noticee No.1 only informed the Board regarding the status on the said date by stating that the NOC from the consortium banks has not been obtained *so far*. This clearly underlines the fact that the same was not denied and could have been obtained in the near future.

43. In light of the aforesaid observation, I note that, the discussion that took place during the Board Meeting of February 14, 2018 does not conclusively suggest that the Directors of Arcotech Ltd, present in the said meeting and particularly Noticee No. 1, in absence of any report/data/statistics, could have predicted the

outcome of the financial results of the company for the quarter and year ended March 2018 and the fact that the company will book loss in the March 2018 quarter.

b. Whether the financial hardship of the Arcotech Ltd. during March 2018 quarter, was a new development or it was already existing and whether it was known to the public before the declaration of financial results?

44. Having addressed question (a), now I shall proceed to question (b). During the Board meeting of Arcotech Ltd. dated May 29, 2018, the Whole Time Director had pointed out in the said meeting that profits of the company in 2017-18 declined due to the reasons such as inverted duty structure, higher interest cost and GST introduction. In this regard, I note that it is a known fact that the GST was introduced and made applicable from July 01, 2017 onwards. Regarding the higher interest cost, I note from the SCN that during the Board meeting of February 14, 2018, the Whole Time Director of Arcotech Ltd., Mr. R N Pattanayak, informed that 'due to non-review of the working capital limits by consortium banks, the rating agency downgraded the rating and the same was resulting in charging of higher rate of interest.'

45. In this regard, I note from the SCN that vide the press release dated October 05, 2017 of Care Ratings, the rating agency had downgraded the company's long term and short term bank facilities from "CARE BB to CARE BB-" for the reason "Issuer not cooperating". Also, it was mentioned that the rating was revised on account of *decline in profitability margins, elongated working capital cycle and deterioration in debt coverage metrics*. The said press release also mentions that *"Consequently, its PAT margins also reduced to 3.58% on account of lower operating margin and higher interest expenses"*. Since the aforesaid facts were made public vide the above mentioned press release, I note that it was already in the public domain that the company was struggling financially.

46. This observation is supported by the fact that even prior to announcement of financial results of Arcotech Ltd. for the quarter and year ending March 2018, the price of the scrip was already going down and even immediately after dissemination of the said financial result, no significant downfall was observed in price, which supports the fact that the investors were anticipating the negative results. I also note that the price of the scrip was already coming down during the IP and had been showing the similar trend since October 2017 as well (closing price at BSE on October 09, 2017 was Rs.81.57). As per SCN, the price fell from Rs.24.05 at BSE on May 29, 2018 to Rs.14.40 on June 29, 2018, which is during the period of one month and hence to attribute the same solely to the declaration of financial results on May 29, 2018 alone may not be reasonable.
47. Having addressed the above two questions, I note that, nothing novel was brought on the table during the board meeting of February 14, 2018 and nothing was crystallised on the said date to suggest that Noticee No.1 could have known the UPSI on the said date. Hence, in absence of sufficient material on record, UPSI period in the instant case regarding the UPSI i.e., Financial Results of Arcotech for the year and quarter ending March 31, 2018, cannot said to be initiated from February 14, 2018.
48. Based on the aforesaid discussion, the charge that the information w.r.t. inability to switchover the loan from IFCI to JM Financial, which would affect the financial performance of the company and in turn impact the financial result of the company for the QE March 31, 2018 and FY ending 2017-18 and which may further lead to impact the price of the scrip on announcement, was only within the knowledge of the Noticee No.1 & 2 and based on which the insider trading was executed by Noticee No. 3 & 4, does not sound reasonable.
49. I note that the period of UPSI in SCN was considered from February 14, 2018 to May 29, 2018, as the issues discussed in the board meeting was alleged to be a material information and had allegedly affected the financial performance of

the company. However, from the chronology of events submitted by the company during investigation, it was observed that the process of audit of financial results for FY 2017-18 began on May 14, 2018. I further note that no other information is available on record to suggest that the said UPSI came into existence prior to May 14, 2018. In view of the same, for the UPSI i.e. financial results of Arcotech Ltd. of 2017-18, the period of UPSI should ideally be from May 14, 2018 to May 29, 2018.

Issue No. 2 - Whether Noticees are “insiders” within the definition of the term under the PIT Regulations?

50. Regulation 2(1)(g) of SEBI (PIT) Regulations, 2015 defines the term insider as under:

"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.*

Regulation 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;

51. As per the aforesaid definition, Noticee No.1 and 2 are connected persons of Arcotech by virtue of being its Directors. Further, Noticee No.1 and 2 were also the directors of Noticee No.3 and 4, who were also part of the promoter group of Arcotech. In view of the above, Noticee No. 3 and 4 shall also be considered as *Insiders* under the provisions of PIT Regulations.

Issue No. 3 - If the answer to issues no. 1 and 2 is in affirmative, whether the Noticees *by communicating / procuring the UPSI and trading in the scrip of Arcotech, have violated the provisions of SEBI Act and PIT Regulations, as alleged in the SCN?*

52. As already established above, there is nothing on record to conclude that the UPSI came into existence prior to May 14, 2018. Hence, I note that the UPSI was not in existence on the dates when the shares of Arcotech was sold by Noticee No. 3 and 4 (i.e. during March and April 2018). Hence the instant issue requires no consideration.

Issue No.4 - If the violations alleged against the Noticees have been established, what directions are required to be issued and what is the amount of monetary penalty that is required to be imposed on the Noticees?

53. In the instant case, it has already been established that the UPSI i.e. Financial Results of Arcotech for the quarter and year ending March 2018, was not in existence when the trading was undertaken by Noticee No. 3 and 4. Hence, the question of communicating the same by Noticee No. 1 and further trading in the scrip of Arcotech by Noticee No. 3 and 4 does not arise. The same has already been dealt in the above paragraphs. Hence, the present issue does not require any consideration as the violations alleged against the Noticees are not established.

Direction

54. In view of the foregoing, I, in exercise of powers conferred upon me under sections 11(1), 11(4), 11B(1), 11B(2) and 11(4A) read with Section 15G and Section 19 of the SEBI Act, hereby dispose of the proceedings initiated vide SCN

dated May 25, 2023 against the Noticees without issuance of any directions and without imposing any monetary penalty for the reasons stated in the order above.

55. This order is without prejudice to any other action that may be initiated against the Noticees by SEBI or any other authority in accordance with law.

56. The order shall be served upon the Noticees.

Date: December 29, 2023

Place: Mumbai

G. RAMAR
CHIEF GENERAL MANAGER
SECURITIES AND EXCHANGE BOARD OF INDIA