ED/PR/IVD/ID9/21092/2022-23

SECURITIES AND EXCHANGE BOARD OF INDIA

CORAM: PRAMOD RAO, EXECUTIVE DIRECTOR

ORDER

UNDER SECTION 11(1), 11(4), 11(4A), 11B(1) AND 11B(2) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992

In respect of

Noticee No.	Name of the Noticee	PAN	
1.	Mr. Shailendra Mehta	ALGPM2002F	
2.	Ms. Shruti Vishal Vora	AKZPM7724N	
3.	Mr. Varun Khandelwal	AMMPK0859R	
4.	Disposed of vide Settlement Order no. SO/EFD-2/SD/399/FEBRUARY/2022 dated February 28, 2022		

In the matter of Circulation of Unpublished Price Sensitive Information through WhatsApp messages with respect to HDFC Bank Ltd.

BACKGROUND

1. On November 17, 2017 the *Financial Chronicle* published a news article (sourced from Reuter's article by Mr. Rafael Nam) with the title *"Out on WhatsApp: Prescient messages about Indian firms"* which had reported that unpublished financial results of some of the major companies got posted/circulated in the instant messaging app WhatsApp (and groups created therein) ahead of their official announcements of such financial results on the floor of the BSE India Ltd. (hereinafter referred to as "**BSE**") and the National Stock Exchange of India Ltd.(hereinafter referred to as "**NSE**" and collectively as "**Stock Exchanges**") for the consumption of public at large.

2. In the aforesaid background, Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") initiated a preliminary examination in the matter of circulation of Unpublished Price Sensitive Information through WhatsApp groups during which search and seizure operation for 26 entities were conducted and approximately 190 devices, records etc., were seized. The WhatsApp chats as extracted from the said seized devices were further examined and it was noticed that in respect of around 12 companies whose earnings data and other

financial information got shared/leaked through such WhatsApp groups. HDFC Bank Ltd. was one of the major companies about which the information was leaked on the WhatsApp groups.

3. Subsequently, SEBI conducted investigation into the matter of circulation of Unpublished Price Sensitive Information through WhatsApp messages with respect to HDFC Bank Limited (hereinafter referred to as "***Company***") during the period from July 01, 2017 to July 24, 2017 (hereinafter referred to as "Investigation Period") to ascertain the possible violations of the provisions of the SEBI Act, 1992 (hereinafter referred to as "**SEBI Act**") and SEBI (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as "**PIT Regulations, 2015**").

4. Based on the facts as revealed and findings made during the course of the investigation by SEBI, a *Show Cause Notice dated February 03, 2021* (hereinafter referred to as "**SCN**") was issued to Mr. Shailendra Mehta, Ms. Shruti Vishal Vora, Mr. Varun Khandelwal and Mr. Samrat Dasgupta (hereinafter individually referred to by their corresponding names/noticee numbers) calling upon them to show cause as to why appropriate measures/directions under sections 11(1), 11(4) and 11B(1) of the SEBI Act should not be issued against them and further show cause as to why inquiry should not be held against them in terms of Rule 4 of Adjudication Rules and penalty be not imposed under Section 11 (4A), 11 B(2) read with Section 15G of SEBI Act, 1992 for their alleged violations of Section 12A(d) and (e) of the SEBI Act, 1992 and regulations 3(1) and 4(1) of the PIT Regulations, 2015.

5. I note that during pendency of the proceedings, *Noticee nos. 3 and 4* had applied for the settlement of aforesaid proceedings vide Settlement Application No. 6620 of 2021 and 6697 of 2022, respectively. Whereas the Settlement Application No. 6620 of 2021 filed by *Noticee no. 4* has been accepted by SEBI and the proceedings *qua* him got disposed of vide a settlement order date February 28, 2022, the Settlement Application No. 6697 of 2022 as filed by *Noticee no. 3* has been withdrawn by him vide his email dated September 30, 2022. Accordingly, the present proceedings are now being continued with respect to the remaining three noticees i.e., Noticee *nos. 1, 2 and 3* (hereinafter collectively referred to as "***Noticees***").

6. The brief facts and findings of the investigation and the allegations made on the basis of such findings of the said investigation, as contained in the SCN, are as under:

   (a) The *Company* is an Indian banking company having its registered office at *HDFC Bank House, Senapati Bapat Marg, Lower Parel, Mumbai, Maharastra- 400013*. The equity shares of the *Company* are listed on the Stock Exchanges;

(b) On July 21, 2017, *Noticee no. 1* posted the following message in a WhatsApp group *"Only Trades, No Bakwaas"* (hereinafter referred to as "**WhatsApp Group**"):

"Hearing Hdfc Bank PAT@3900 crs & 1.25 GNPA vs 1.04";

(c) Vide letters dated June 07, 2018 and July 02, 2018, *Noticee no. 2* has acknowledged that upon receiving the aforesaid message from *Noticee no. 1* on the WhatsApp Group , she had shared/further communicated the message with certain persons;

(d) The examination of the aforesaid messages reveals that the same pertains to the financial results of the *Company* for the quarter ended on June 30, 2017 and the *Company* has announced the said financial results at the BSE on July 24, 2017 at 12:12:56 hours and at the NSE on July 24, 2017 at 12:22 hours;

(e) The financial figures of the *Company* that were in circulation in the aforesaid WhatsApp Group were very close to the actual announcements made by *Company* on July 24, 2017 on the Stock Exchanges;

(f) In terms of regulation 2(1)(n) of the PIT Regulations, 2015, the aforesaid message containing financials of the *Company* for the quarter ending on June, 2017 was viewed as an Unpublished Price Sensitive Information (hereinafter referred to as "**UPSI**") until the said message was disclosed to the BSE on July 24, 2017 at 12:12:56 hours. It is further confirmed by the *Company* that the preparation to finalize the financial of the *Company* started on July 01, 2017. Therefore, the date of starting the preparation of financial on July 01, 2017 can be said to be the date when UPSI came in to existence and consequently the period of the UPSI becomes July 01, 2017 to July 24, 2017 i.e., before it was disclosed to the Stock Exchanges (hereinafter referred to as "**UPSI Period**");

(g) Based on the possession of the aforesaid message by *Noticee nos. 1 and 2* containing information relating to financial of the *Company*, *Noticee nos. 1 and 2* have been alleged to be insiders in terms of regulation 2 (1)(g) of the PIT Regulations, 2015. Further, *Noticee nos. 1 and 2* are noticed to have communicated the UPSI through WhatsApp;

(h) *Noticee no. 3* was also member of the said WhatsApp Group. By virtue of his membership of the said WhatsApp Group and due to the fact that the message containing UPSI pertaining to the *Company* was circulated/published/shared in the said WhatsApp Group, it is noticed that *Noticee no. 3* also had access to/possession of the said UPSI and thereby *Noticee no. 3* is alleged to be insider in terms of Regulation 2 (1)(g) of PIT Regulations, 2015;

(i) Prior to the disclosure of the UPSI to the Stock Exchanges on July 24, 2017, it was noticed that *Noticee no. 3* had traded in the scrip of the *Company* hence, the trading in the scrip of the *Company* has been alleged to be while in possession of the UPSI; and

(j) Accordingly, the above acts of *Noticee nos. 1 and 2* of communicating the UPSI through WhatsApp and *Noticee no. 3* of indulging in trading in the scrip of the *Company* while in possession of UPSI prior to disclosure of the said UPSI on the Stock Exchanges are alleged to be in violation of Section 12A (d) & (e) of the SEBI Act, 1992 and regulation 3(1) and 4(1) of the PIT Regulations, 2015.

7. I note from the record that the SCN has been duly served on the *Noticees*.

REPLY, INSPECTION, PERSONAL HEARING AND SUBMISSIONS

8. In response to the SCN, *Noticee no. 1* filed his reply vide *letter dated February 22, 2021*. *Noticee no. 2* vide emails dated February 26, 2021, September 19, 2021 and October 10, 2021 *inter alia* made a request for inspection of documents which was granted to and availed by *Noticee no. 2* on December 06, 2021. Similarly, vide email and letter dated February 25, 2021 *Noticee no. 3* had requested for inspection of documents which was availed by him on December 06, 2021. Pursuant to conclusion of the inspection of documents as sought by *Noticee nos. 2 and 3*, an opportunity of personal hearing was granted to the *Noticees* on *September 15, 2022*. Subsequently, *Noticee no. 2 and 3* vide email and letter dated September 07, 2022 and letter dated September 09, 2022, respectively requested for an adjournment of the aforesaid scheduled hearing for the reasons stated in the said email and letters.

9. On the scheduled date of hearing held on September 15, 2022, the physical hearing in respect of *Noticee no. 1* was conducted and concluded wherein *Noticee no. 1* appeared along with his Authorised Representatives ('**ARs**') Mr. Deepak Dhane, and Ms. Kashmira Dingankar, Advocates and made oral submissions. Further, *Noticee no. 1* was granted time till September 30, 2022 to file his written submissions, if any, as per his request made at the hearing. Accordingly, vide email dated *September 30, 2022 Noticee no. 1* has filed his written submissions. With regard to *Noticee nos. 2 and 3,* the hearing was held through Video Conferencing wherein they appeared along with their respective ARs, Mr. Kunal Katariya, Advocate for *Noticee no. 2* and Ms. Yugandhara Khanwilkar, Advocate for *Noticee no. 3* and reiterated their earlier request for adjournment of the hearing and for further time to file their written submissions. The said request of *Noticee nos. 2 and 3* was acceded to and they were granted time till October 04, 2022 to file their written submissions in the matter, as requested by them. Consequently, *Noticee nos. 2 and 3* vide separate emails each dated *October 04, 2022* have filed their respective further written submissions and also requested for another opportunity of personal hearing. Accordingly, *Noticee nos. 2 and 3* have been granted an opportunity of personal hearing on *October 20, 2022* and *October 27, 2022*, respectively, which they availed, and at which made oral submissions in line with their written submissions. The said hearings stand concluded.

10. The replies, further submissions and post hearing submissions of the *Noticees* are summarized as under:

Noticee no. 1 (Mr. Shailendra Mehta)

i. *Noticee no. 1* denies all the allegations made in the SCN and requests to absolve him as a noticee;

ii. *Noticee no. 1* vide his letter dated July 06, 2018 (filed in response to SEBI's letter dated June 22, 2018) has submitted that he was employed with STCI Primary Dealer Ltd.('**STCI**') during the period August 08, 2016 to July 31, 2017;

iii. No liability can be fastened on *Noticee no. 1* based on certain Orders/Judgments of the Hon'ble Securities Appellate Tribunal (hereinafter referred to as "**SAT/Tribunal**") and the Hon'ble Supreme Court of India namely, *Appeal No. 308 of 2020 & other Appeals-Shruti Vora vs. SEBI – decided on March 22, 2021(SAT)*, *Appeal No. 80 of 2009-Dilip S. Pendse vs. SEBI – decided on November 19, 2009 (SAT)* and *Civil Appeal No. 7054 of 2021-Balram Garg vs SEBI decided on April 19, 2022 (SC)*;

iv. It is a matter of record that SEBI had challenged the above mentioned SAT Order dated March 22, 2021 before the Hon'ble Supreme Court and the Hon'ble Supreme Court had vide its Order dated September 26, 2022 has dismissed SEBI's Appeal. Therefore, the abovementioned SAT Order has attained finality;

v. Further, it is also a matter of record that SEBI had preferred a review Petition before the Hon'ble Supreme Court seeking review of its abovementioned Order dated April 19, 2022 and the said Review Petition has also been rejected by the Hon'ble Supreme Court;

vi. In view of the above, *Noticee no. 1* submits that the subject proceedings are squarely covered by the abovementioned SAT Order dated March 22, 2021 and the Hon'ble Supreme Court Order dated September 26, 2022.

Noticee no. 2 (Ms. Shruti Vishal Vora)

i. *Noticee no. 2* denies the allegations contained in the SCN;

ii. *Noticee no. 2* has submitted that she has been working with Antique Stock Broking Ltd. ('**Antique Broking**') since 2008 in various roles and capacity including Technical Analyst, Derivatives Sales Department etc. Since 2016, the *Noticee no. 2* has been working in Institutional Sales division of Antique Broking

iii. At the outset, it is pertinent to note that several show cause notices were issued to *Noticee no. 2*, arising out of the same search and seizure operation through which her device was seized by SEBI and WhatsApp chats were extracted therefrom to make out a case. The only difference in the show cause notices issued in other matters was the company relating to which alleged UPSI was circulated. All allegations in the SCN are identical to

such other show cause notices. The show cause notices issued in the matters of Wipro Limited, Ambuja Cement Limited, Mindtree Limited, Bajaj Auto Limited, Bata India Limited and Asian Paints Limited (herein after referred to as "**Appeal SCNs**") were adjudicated by the Ld. Adjudicating Officers of SEBI against which *Noticee no. 2* had filed appeal before the Hon'ble Securities Appellate Tribunal (hereinafter referred to as "**SAT**"). The Hon'ble SAT was pleased to quash and set aside the Orders of the Ld. AO in all such Appeal SCNs. SEBI thereafter approached the Hon'ble Supreme Court challenging the order of the Hon'ble SAT. The Hon'ble Supreme Court was pleased to dismiss the said appeals by SEBI on September 26, 2022. In view of the same, the Learned AOs in the identical matters of Infosys, TCS, Ultratech and Cement also dropped the allegations *qua Noticee no. 2* and disposed of the show cause notices issued in those matters. As the facts and allegations in Appeal SCNs are identical and arise out of the WhatsApp chats extracted from phone of *Noticee no. 2* under the same search and seizure operation, the decision of the Hon'ble Supreme Court in the Appeal SCNs squarely apply to the present matter. In view thereof, the allegations in the SCN of the present matter do not sustain;

iv. No connection has been established between the *Company*, its promoters /directors /employees/ auditors with either *Noticee no. 2* or the person who forwarded the said Heard on Street (hereinafter referred to as "**HOS**") to *Noticee no. 2*. The *Company* vide letter dated August 28, 2019 has also confirmed that neither promoters of HDFC Ltd., HDFC Investments Limited and HDFC Holdings Limited nor the directors and relevant individuals from the *Company* were ever associated/related/connected in any capacity to *Noticee no. 2* or the sender of the message;

v. Moreover, SEBI was unable to find the origin of the HOS being circulated on WhatsApp which is alleged to be UPSI. No leak from the *Company* could be established by SEBI as evident from email dated December 27, 2018 of WhatsApp Inc;

vi. Without establishing even a remote connection and without leak there cannot be UPSI. While choosing whether a particular message is UPSI or gossip, the holistic view of the entire evidence, including the exculpatory evidence is required to be taken. In fact, HOS means that the estimate is not from the *Company* and, therefore, estimate received by *Noticee no. 2* was from an unknown source and such estimate whose origin is not known cannot be regarded as UPSI;

vii. HOS forwarded by *Noticee no. 2* closely matching with the actual numbers does not make it UPSI. The SCN fails to consider numerous instances where estimates did not match and where the HOS turned out to be preposterously incorrect, however SEBI has cherry

picked only those HOS which have closely matched with the actual numbers and issued the SCN;

viii. An analysis of the messages on WhatsApp Group would reveal HOS was sent and clearly understood as market gossip and the same cannot be treated as "information". Admittedly, there was no source-based credibility to any of such HOS. The reply of Mr. Shailendra Mehta (*Noticee no. 1)* dated August 06, 2018 (Annexure 13 to Investigation Report – originally not provided to *Noticee no. 2* along with the SCN but subsequently received along with the Investigation Report) also indicates that he forwarded the same on a WhatsApp Group believing it to be generally available information and a HOS, since the message also started with *"Hearing…"* ;

ix. There has been no pattern/no arrangement established from the phone of *Noticee no. 2* available with SEBI which suggests that any insider kept sharing any UPSI with *Noticee no. 2* or that *Noticee no. 2* was soliciting the same from any person;

x. There is no allegation in the SCN that there was a wilful attempt to source UPSI and then share the same;

xi. It is expressly stated in the IR that during investigation it was found that no trades were done by family members of *Noticee no. 2* or *Noticee no. 2* herself or the individuals to whom *Noticee no. 2* had forwarded the message to;

xii. The market chatter group of which *Noticee no. 2* was a part of had diverse set of 40 market participants from broking industry, Mutual funds and Insurance companies, proprietary traders, media journalists from reputed houses like CNBC, Reuters etc. A perusal of the group chat would show that the group had varied discussion on fundamental analysis, technical analysis, current affairs, macro economy, world news which directly impacts our indices and stocks. The news article brings out the HOS story in a prejudicial light suggesting that prime objective of market groups is to discuss result estimates only. A perusal of the chat would show that nothing can be further from the truth;

xiii. The SCN did not annex all the findings pursuant to its investigation and instead cherrypicked observations from the IR to level charges against *Noticee no. 2*. In the IR, SEBI has stated that WhatsApp Inc. expressed its inability to search for a given message in their database citing reasons that WhatsApp users being protected with end-to end encryption protocol, third parties and WhatsApp cannot read such messages or search for such messages. It further stated that the *Company* submitted that as per their internal verification, none of the relevant individuals who had access to the financial information of the *Company* is/was associated/related/connected in any capacity with *Noticee no. 2* or *Noticee no. 1*;

xiv. SEBI, vide several emails exchanged between SEBI and the depositories also observed that there are no transactions in respect of shares of the *Company* by *Noticee no. 2*. The said emails form part of the IR at Annexure 18 therein. The SCN ought to have stated the aforesaid observations with respect to trading made in the IR instead of deliberately omitting it. Thus, it shows that none of the recipients of the HOS including *Noticee no. 2* had any reason to believe the veracity of the message and all of them treated the same as market gossip;

xv. *Noticee no. 2* has no knowledge as to who originated the message as she has only received the information from *Noticee no.1* and circulated the same to other individuals;

xvi. A perusal of the relevant provisions of the SEBI Act and the PIT Regulations make it abundantly clear that the SCN makes out no case of violation of the said provisions of the SEBI Act or the PIT Regulations, 2015. The only case against *Noticee no. 2* is that she has received certain WhatsApp message on a WhatsApp Group about estimates of a company's result, from a member of the said Group who is in no manner a "connected person" (within the meaning of the PIT Regulations or otherwise) with the *Company* and *Noticee no. 2* forwarded the information on an "as is where is" basis without any specific application of mind. Therefore, it is submitted that the rumour shared with *Noticee no. 2* and the rumour that she forwarded, was not UPSI as the said rumour was in the nature of mere speculation about the results. Since the information was mere gossip, rumour and market speculation forwarded by people, the same was generally available information and not UPSI;

xvii. There is no allegation in the SCN that the person forwarding the WhatsApp message to *Noticee no. 2* was in possession of or had access to UPSI. SEBI cannot merely allege in the air, that *Noticee no. 2* had access to UPSI, without atleast specifying and substantiating from 'whom' and 'how'. If the person sending the message to *Noticee no. 2* is not alleged to have access to the UPSI, clearly, she cannot be alleged to have had access to UPSI;

xviii. For a person to fall under definition of "insider' as contemplated in regulation 2(1)(g) of the PIT Regulations, 2015, one must either have actually received the UPSI or actually had the access to such UPSI as decided on August 11, 2017 by the Hon'ble SAT in the matter of *SRSR Holdings Pvt. Ltd. & Others vs. SEBI*. It is obligatory on the part of SEBI, before alleging serious charges of insider trading in the SCN, to clearly show as to how *Noticee no. 2* had 'access' to the alleged UPSI. The said burden has not been discharged by SEBI. The issue of who provided access and how, is still at large. The SCN is absolutely silent on this aspect and has admittedly not been able to unearth the origin of the message. Same also makes the allegations vulnerable to the vice of vagueness and being in gross violation of principles of natural justice and therefore being legally

untenable and unsustainable. Reliance is placed on the order of the Hon'ble SAT passed in *Appeal No. 83 of 2004-Samir Arora vs. SEBI* decided on October 15, 2004;

xix. The whole theory of communication of UPSI as alleged in the SCN is based on circumstantial evidence. The Hon'ble Courts have consistently laid down that where a case rests squarely on circumstantial evidence, the inference of guilt can be justified only when all the incriminating facts and circumstances are found to be incompatible with the innocence of the accused or the guilt of any other person. The circumstances from which an inference as to the guilt of the accused is drawn have to be proved beyond reasonable doubt and have to be shown to be closely connected with the principal fact sought to be inferred from those circumstances. In the matter under reference, nothing of the sort is there. Entire allegations are speculative and only based on surmises and conjectures. Reliance is placed on the following orders/judgments passed by the Hon'ble Supreme Court of India:

   a. *State of Goa vs. Sanjay Thakkaran and another (2007) 3 SCC 755*
   b. *Bank of India vs. Degala Surya Narayana (AIR 1999 SC 2407)*
   c. *Nandakishore Prasad vs. State of Bihar (1978) 3 SCC 366,*
   d. *Union of India vs. H. C. Goel (AIR 1964 SC 364)*
   e. *L. D. Jaisinghani v. Naraindas N Punjabi (1976) 1 SCC 354*
   f. *Razikram vs. J. S. Chauhan - AIR 1975 SC 667*
   g. *Ambalal vs. Union of India AIR 1961 SC 264*
   h. *Gulabchand vs. Kudilal (AIR 1966 SC 1734)*
   i. *Roop Singh Negi Vs. Punjab National Bank &Ors. (2009) 2 SCC 570;*

xx. *Noticee no. 2* also relies on the order passed by the Hon'ble Tribunal in *Appeal No. 80 of 2009-Dilip Pendse vs. SEBI*, decided on November 19, 2009 to contend that the charge of insider trading is one of the most serious charges in relation to the securities market and having regard to the gravity of this wrong doing, higher must be the preponderance of probabilities in establishing the same;

xxi. In fact, in the United States, in a case of insider trading in *U.S. v. Roberts, No. 15-ct-00020 (M.D. La. Filed Feb19, 2015)*, a jury found Jessie Roberts, a Louisiana dentist who claimed what the government called an illegal tip was just a rumor, not guilty of insider trading;

xxii. Without prejudice to the aforesaid, it is submitted that even in India, SEBI has taken a view that a tipper who communicated the UPSI was not liable to pay any penalty in the case of Utsav Pathak (In the matter of Crisil Limited, Order dated August 30, 2019). It is submitted that as held by the Supreme Court in the case of *Hindustan Steel Ltd. vs. State of Orissa 1969 2 SCC 627* and *Adjudicating Officer, SEBI vs Bhavesh Pabari (2019) 5 SCC 90*, penalty need not be levied in every single case, even if there appears to be a violation of

law. The principles laid down in Section 15J of the SEBI Act, 1992 have to be considered before imposing the penalty;

xxiii. The financial results of a company are UPSI but HOS news is not UPSI as the same is not "information" but merely a rumour. The message "Hearing HDFC…" is HOS and not USPI. Therefore, it cannot be said that the information shared by *Noticee no. 2* was UPSI, as alleged or at all. The onus of proving that the information with *Noticee no. 2* was UPSI, lies on SEBI as *Noticee no. 2* is not a connected person. It is admitted by SEBI that *Noticee no. 2* is not a connected person. It is also admitted position that SEBI was unable to unearth the origin of the message on WhatsApp. Therefore, SEBI has not discharged its burden to prove the said message was UPSI. The Helix Advisory report referred to also states that from the devices seized from 26 entities of the Market chatter group, the data extracted therefrom indicated absence of "Market Chatter Group" which was the alleged group circulating UPSI according to Financial Chronicle article;

xxiv. Merely because an estimate closely matches the actual number does not change the fact that the same was a gossip / speculation and converts itself into UPSI. In any case in more than 101 instances where WhatsApp messages received and / or shared by *Noticee no. 2* with several clients / groups which contain such HOS information which did not match the actual numbers;

xxv. Since it was a generally available information, it cannot be UPSI. Since *Noticee no. 2* does not fall within the definition of insider, she cannot be alleged to have violated the SEBI PIT Regulations, 2015. The said interpretation (that a rumour becomes information in hindsight) would be extremely perverse as it would mean that a person is free to share HOS till such time that she verily believes that the HOS is false and cannot match. If the HOS ever matches the actual numbers, then the same is deemed to be UPSI. An information is UPSI or speculation at the time when it is shared and cannot take the nature of being a UPSI retrospectively once the actual numbers are out and there is a benefit of hindsight;

xxvi. In view of the aforesaid, it is most humbly submitted that the SCN against *Noticee no. 2* is liable to be dropped with no adverse inference.

Noticee no. 3 (Mr. Varun Khandelwal)

i. *Noticee no. 3* denies each and every statement, averment, contentions and allegations as contained in the SCN. Unless any statements, averments, contentions and/ or allegations are specifically admitted by him, the same should be deemed to be denied;

ii. During the course of the hearing held on October 27, 2022, *Noticee no. 3* in response to a query put to him directly in this behalf responded that *Noticee no. 3* was working as Principal Officer for Bullero Capital Private Limited (SEBI Registration No.

INP000004425) which holds a PMS license which is under surrender process since 2018 (which is yet to be concluded on account of probate related formality necessitated due to untimely accidental death of one of the clients of Bullero Capital). *Noticee no. 3* also submitted that he is an independent investor who deals in shares, securities and their derivatives on a daily basis in his individual capacity as a proprietary trader. In any given financial year (From FY 2015-16 to FY 2020-21), his trades in the stock market are in excess of INR 100 Crore as per the Securities Transaction Tax (STT) certificates;

iii. In fact, *Noticee no. 3* frequently trades in the scrip of the *Company* where he has executed 80 to 100 trades in the said scrip during the period from April 2016 to December 2017. *Noticee no. 3* has regularly traded in the scrip of the *Company* in the 12 months preceding the alleged violations and the said trades were in fact consistent with his trading pattern and were made in the ordinary course and without any reliance on the alleged UPSI whatsoever;

iv. 4 out of 6 trades of *Noticee no. 3* as listed in Table No. 4 of the SCN, which are alleged to be violative of the PIT Regulations, were undertaken after the information was announced on the Stock Exchanges. Thus, the SCN should be discharged against *Noticee no. 3* in respect of said 4 trades at the outset itself. Consequently, SEBI has erroneously considered these trades to be violative of the PIT Regulations in the SCN;

v. Table no. 4 of the SCN shows a calculation of profit of INR 1,125 pursuant to the allegedly violative trades. However, on a recalculation of the numbers provided in the same table, it is clear that in fact there was a loss of INR 1,125 and not a profit. This is relevant when assessing the rationale for the trades;

vi. Upon bare perusal of the results of the *Company* for the quarter ended June 30, 2017, it is pertinent to note that there is no substantial movement in the key indicators of the bank (neither on quarter-on-quarter basis or year-on-year basis) that would have caused any material change in the then prevailing market price of the shares of the *Company*. This is evident from the fact that the stock price of the *Company* showed no material movement during the period under consideration. Such meager volatility in the price of the equity shares of the *Company* itself indicates that the message does not qualify to be an UPSI as defined under regulation 2(1)(n) of the PIT Regulations, 2015 and that the apprehensions of SEBI made in the said SCN do not stand on its own feet;

vii. Squaring off the transactions even before the announcement of the said quarterly results itself indicates that such trades undertaken by *Noticee no. 3* were purely speculative in nature and based on independent analysis and not based upon any alleged UPSI;

viii. The SCN fails to establish any connection between *Noticee no. 3* and the *Company*, its promoters /directors /employees/ auditors with either him or with the person who sent

the message in the WhatsApp Group. Furthermore, the IR provided by SEBI also admits failure to establish any link whatsoever between the sender of the message, *Noticee no. 3* and the *Company*;

ix. *Noticee no. 3* was not the originator of the WhatsApp message and happened to be a recipient only by way of being on the WhatsApp Group. There was no direct message received by *Noticee no. 3* from the originator. In fact, SEBI also conducted search and seizure at *Noticee no. 3's* home as a part of this investigation and seized all his digital devices. However, no mala fide wrongdoing was found from the same and no adverse content was found by SEBI on the devices seized from *Noticee no. 3* during the search and seizure process;

x. Further, *Noticee no. 3* did not have any reason to believe, that *Noticee nos. 1 and 2* were 'insider' in terms of Regulation 2 (1) (g) of the PIT Regulations vis-à-vis the *Company*, as alleged or otherwise. Further, such allegation that *Noticee no. 3* was an 'insider' in terms of the PIT Regulations itself is based upon the allegation/assumption of SEBI that *Noticee nos. 1 and 2* become insider in terms of Regulation 2 (1) (g) of the PIT Regulations;

xi. *Noticee no. 3* does not have and had never in the past had any relationship with *Noticee nos. 1 and 2*. SEBI has accepted that the *Company* / promoters /directors / employees / auditors who had access to the financial results prior to the date of announcement of the same, have not leaked any UPSI. SEBI has investigated and found no leak in this matter covered by SCN issued to *Noticee no. 3*;

xii. From the very nature of the message, it is evident that the nature of the information falls under the category of 'Heard on Street' and is not UPSI. It is a well-known fact that nobody gives undue weightage to HOS while making investment decisions as it is pure speculation/gossip from unverified sources and that HOS functions like a grapevine;

xiii. In fact, HOS means that the estimate is not from the *Company* and, therefore, estimate sent on the WhatsApp Group was from an unknown source and such estimate, whose origin is not known cannot be regarded as UPSI;

xiv. Any *post facto* analysis done post result declaration is with the benefit of hindsight. In this background of estimates, the nature of a HOS estimate cannot change to UPSI retrospectively once the actual numbers match as there is no benefit of hindsight;

xv. In light of the decision of the Hon'ble Supreme Court dated September 26, 2022 passed in the Appeal SCNs and subsequent orders of Ld. Adjudicating Officers of SEBI *Noticee no. 3* humbly prays that no action as contemplated in paragraph 20 and 21 of the SCN may be taken against him and that SEBI ought to withdraw the SCN and discharge him from the extant proceedings;

xvi. *Noticee no. 3* has placed reliance on orders passed the Hon'ble Tribunal in *Chandrakala vs. SEBI (Appeal No. 209 of 2011)* and *Rajeev Vasant Sheth vs. SEBI (Appeal No. 536 of 2021)* in support of his contention that he has provided proper rationale for executing his trades and therefore he cannot be held responsible for violations of regulation 4(1) of the PIT Regulations, 2015.

CONSIDERATION AND FINDINGS

11. I have considered the allegations levelled against the *Noticees* in the SCN, written replies received from the *Noticee*s, submissions made by the *Noticees* during the personal hearing as captured in the written submissions filed and the materials available on record. Before dealing with the submissions made by the *Noticee*s, it would be apposite to refer to the relevant provisions of law pertaining to the matter, extract whereof is reproduced below:

The SEBI Act, 1992

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

12A. No person shall directly or indirectly—

(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;

The SEBI (PIT) Regulations, 2015

Communication or procurement of unpublished price sensitive information.

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

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

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:

12. I note from the SCN that the main allegation against *Noticee nos. 1 and 2* is that they being "insiders" have communicated the UPSI through WhatsApp groups and therefore have acted

in violation of Section 12A (d) & (e) of the SEBI Act, 1992 and regulation 3(1) of the PIT Regulations, 2015. Further, the charge against *Noticee no. 3* is that he being "insider" has traded in the shares of the *Company* while in possession of UPSI and therefore has acted in violation of Section 12A (d) & (e) of the SEBI Act, 1992 and regulation 4(1) of the PIT Regulations, 2015. While attributing the aforesaid charges, the SCN also records that the WhatsApp message containing the financial result relating to quarter ending June 2017 of the *Company,* the preparation of which started on July 01, 2017 was an UPSI prior to its disclosure to the Stock Exchanges on July 24, 2017 and accordingly the period of UPSI was observed to be starting from July 01, 2017 to July 24, 2017. Consequently, the trades executed in the scrip of the *Company* by *Noticee no. 3* while he was in possession of the UPSI during the above UPSI period were allegedly in violation of the provisions as stated in the SCN.

13. In respect of the aforesaid charges levelled against the *Noticees*, as noted earlier, the *Noticees* have contended that in view of the order dated March 22, 2021 passed by the Hon'ble SAT (in Appeal Nos. 308 of 2020 and other companion appeals) and order dated September 26, 2022 (in Civil Appeal Nos. 2252-2262/2021) passed by the Hon'ble Supreme Court upholding the aforesaid SAT order, no liability can be fastened on the *Noticees*. In this regard, I note that the Hon'ble SAT while passing its aforesaid order dated March 22, 2021, has observed as under:

> *"12. It is an admitted fact that despite great efforts by the respondent SEBI to find out the source of information or to find out leakage, if any, of the information from the side of financial team, legal team or the audit team of the respective companies, no information could be recovered. The impugned order shows that time and again the learned AO has expressed the inability in this regard.*
>
> *13. It is to be noted that admittedly the respondent SEBI has mined hundreds of similar messages from the devices of the appellants. Out of those numerous messages only in the present six cases the messages matched with the exact figure of the financial results. It is not the case of the respondent SEBI that the present impugned messages were coded differently. On the other hand, it would show that within minutes of receipt of the messages by the respective appellant she/he forwarded it to several persons including one of the group members who happens to be a journalist of Reuters.*
>
> *14. As regards the estimates of the broker which subsequently matched with the published result, the AO reasoned that it is not the appellant's claim that the impugned message had arisen from the market research like that of those brokerage houses. However, the learned AO failed to appreciate that the appellants were pleading that the WhatsApp messages might have been originated from the brokerage houses, or from the estimates found on the platform of Bloomberg which were floated and were in the public domain. The learned AO also failed to take into consideration that there were numerous other messages of similar nature received and forwarded by the appellant which did not at all match with the*

published financial results. Appellant Shruti Vora in the case of Wipro has specifically pointed out that along with the said message similar massage regarding Axis Bank had also reached her which she had also forwarded. The published results, in that case however, were widely different. The learned AO did not give any weightage to the same.

15. The above definitions of the 'unpublished price sensitive information' and 'insider' would show that a generally available information would not be an unpublished price sensitive information.

16. The information can be branded as an unpublished price sensitive information only when the person getting the information had a knowledge that it was unpublished price sensitive information. Though knowledge is a state of mind of a person, the same can be proved on preponderance of probabilities on attendant circumstances. In the present case, there are no attendant circumstances at all except the possibilities as enumerated by the learned AO. Proximity of time, similarity between the information were the only two factors that weighed with the learned AO to brand the information as unpublished price sensitive information. In the case of Samir Arora vs. SEBI (2004) SCC Online SAT 90 this Tribunal had rejected the arguments of SEBI that there is no need for linkage between the potential source of the unpublished price sensitive information and the person allegedly in possession of the alleged unpublished price sensitive information.

18. The learned counsel for the appellant argued that merely passing of the information without any trading in the scrips of the concerned company, would not amount to violation of PIT Regulations. They took us through the notes below the relevant regulations which would indicate that trading having possession of unpublished price sensitive information is prohibited. However, since the Regulation 3 clearly prohibits passing of unpublished price sensitive information otherwise than for valid reasons. However, in the facts of the case, in our view the respondents failed to prove any preponderance of probabilities that the impugned messages were unpublished price sensitive information, that the appellants knew that it was unpublished price sensitive information and with the said knowledge they or any of them had passed the said information to other parties."

Further, it is noted that the Hon'ble Supreme Court vide its order dated September 26, 2022, while upholding the aforesaid SAT order has observed as follows:

"2. The Appellate Tribunal by its order under challenge, set aside the determination made by Adjudicating Officer who had imposed penalty in the sum of Rs.15,00,000/- (Rupees fifteen lakhs only) upon the Appellants before the Tribunal in each of the proceedings.

3. After considering the factual aspects of the matter, including the statutory provisions, the Tribunal found that in the facts and circumstances of the case no liability could be fastened on said appellants before the Tribunal.

5. The instant appeals are, therefore, dismissed purely in the facts and circumstances leaving all questions open."

14. In this regard, I note that on the basis of a common search and seizure operation, certain proceedings were initiated against various entities including the *Noticees* wherein several show cause notices were issued by SEBI (including the Appeal SCNs issued to *Noticee no. 2*). SEBI's enforcement proceedings were an off-shoot of the search and seizure operation through which the device of *Noticee no. 2* was seized and WhatsApp chats were extracted therefrom. The only difference in the show cause notices issued in other matters was that of the companies such as Wipro Limited, Ambuja Cement Limited, Mindtree Limited, Bajaj Auto Limited, Bata India Limited and Asian Paints Limited relating to which alleged UPSI was circulated. All the allegations in the present SCN levelled against the *Noticees* are identical to the allegations recorded in earlier show cause notices issued to *Noticee no. 2*. Additionally, in the present SCN the charge of violation of regulation 4(1) of the PIT Regulations, 2015 has been levelled against *Noticee no. 3,* who was not a Noticee in the said Appeal SCNs. As stated above, the Appeal SCNs issued in the matters of Wipro Limited, Ambuja Cement Limited, Mindtree Limited, Bajaj Auto Limited, Bata India Limited and Asian Paints Limited were adjudicated upon by the Adjudicating Officers ("**AOs**") of SEBI and culminated into multiple orders passed by the AOs, against which *Noticee no. 2* had filed appeals before the Hon'ble SAT. The Hon'ble Tribunal quashed and set aside the orders of the AOs vide its order dated March 22, 2021. Aggrieved by the said SAT order, SEBI had filed Civil Appeal Nos. 2252-2262 impugning the said SAT order before the Hon'ble Supreme Court which was dismissed on September 26, 2022, with the findings extracted hereinabove.

15. Thus, taking cognizance of the aforesaid orders passed by the Hon'ble SAT and the Hon'ble Supreme Court, I note that the AOs in identical matters such as Mindtree Ltd., Bata Ltd., Ultratech Cement Ltd., Infosys Ltd., TCS Ltd. and ITC Ltd. have also dropped the allegations *qua* the entities including *Noticee no. 2* and disposed of the Appeal SCNs issued in those matters. As the facts giving rise to the allegations in the Appeal SCNs are identical to the facts presented before me, arising out of the WhatsApp chats extracted from the mobile phone of *Noticee no. 2* under the same search and seizure operation, I note that the decision of the Hon'ble Supreme Court in the Appeal SCNs applies to the present proceedings.

16. In view thereof, I find that the allegations levelled against *Noticee nos. 1 and 2* in the SCN issued in the present matter do not sustain. Consequently, the charge of violating regulation 4(1) levelled against *Noticee no. 3* alleged on the strength of *Noticee nos. 1 and 2*, being insiders, having communicated the UPSI to *Noticee no. 3* who in turn is alleged to have traded in the shares of the *Company* while in possession of UPSI is also liable to be dropped. In view of my aforesaid

findings exonerating the *Noticees* from the rigor of the charges leveled against them in the SCN, I do not find it relevant to deal with other submissions made by the *Noticees* in their replies/submissions as recorded above.

17. As noted above, I note that the Hon'ble Supreme Court vide its aforesaid order has held *inter alia* that in the facts and circumstances of the present case no liability could be fastened on said appellants including *Noticee no. 2* and therefore dismissed the civil appeals filed by SEBI purely in the facts and circumstances of those cases leaving all questions open. However, in my view, a set of other facts that are present in this case require further deliberation.

18. In this background, I deem it appropriate to deal with the conduct of *Noticee nos. 1 and 2* specifically. In this regard, I note that *Noticee no.1* i.e., Mr. Shailendra Mehta vide his letter dated July 06, 2018 (filed in response to SEBI's letter dated June 22, 2018) has submitted that he was employed with STCI Primary Dealer Ltd.('**STCI**') during the period August 08, 2016 to July 31, 2017. *Noticee no. 1* was working as a proprietary equity dealer at STCI and was governed by its code of conduct as stipulated by the Human Resource Policy Manual of STCI ('**Manual**'). It is noted that STCI is a Stand Alone Primary Dealer registered as an Non-Banking Financial Company ('**NBFC**')under Section 45-IA of the Reserve Bank of India Act, 1934 playing an active role in the Government Securities ('**G-Sec**') market, both in its primary and secondary market segments through various obligations like participating in Primary auction, market making in G-Secs, predominance of investment in G-Secs, achieving minimum secondary market turnover ratio, maintaining efficient internal control system for fair conduct of business etc. It is further noted that it is a company permitted by Reserve Bank of India to undertake dealing in corporate bonds as a "core" activity permitted to Stand Alone Primary Dealers. Further, as STCI meets the prescribed criteria and is permitted to operate as a "diversified" Primary Dealer, it is permitted to trade in equity and equity derivatives on proprietary account only as a "non-core" activity. Also, as per the Reserve Bank of India guidelines, STCI's investment in G-Secs have predominance over the non-core activities mentioned above. It is pertinent to note that STCI is required to submit a duly executed & signed Undertaking ('**Undertaking**') on a Non-Judicial stamp paper in the prescribed format to RBI at the time of renewal of its Primary Dealership Authorization every three years. One of such undertakings of the said Undertaking stipulates that STCI shall abide by the code of conduct as laid down by RBI/SEBI, the Primary Dealers' Association of India ('**PDAI**') and the Fixed Income, Money Markets and Derivatives Association of India ("**FIMMDA**"). The RBI regulations mandates that all Primary Dealers have to join PDAI and FIMMDA and all its employees have to abide by the code of conduct framed by them and have to comply with such other actions/measures taken by PDAI and FIMMDA in the interest of the financial markets.

19. I note that at the time when *Noticee no. 1* posted the Message in the WhatsApp Group on July 21, 2017, he was still employed with STCI and therefore was bound by the code of conduct as stipulated by the Manual of STCI and FIMMDA. In this regard, I note that some of the relevant stipulations of code of conduct framed by STCI for its employees *inter alia* are as under:

3.1.4: Insider Trading

a) Employees or directors who have access to confidential information are not permitted to use or share that information for stock trading purposes or for any other purpose except the conduct of the company's business. All non-public information gathered during the course of business about any other company and all non-public information about STCI PD should be considered confidential information. To use non-public information for personal financial benefit or to "tip" others who might make an investment decision on the basis of this information is not only unethical but also illegal. Indulging in insider trading of any kind will be considered breach of contract and due disciplinary action can be initiated against the employee including termination of service. [para 3.1.4]

3.1.5: Avoidance of Conflict of Interest

b) The company values employee's good judgment. Employees should avoid any activity or association that conflicts with, appears to conflict with, or is likely over time to conflict with exercise of independent judgment of the Company's best interests. [para 3.1.5(a)]

c) Employees should never use their employment with the Company for personal gain and should avoid outside activities or influences which conflict with or impair their performance of duties, or which give the appearance of doing so. [para 3.1.5(b)]

d) Participating in the regulatory or other activities of a community or governmental body that may have a direct impact on the business of the Company. [para 3.1.5(c)(v)]

3.2.5: Relationship with Press & Media

e) Company authorization is required before an employee can speak to the media or public forum on behalf about the company. [para 3.2.5(a)]

f) Authorized employees are expected to maintain discretion while communicating with any outside party. [para 3.2.5(c)]

g) Occasional contribution by employees of articles of literary, artistic, scientific, religious nature not detrimental to the interests of the company may be undertaken, subject to the condition that the employee intimates the company and he/she shall not undertake or shall discontinue such work, if so directed by the company. [para 3.2.5(d)]

h) However, it will be considered as a breach of contract if,

i. *an employee contributes any article or write any letter in his/her own name, anonymously or in the name of other person, to any newspaper or periodical or magazine or publish or cause to publish or pass on to others any documents, papers or information which may come to the employee's possession or is within the employee's knowledge about the Company or its customers*

ii. *Owns or conducts or participates in the editing or management of any newspaper or other publication(s). [para 3.2.5(e)]*

Thus, I note that by being an employee of STCI (an RBI approved Stand Alone Primary Dealer) *Noticee no.1* was bound by the code of conduct framed by STCI and the practice of circulating the financial results of certain companies before the respective companies publish the same officially in WhatsApp groups, may be in potential breach of certain such stipulations.

20. It is noted that while replying to the SCN, *Noticee no. 2* i.e., Ms. Shruti Vishal Vora has submitted that she has been working with Antique Stock Broking Ltd. ('**Antique Broking**') since 2008 in various roles and capacity including Technical Analyst, Derivatives Sales Department etc. Since 2016, *Noticee no. 2* has been working in Institutional Sales division of Antique Broking. I note that Antique Broking is a Stock Broker having SEBI Registration No. NZ000001131 and therefore it and its employees are governed by the Code of Conduct as stipulated under Schedule II read with regulation 9 of the Stock Brokers Regulations, 1992 (hereinafter referred to as "**Stock Broker Regulations**") which *inter alia* prescribes as under:

Stock brokers to abide by Code of Conduct.

9. The stock broker holding a certificate shall at all times abide by the Code of Conduct as specified in Schedule II.

SCHEDULE –II

Code of Conduct for Stock Broker

A. General.

(1) Integrity: A stock-broker, shall maintain high standards of integrity, promptitude and fairness in the conduct of all his business.

(2) Exercise of due skill and care: A stock-broker shall act with due skill, care and diligence in the conduct of all his business.

(3) Manipulation : A stock-broker shall not indulge in manipulative, fraudulent or deceptive transactions or schemes or spread rumours with a view to distorting market equilibrium or making personal gains.

(4) Malpractices: A stock-broker shall not create false market either singly or in concert with others or indulge in any act detrimental to the investors interest or which leads to interference with the fair and smooth functioning of the market. A stockbroker shall not involve himself in excessive speculative business in the market beyond reasonable levels not commensurate with his financial soundness.

(5) Compliance with statutory requirements: A stock-broker shall abide by all the provisions of the Act and the rules, regulations issued by the Government, the Board and the Stock Exchange from time to time as may be applicable to him.

B. Duty to the Investor

(4) Business and Commission:

(a) A stock-broker shall not encourage sales or purchases of securities with the sole object of generating brokerage or commission.

(b) A stock-broker shall not furnish false or misleading quotations or give any other false or misleading advice or information to the clients with a view of inducing him to do business in particular securities and enabling himself to earn brokerage or commission thereby.

(7A) Investment advice in publicly accessible media—

(a) A stock broker or any of his employees shall not render, directly or indirectly, any investment advice about any security in the publicly accessible media, whether real-time or non-real-time, unless a disclosure of his interest including the interest of his dependent family members and the employer including their long or short position in the said security has been made, while rendering such advice.

(b) In case an employee of the stock broker is rendering such advice, he shall also disclose the interest of his dependent family members and the employer including their long or short position in the said security, while rendering such advice.

21. I further note that taking cognizance of the fact that unauthenticated news related to various scrips are circulated in blogs/chat forums/e-mail etc. by employees of Broking Houses/Other Intermediaries without adequate caution as mandated in the Code of Conduct for Stock Brokers and respective Regulations of various intermediaries registered with SEBI, SEBI issued Circular No. Cir/ISD/1/2011 dated March 23, 2011 on '*Unauthenticated news circulated by SEBI Registered Market Intermediaries through various modes of communication*' (hereinafter referred to as "**Circular**") which also specified that: (i) In various instances, it has been observed that the Intermediaries do not have proper internal controls and do not ensure that proper checks and balances are in place to govern the conduct of their employees (ii) Due to lack of proper internal controls and poor training, employees of such intermediaries are sometimes not aware of the damage which can be caused by circulation of unauthenticated news or rumours and (iii) It is a well-established fact that market rumours can do considerable damage to the normal functioning and behaviour of the market and distort the price discovery mechanisms,. It is noted that the Circular *inter alia* mandates as under:

"3. In view of the above facts, SEBI Registered Market Intermediaries are directed that:

- *Proper internal code of conduct and controls should be put in place.*
- *Employees/temporary staff/voluntary workers etc. employed/working in the Offices of market intermediaries do not encourage or circulate rumours or unverified information obtained from client, industry, any trade or any other sources without verification.*
- *Access to Blogs/Chat forums/Messenger sites etc. should either be restricted under supervision or access should not be allowed.*
- *Logs for any usage of such Blogs/Chat forums/Messenger sites (called by any nomenclature) shall be treated as records and the same should be maintained as specified by the respective Regulations which govern the concerned intermediary.*
- *Employees should be directed that any market related news received by them either in their official mail/personal mail/blog or in any other manner, should be forwarded only after the same has been seen and approved by the concerned Intermediary's Compliance Officer. If an employee fails to do so, he/she shall be deemed to have violated the various provisions contained in SEBI Act/Rules/Regulations etc. and shall be liable for actions."*

It is noted that in order to ensure availability of comprehensive information mentioned in the circulars pertaining to Surveillance of Securities Market at one place, the aforesaid Circular is further incorporated in the Master Circular No. SEBI/HO/ISD/ISD-PoD-2/P/CIR/2022/118 dated September 13, 2022 (hereinafter referred to as "**Master Circular**").

22. To put the aforesaid deliberation in perspective, I note that both *Noticee nos. 1 and 2* evidently are persons who have sufficient knowledge and understanding about the nature and working of the financial/money/securities market. It is further noted that the Codes of Conduct prescribed by STCI, PDAI and FIMMDA and under the Stock Broker Regulations are also applicable to *Noticee no 1* and *Noticee no. 2* (she being employee of Antique Broking to which the said Code of Conduct under the Stock Broker Regulations applies), respectively. Therefore, it is expected that *Noticee no. 1* and *Noticee no. 2* would have to act in conformity with the said standards and mandates as prescribed under the said Codes of Conduct as applicable to them respectively and additionally in the case of *Noticee no 2,* also in accordance with the mandates specified under the extant SEBI Circular on the subject.

23. At this stage, it is noteworthy that the entire thrust of arguments advanced by *Noticee nos. 1 and 2* is that at the time of receiving/posting the Message, they did not believe the said Message to be UPSI as the same was HOS and a rumour which they shared/forwarded. Further, the said rumour was in the nature of mere speculation or gossip about the financial results of the *Company*. Since the information was mere rumours, gossip and market speculation forwarded by people, the same was generally available information and not UPSI.

24. In this context, as elaborated above, I note that *Noticee nos. 1 and 2* were, in fact, financial market professionals working with a Primary Dealer (STCI) and a Brokerage firm (Antique

Broking), regulated by RBI and SEBI, respectively, and are having significant fluency and knowledge in market/trading and to whom the Codes of Conduct applied. As regards the contention of *Noticee nos. 1 and 2* that the Message was in the nature of HOS and rumour and thus not UPSI, it appears that the Codes of Conduct cited above prohibits spreading of rumours or communicating in a manner inimical to the markets. Therefore, in my considered view, it cannot be a case of *Noticee nos. 1 and 2* that in order to get out of the rigor of the charges levelled against them in the SCN, they are permitted to adopt a defense which runs contrary to the Codes of Conduct applicable to them.

25. To sum up the aforesaid deliberation in its context, I find it appropriate to capture the legislative, regulatory scheme and mandate of the Broker Regulations, 1992. Regulation 9 of the Stock Brokers Regulations casts an obligation on a stock broker that he/she shall at all-time abide by the Code of Conduct as specified in Schedule II. I note that adherence to the said Code of Conduct is not a onetime exercise but an ongoing process which a stock broker and its employees ought to exercise/practice at all time of their dealings in the securities market. Admittedly, it is the unequivocal contention of *Noticee nos. 1* and *Noticee no. 2* that the said Message (pertaining to the financial results of a listed company .ie., HDFC Bank) was in the nature of speculation/rumour which they forwarded/circulated in the WhatsApp groups including WhatsApp Group and thus it appears that the act of *Noticee no. 1* of forwarding the Message (understood by him to be in the nature of speculation and rumour) may have been in violations of the code of conduct applicable to him as prescribed by STCI, PDAI and FIMMDA.

26. Further, it appears that *Noticee no. 2* may have acted in violation of the Code of Conduct specified under the Broker Regulations 1992, specifically Clause A(3) which *inter alia* prohibits spreading of rumors. Consequently it appears that violation of Clause A(3) may further lead to violations of other Clauses of the said Code of Conduct (as by spreading rumours with respect to financial results of a listed entity i.e., the *Company*,) *Noticee no. 2* has not acted with due skill, care and diligence in the conduct of her business as expected of her and as mandated under Clause A (2) and has also not maintained high standards of integrity, promptitude and fairness in the conduct of her business as stipulated under Clause A(1). Similarly, by not adhering to and complying with the aforesaid Clauses, it appears that *Noticee no. 2* has further breached Clause A(4) inasmuch as the said conduct has amounted to interference with the fair and smooth functioning of the securities market when she circulated such rumour about the financial results of a listed company that too just around the time of their official announcement by the *Company* on the platform of the Stock Exchanges. Resultantly, the non-compliance of the aforesaid clauses of the Code of Conduct may also lead to breach of Clause A(5) of said Code of Conduct as she failed to comply with the aforesaid clauses. Pertinently,

the Code of Conduct under the Stock Broker Regulations further mandates that Noticee *no. 2* shall not render any investment advice about any security to investor unless a disclosure of her interest including the interest of her dependent family members and the employer including their long or short position in the said security has been made, while rendering such advice.

27. More pertinently, the said Circular mandates that: (i) proper internal code of conduct and controls should be put in place by a Stock Broker, (ii) employee employed/working in the Offices of a Stock Broker does not encourage or circulate rumours or unverified information obtained from client, industry, any trade or any other sources without verification, (iii) access to Blogs/Chat forums/Messenger sites etc. should either be restricted under supervision or access should not be allowed and logs for any usage of such Blogs/Chat forums/Messenger sites (called by any nomenclature) shall be treated as records and the same should be maintained as specified by the respective Regulations which govern the concerned intermediary and (iv) Employees should be directed that any market related news received by them either in their official mail/personal mail/blog or in any other manner, should be forwarded only after the same has been seen and approved by the concerned Intermediary's Compliance Officer. If an employee fails to do so, he/she shall be deemed to have violated the various provisions contained in SEBI Act/Rules/Regulations etc. and shall be liable for actions.

28. In a nutshell, the dissemination of unauthenticated news/unverified information/rumors pertaining to the financial results of the listed companies, ahead of its publication on the Stock Exchanges or otherwise, can influence the stock prices of such listed companies or trading thereat. The spreading of unauthenticated news/unverified information/rumors interferes with the price discovery mechanism of the stock exchanges and therefore impedes the fair and smooth functioning of the securities market. In the present age and time of information boom and the reach of social media, it becomes incredibly easy for entities to spread such unauthenticated news/unverified information at great speed through tools (such as WhatsApp, Telegram etc.). It is imperative that such menace needs to be curbed to safeguard the interest of the innocent investors and the securities market. Therefore, it is incumbent upon the registered Intermediaries/Trading Member/Stock Broker and their employees to refrain from rumormongering or transmission of unauthenticated news/unverified information in the interest of market integrity. Thus, the entities associated with the securities market and financial markets and their employees, suppliers or vendors would need to adhere to the internal checks and balances created/mandated by the regulated entities (such as code of conduct mandated for a broking house or prescribed by an industry association) and also comply with the regulatory framework prescribed by the regulator in this regard. Any such deviation by the regulated entities or their employees, suppliers or vendors from the said

prescribed or expected market behavior needs to be dealt with strictly so that these entities or their employees, suppliers or vendors do not themselves indulge or encourage others in spreading of unauthenticated news/unverified information or rumors.

29. In view of the above deliberations, I am of the firm view that this is a fit case where the aspect relating to compliance with the requirement of the Code of Conduct under Schedule II read with regulation 9 of the Stock Broker Regulations, 1992 and the SEBI Circular dated March 23, 2011 by *Noticee no. 2* and her employer, Antique Broking requires a thorough examination by SEBI in accordance with applicable securities laws.

30. It is also in fitness of thing that STCI, PDAI and FIMMDA may be informed about the conduct of *Noticee no. 1* as he was an employee of STCI when he posted the Message in the WhatsApp Group for taking appropriate action in accordance with the code of conduct as deemed necessary and appropriate by STCI, PDAI and FIMMDA.

31. As noted earlier, *Noticee no. 3* was working for Bullero Capital Private Limited (SEBI Registration No. INP000004425) which holds a PMS license which is pending with SEBI under surrender process since 2018. *Noticee no. 3* has further confirmed that he was working as Principal Officer at Bullero Capital Private Limited. Therefore, I am of the view that this aspect also requires an examination by SEBI to see if at the relevant time the conduct of *Noticee no.3* and Bullero Capital Private Limited was in conformity with the SEBI (Portfolio Managers) Regulations, 1993.

32. Keeping in view the observation made in the preceding paragraphs and having considered materials available on record including orders of the Hon'ble SAT and the Hon'ble Supreme Court and the submissions advanced by the *Noticees,* I hold that the charges levelled against the *Noticees* relating to violation of provisions of the Insider Trading Regulations as alleged in the SCN are found to be not established. However, at the same time there is a need to look into the conduct of the *Noticee nos. 2 and 3* by SEBI as discussed above.

ORDER

33. 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 15G of the SEBI Act, 1992 and SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995, hereby issue the following direction:

    i. The Show Cause Notice dated February 03, 2021 issued against Noticee nos. 1 to 3 i.e., Mr. Shailendra Mehta, Ms. Shruti Vishal Vora and Mr. Varun Khandelwal, is hereby disposed of without any direction.

34. SEBI to write to STCI, PDAI and FIMMDA for them to look into the conduct of Noticee no. 1 (Mr. Shailendra Mehta) in terms of the codes of conduct applicable to Noticee no. 1 and take necessary and appropriate measures, if deemed fit.

35. SEBI to examine the role of Noticee no. 2 (Ms. Shruti Vishal Vora) and her employer Antique Stock Broking Ltd. for any possible violations of Code of Conduct prescribed under Schedule II read with regulation 9 of the Stock Broker Regulations, 1992, the Circular dated March 23, 2011 and/or other relevant rules and regulations.

36. SEBI to examine the role of Noticee no. 3 (Mr. Varun Khandelwal) and Bullero Capital Private Limited under the SEBI (Portfolio Managers) Regulations, 1993 (including the Code of Conduct prescribed in Schedule III of such Regulations) and/or other relevant rules and regulations.

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

38. A copy of this Order shall be served upon the recognized Stock Exchanges, STCI, PDAI, FIMMDA, Antique Stock Broking Ltd., Bullero Capital Private Limited and the Noticees for information and necessary compliance.

Sd/-

DATE: NOVEMBER 10, 2022 **PRAMOD RAO**

PLACE: MUMBAI **EXECUTIVE DIRECTOR**

SECURITIES AND EXCHANGE BOARD OF INDIA