

SECURITIES AND EXCHANGE BOARD OF INDIA

FINAL ORDER

UNDER SECTIONS 11(1), 11(4) AND SECTION 11B OF THE SEBI ACT, 1992 READ WITH REGULATION 11 OF THE SECURITIES AND EXCHANGE BOARD OF INDIA (PROHIBITION OF FRAUDULENT AND UNFAIR TRADE PRACTICES RELATING TO SECURITIES MARKET) REGULATIONS, 2003 AND REGULATION 44 OF THE SEBI (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 1997 READ WITH REGULATION 32 OF THE SEBI (SUBSTANTIAL ACQUISITION OF SHARES AND TAKEOVERS) REGULATIONS, 2011.

IN THE MATTER OF INCAP FINANCIAL SERVICES LIMITED.

NOTICEES		PAN
1.	ABHAY DATTATRAY JAVLEKAR	ACVPJ4679B
2.	ARVIND BABULAL GOYAL (DIRECTOR – INCAP FINANCIAL SERVICES LIMITED)	ACIPG0193J
3.	DHARMENDRA BHOJAK	AFAPB7100D
4.	POOJA GOYAL	AEHPG5959B
5.	RAMESH DWARKADAS DAGA	AMTPD7404Q

1. BACKGROUND

- 1.1 Securities and Exchange Board of India (“**SEBI**”) had received a complaint from India Infoline Limited wherein it was alleged that an individual (Prem Agarwal) had circulated a message through short message service (“**SMS**”) regarding trading in the scrip of Incap Financial Services Limited (“**Incap/the Company**”) on January 11, 2011, stating: “*BSE call buy INCFS (530887) at CMP TRGT 35/50 within a week news (splited), going to declare dividend within week so hurry up don’t miss profit www.indiainfoline.com*”.
- 1.2 On the basis of the aforementioned complaint, SEBI undertook an investigation in the matter for the period from December 1, 2010–February 23, 2011 (“**Investigation period**”) to ascertain whether there was any violation of the provisions of the SEBI Act, 1992 (“**SEBI Act**”), the SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003 (“**PFUTP Regulations 2003**”), the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations 1997 (“**Takeover Regulations 1997**”) and the SEBI (Prohibition of Insider Trading) Regulations, 1992 (“**Insider Trading Regulations 1992**”).
- 1.3 Incap is a company incorporated under the Companies Act, 1956 (“**Companies Act**”) on March 31, 1994. The shares of the Company were listed on the Bombay Stock Exchange Limited (“**BSE**”) during the Investigation period. The scrip was suspended from trading

on February 24, 2011, by BSE, for non-compliance with the provisions of the Listing Agreement.

1.4 From the Investigation Report, the following is noted:

A. The Board of Directors of the Company was as under:

TABLE I – BOARD OF DIRECTORS (SOURCE: BSE WEBSITE)		
Sr. No.	NAME	DESIGNATION
1.	ARVIND BABULAL GOYAL	EXECUTIVE DIRECTOR AND COMPLIANCE OFFICER
2.	AMIT N PATEL	INDEPENDENT DIRECTOR
3.	SATISH R MANDOWARA	INDEPENDENT DIRECTOR

B. The shareholding pattern of the Company was as under:

TABLE II – SHAREHOLDING OF INCAP FOR THE PERIOD FROM 30.09.2010 – 31.03.2011 (SOURCE: BSE WEBSITE)				
	NAME	% AS ON 30.09.2010	% AS ON 31.12.2010	% AS ON 31.03.2011
A.	PROMOTER AND PROMOTER GROUP			
1.	BHAGWANBHAI P. PATEL	2.23	2.23	2.23
2.	NIRANJAN K. PATEL	2.11	2.11	2.11
3.	PRAFUL C. PATEL	1.76	1.76	1.76
4.	DASRATH B. PATEL	1.55	1.55	1.55
5.	KANTILAL P. PATEL	0.45	0.45	0.45
6.	AMIT PATEL	0.42	0.42	0.42
7.	KIRTI S. KOTARIA	0.42	0.42	0.42
	TOTAL	8.94	8.94	8.94
B.	PUBLIC	91.06	91.06	91.06
C.	TOTAL (A + B)	100.00	100.00	100.00

C. Prior to the Investigation period i.e. September 1, 2010 to November 30, 2010, the scrip of Incap was trading with an opening price of ₹38.65 and closing price of ₹31.55, a high price of ₹38.65 with a low price of ₹22.20. However, during the Investigation period, the price of the scrip decreased from ₹31.10 to ₹4.43 (difference of ₹26.67 or 85.76% fall in price).

D. The price–volume analysis of the scrip of Incap is provided below:

TABLE III: PRICE–VOLUME ANALYSIS OF THE SCRIP OF INCAP (SOURCE: BSE WEBSITE)							
PERIOD	DATES		OPENING PRICE (VOLUME) ON FIRST DAY OF THE PERIOD	CLOSING PRICE (VOLUME) ON LAST DAY OF THE PERIOD (₹)	LOW PRICE (VOLUME) DURING THE PERIOD (₹)	HIGH PRICE (VOLUME) DURING THE PERIOD (₹)	AVG. NO. OF (SHARES) TRADED DAILY DURING THE PERIOD
BEFORE INVESTIGATION PERIOD	1.09.2010 – 30.11.2010	PRICE	38.65	31.55	22.20	38.65	9,101
		VOLUME	200	1,06,481	100	1,06,481	
DURING INVESTIGATION PERIOD	1.12.2010 – 23.02.2011	PRICE	31.10	4.43	4.43	33	86,414
		VOLUME	1,86,592	38,322	305	8,96,015	
AFTER INVESTIGATION PERIOD	23.02.2011 – 23.05.2011	PRICE	THE SCRIP WAS SUSPENDED FROM TRADING BY THE BSE FOR NON– COMPLIANCE WITH THE VARIOUS PROVISIONS OF THE LISTING AGREEMENT ON 24.02.2011				
		VOLUME					

E. Abhay Javlekar (“**Abhay Javlekar/Noticee no. 1**”), Arvind Babulal Goyal (“**Arvind Goyal/Noticee no. 2**”), Dharmendra Bhojak (“**Noticee no. 3**”), Pooja Goyal (“**Noticee no. 4**”) and Ramesh Dwarkadas Daga (“**Ramesh Daga/Noticee no. 5**”) (Collectively referred to as “**Noticees**”), had bought shares during the Investigation period, prior to the circulation of the SMS and thereafter, some of the aforementioned Noticees had sold shares in the securities market post the circulation of the aforesaid SMS. Details regarding client concentration in the scrip of Incap (predominantly the aforementioned Noticees and entities to whom off–market transfers were made by them, viz. Dhaval Amrish Shah, Dharmesh Visariya, Manjulaben Patel and Chandra Shekhar Sunil) are provided below:

TABLE IV – CLIENT CONCENTRATION IN THE SCRIP OF INCAP DURING THE INVESTIGATION PERIOD					
BUY CLIENT NAME	TOTAL	% OF TRADED VOLUME	SELLING CLIENT NAME	TOTAL	% OF TRADED VOLUME
ABHAY JAVLEKAR	9,28,482	18.21	ABHAY JAVLEKAR	18,75,470	36.79
DHARMENDRA BHOJAK	3,42,595	6.72	DHARMENDRA BHOJAK	3,08,626	6.05
JV STOCK BROKER PVT. LTD.	1,89,422	3.72	DHAVAL AMRISH SHAH	2,43,567	4.78
DHAVAL AMRISH SHAH	1,84,930	3.63	JV STOCK BROKER PVT. LTD.	1,89,422	3.72
POOJA ARVIND GOYAL	134,551	2.64	RAMESH DAGA	1,80,803	3.55
RAMESH DAGA	1,09,224	2.14	DHARMESH VISARIYA	1,58,000	3.09
ELIZABETH LOBO ELIZABETH	1,00,000	1.96	POOJA ARVIND GOYAL	1,32,181	2.59
P N VIJAY	1,00,000	1.96	ARVIND GOYAL	1,12,030	2.19
NAILESH SWARUP CHAND	85,000	1.67	MANJULABEN PATEL	95,000	1.86
SHAISHIL TUSHARKUMAR	66,006	1.29	CHANDRA SHEKHAR SUNIL	79,545	1.56
TOP 10 BUY CLIENTS	22,40,210	43.94	TOP 10 SELLING CLIENTS	33,74,644	66.19
REMAINING CLIENTS	28,58,210	56.06	REMAINING CLIENTS	17,23,776	33.81
TOTAL TRADED VOLUME	50,98,420	100.00	TOTAL TRADED VOLUME	50,98,420	100.00
*ABHAY JAVLEKAR WAS THE TOP CLIENT IN THE SCRIP ON BUY AS WELL AS SELL SIDE WITH GROSS BUY OF 9,28,482 SHARES AND GROSS SELL OF 18,75,470 SHARES.					

- F. Abhay Javlekar, Arvind Goyal, Dharmendra Bhojak, Pooja Goyal and Ramesh Daga were found to have indulged in synchronised trading amongst themselves, self-trades and reversal of trades, which had allegedly resulted in a false appearance of trading and manipulation of the trading volumes in the scrip of Incap in violation of the relevant provisions of the SEBI Act read with the PFUTP Regulations 2003.
- G. Arvind Goyal has played a pivotal role in the manipulation/volume creation in the scrip of Incap on account of having allegedly traded in the name of Abhay Javlekar, Dharmendra Bhojak, Pooja Goyal and Ramesh Daga.
- H. Abhay Javlekar, Arvind Goyal and Ramesh Daga had earned profits while Pooja Goyal and Dharmendra Bhojak incurred losses with respect to their trading in the scrip of Incap. The unlawful gains by Arvind Goyal, Abhay Javlekar and Ramesh Daga were through the sale of shares of Incap when the price of the scrip was falling thereby avoiding loss.
- I. Further, the combined equity shareholding of Abhay Javlekar, Arvind Goyal and Dharmendra Bhojak in Incap had crossed 15% on September 30, 2010 and a further 5% twice, the first on October 16, 2010 and the second, by them along with Pooja Goyal and Ramesh Daga on December 6, 2010.

AD INTERIM EX PARTE IMPOUNDING ORDER DATED OCTOBER 20, 2015:

- 2.1 Upon a consideration of the Investigation Report, vide an *Ad Interim Ex Parte Impounding Order* ("**Impounding Order**") dated October 20, 2015, SEBI *prima facie* found that the trading by Abhay Javlekar, Arvind Goyal and Ramesh Daga was in violation of Sections 12A(a), (b) and (c) of the SEBI Act and Regulations 3(a), (b), (c), (d) read with Regulations 4(1), 4(2)(a) and (g) of the PFUTP Regulations 2003. Accordingly, vide the aforesaid Order, SEBI *inter alia* directed that the amount of unlawful gains/loss avoided i.e. **₹5,87,12,087.59** be impounded, jointly and severally from Abhay Javlekar, Arvind Goyal and Ramesh Daga.
- 2.2 However, till date, the aforementioned Noticees/individuals had failed to ensure compliance with the *Impounding Order*.

SHOW CAUSE NOTICE DATED FEBRUARY 29, 2016:

2.3 In this context, SEBI had issued a Show Cause Notice dated February 29, 2016 (“SCN”) to Abhay Javlekar, Arvind Goyal, Dharmendra Bhojak, Pooja Goyal and Ramesh Daga *inter alia* alleging violation of the provisions of:

- (A) **Sections 12A(a), (b) and (c) of the SEBI Act and Regulations 3(a), (b), (c), (d) read with Regulations 4(1), 4(2)(a) and (g) of the PFUTP Regulations 2003** – Arvind Goyal was allegedly the nodal person conducting the trading in the scrip of Incap during the Investigation period. In addition to his trading account, Noticees no. 1, 3, 4, and 5 i.e. Abhay Javlekar, Dharmendra Bhojak, Pooja Goyal and Ramesh Daga had allegedly also lent him their trading accounts. Arvind Goyal is alleged to have used the aforementioned accounts including his trading account *inter alia* for reversal, synchronised and self-trades and thereby, created artificial volume in the scrip of Incap. As a result, Arvind Goyal is alleged to have violated the aforementioned provisions of the SEBI Act and the PFUTP Regulations 2003.
- (B) **Regulations 10 and 11(1) of the Takeover Regulations 1997** – The combined shareholding of Arvind Goyal, Abhay Javlekar and Dharmendra Bhojak, had crossed 15% on September 30, 2010 and a further 5% twice i.e. on October 10, 2010 (Arvind Goyal, Abhay Javlekar and Dharmendra Bhojak) and December 6, 2010 (Arvind Goyal, Abhay Javlekar and Dharmendra Bhojak along with Pooja Goyal and Ramesh Daga). For the aforementioned change in shareholding, which attracted Regulations 10 and 11 of the Takeover Regulations 1997, the Noticees as ‘persons acting in concert’ are alleged to have failed in making an Open Offer thereby violating the said Regulations.
- (C) **Wrongful gain/avoidance of loss:** Arvind Goyal, Abhay Javlekar and Ramesh Daga had allegedly earned profits with regard to their trading in the scrip of Incap for which disgorgement proceedings for recovery of wrongful/unlawful gains were envisaged against them.

2.4 In view of the aforementioned, the Noticees were directed to show cause as to why suitable directions under Sections 11 and 11B of the SEBI Act should not be issued against them for the violations alleged in the SCN.

HEARING:

2.5 Subsequent to the issuance of the *Impounding Order* and the SCN, an opportunity of inspection of documents and personal hearing was granted to the Noticees on various occasions and such dates along with details of appearances/responses are listed out hereunder:

- i.* **March 3, 2016:** A request for inspection of documents relied upon by SEBI in the *Impounding Order* was made by Arvind Goyal (*inter alia* vide a letter dated November 2, 2015), which was acceded to by SEBI. Accordingly, the inspection was scheduled on March 3, 2016; Noticee no. 2 through his authorised representative Advocate Himansu Vinod Kode, undertook the inspection on that date. In addition, vide a letter dated March 10, 2016, SEBI provided Arvind Goyal with the relevant documents relied upon in the *Impounding Order*/SCN.
- ii.* **July 9, 2016:** A request for inspection of documents relied upon by SEBI in the *Impounding Order* was made by Noticee no. 5 (vide letter dated December 4, 2015), which was acceded to by SEBI. The inspection was scheduled on July 9, 2016; however, Noticee no. 5 did not appear on that date.
- iii.* **July 29, 2016:** A request for inspection of documents relied upon by SEBI in the SCN was made by Noticees no. 1 and 5 (vide letter dated May 31, 2016), which was acceded to by SEBI. The inspection was scheduled on July 29, 2016, wherein only the authorised representative for Noticee no. 1 i.e. Unnati Upadhyay, Company Secretary, undertook the inspection. Vide an e-mail dated November 16, 2016, Noticee no. 1 requested for another opportunity for inspection of documents and the same was granted on November 20, 2016; the authorised representative for Noticee no. 1 i.e. Unnati Upadhyay, Company Secretary, undertook the inspection. Noticee no. 5 was granted another opportunity of inspection on July 29, 2016 but he failed to appear on that date.
- iv.* **August 9, 2017/June 20, 2018:** An opportunity of personal hearing was granted to all the Noticees on August 9, 2017. However, Noticees no. 1, 2 and 4 had requested for adjournment of the hearing which was acceded to, by SEBI. Noticees no. 3 and 5 had failed to appear for the hearing. The next date of personal hearing was scheduled for November 22, 2017, which got rescheduled to March 7, 2018 and subsequently to June 20, 2018. Noticee no. 5 appeared for himself in the personal hearing on June 20, 2018.

- v. **July 31, 2018:** The personal hearing was once again rescheduled to July 31, 2018 for Noticees no. 1, 2, 3 and 4. Noticees no. 2 and 4 appeared for the personal hearing through their authorised representative i.e. Advocate Sougata Sarkar. Noticee no. 1 appeared for the personal hearing through his authorised representative i.e. Advocate Prakash Shah, in the personal hearing on that date. Noticee no. 3 had failed to appear for the hearing.
- vi. **August 6, 2019:** A further opportunity to file additional written submissions was granted to all the Noticees vide SEBI letter dated August 6, 2019. Noticee no. 1 filed a reply dated August 16, 2019. Noticees no. 3 and 5 did not make any further submissions. Noticees no. 2 and 4 sought time till August 20, 2019 to file additional written submissions, which was acceded to by SEBI. However, no additional written submissions were received from them.

REPLIES/SUBMISSIONS OF THE NOTICEES:

2.6 **Noticee no. 1:** Replies dated (a) November 10, 2015 read with December 2, 2015, (b) March 29, 2016 read with April 19, 2016, (c) May 31, 2016, (d) November 16, 2017, (e) August 16, 2018, (f) September 10, 2018 and (g) August 16, 2019 – In his reply, Abhay Javlekar *inter alia* submitted as under:

- (i) *The trading account with Yoke Securities was opened at the instance of Arvind Goyal, Director of Incap, who was a friend and had promised me a monthly payment for opening of the aforesaid trading account. However, as Arvind Goyal had not made any payment, I discontinued my relationship with him and also closed the aforesaid trading account sometime in August 2011. My mobile no. although provided in the Know Your Client (“KYC”) documents with Yoke Securities was never used for trading in my account. I had opened a bank account (IndusInd Bank Kandivali branch–Account no. 0048E67527–050) specifically to facilitate transactions with Yoke Securities at Arvind Goyal’s instance and the same was operated and managed by him. I had also signed all cheques, which were in possession and used by Arvind Goyal for trading in my account – the entire trading in the scrip was done by Arvind Goyal in my name with his own funds. Further, I had provided Arvind Goyal with signed Demat Instruction Slips (“DIS”) for satisfying the delivery obligations for trading with Yoke Securities. Arvind Goyal was the authorised person for placing orders in the scrip of Incap and further, in its letter to SEBI dated January 6, 2014, Yoke Securities had stated that the phone no. through which Orders were placed was 9322229797, which was Arvind Goyal’s phone number. Accordingly, I was not aware of the trading in the scrip of Incap including off–market transfers.*

- (ii) *As regards my broking/ demat accounts during the year 2009–11, the details contained in the Account Opening Form (submitted to SEBI) are as under:*

ACCOUNT NUMBER	DEPOSITORY PARTICIPANT/BROKER	CONTACT NUMBER	E-MAIL ID
N. A.	YOKE SECURITIES LIMITED (STOCK BROKER)	N. A.	agoyal143@yahoo.com
0048E67527050	RELIGARE SECURITIES LIMITED (DEPOSITORY PARTICIPANT)	9324932949	agoyal143@yahoo.com
200004451871	ADITYA BIRLA MONEY LIMITED	9769995429	agoyal143@yahoo.com

- (iii) *It must be noted that every DP/Broker Account through which the alleged trading has been done in the scrip of Incap had Arvind Goyal's e-mail ID for correspondence. I have never carried out any trading in the securities market during the years 2009–11 except the aforementioned.*
- (iv) *Pursuant to the Impounding Order, when I came to know that SEBI has relied upon wrong statement of Prem Aggarwal, who circulated the SMS at the behest of Paresb Chavan, I filed a police complaint at Malad Police Station on December 3, 2015 (copy submitted to SEBI).*
- (v) *I have been wrongly roped in the current proceedings when it is SEBI's own case that Prem Agarwal has circulated the SMS and the whole operation was carried out by Arvind Goyal. The alleged SMS did not have any impact on the price of the scrip; rather, the price of the scrip fell after that as per the examination report submitted by BSE to SEBI wherein at paragraph 6 'Impact of the SMS on January 11, 2011' it is stated that SMS 'did not have any impact on the price of the share' and that 'TVD has noted that impact of SMS was insignificant as the trading volume in the scrip before the date of fake SMS circulation, was much more'. It is also noted that BSE in its examination report has stated that Prem Aggarwal and Abhay Javlekar are not connected with each other or with any Promoters'.*
- (vi) *Admittedly, my account was used by Arvind Goyal and it has also been well established by the Investigation carried out by SEBI and the Broker wherein I was having my account. At paragraph 21 of the Investigation Report, it has been observed that "Arvind Goyal has accepted in his submissions made to SEBI that he was operating the trading account of Abhay Javlekar and all the trading in Abhay Javlekar's account was done by him only."*
- (vii) *As regards the violation of the Takeover Regulations 1997, without prejudice to the fact that I did not trade, as per the demat statements provided by SEBI during the course of inspection, there is no transaction reflected in the demat statements on 2.12.2010 and 3.12.2010 and accordingly, if the quantity mentioned against those dates in paragraph 15 of the SCN is removed from the total trading in my account, the total acquisition aggregates to 12.97% only as against 17.43% as alleged by SEBI. Further, in so far as the transaction that took place on 30.09.2010 is concerned, it is stated that although paragraph 15 of the SCN mentioned the said transaction, SEBI has only provided me the transaction statements from December 1, 2010 and hence, I will not be able to comment on the same. I submit that the shares have been bought in tranches and not in a single instance, depicting that there was no certain aim of buying shares and then the same were again sold in tranches; it can therefore, be understood that there was no intention of taking over or acquiring the Company. Further, I did not have any common objective or purpose of substantial acquisition of shares or voting rights of Incap or having control over Incap with Arvind Goyal and Dharmendra Bhojak or Pooja Goyal and Ramesh Daga.*

- (viii) *With respect to wrongful gain/avoidance of loss, I submit that I cannot be alleged to have earned a 'wrongful gain' or 'avoided loss' since I have not traded in the scrip of Incap during the period of investigation.*
- (ix) *Separate adjudication proceedings have also been initiated against me vide SCN dated May 13, 2016. I submit that it amounts to 'double jeopardy' and action cannot be taken against me twice for the same alleged violation.*

2.7 **Noticee no. 2:** Replies dated (a) April 18, 2016, (b) May 22, 2017 and (c) August 25, 2018 – Arvind Goyal *inter alia* submitted as under:

- (i) *I am a regular investor in the securities market and trade across various scrips based on research, understanding of the market and suggestions and tips from relatives and friends.*
- (ii) *It is alleged that I am acquainted with Noticees no. 1, 3 and 5. Noticee no. 1 was a friend while Noticees no. 3 and 5 were friends of Noticee no. 1. I am no longer in contact with them. Further, my relationship with them was majorly formal and at arms-length.*
- (iii) *I have not been accused for the allegations of synchronised trades, reversal trades and self-trades in my own trading account.*
- (iv) *As per BSE Notice dated January 25, 2011, trading in the scrip of Incap was to be suspended with effect from February 24, 2011. This fact has not been considered by SEBI while making the accusation that price in the scrip was falling. It is stated that once the news regarding the suspension of trading in a particular scrip is released, there would be no buyers for the scrip and natural trading in the scrip will decrease and eventually so will its price. Thus, it is submitted that no rationale has been applied while issuing the SCN and the same is based on erroneous conclusion.*
- (v) *SEBI has conducted investigation in the scrip of Incap pursuant to the complaint received regarding the SMS being circulated. However, no further observations regarding the SMS have been made in the SCN. No reference to the person who has circulated the SMS, intentions of such persons or the benefits derived by them upon circulation of such message has been made. The SCN has left a mystery regarding who circulated such messages and the reason behind circulating it.*
- (vi) *Upon seeking supporting documents for the SCN from SEBI, I had received inter alia copies of e-mail conversations between SEBI and various other entities during the course of investigation. Amongst them were the e-mails exchanged with some employee of India Infoline. On March 18, 2011, upon enquiry from SEBI officials regarding the nature of connection between Prem Agarwal and Directors of Incap, the employee of India Infoline had replied: "In this regard, we suspect that there may be any relationship between Prem Agarwal and Directors of Incap". No basis of such suspension has been revealed. Further, SEBI has also not enquired with India Infoline regarding the source of information about the SMS or how they have traced the origin of the SMS to Prem. SEBI has conducted the entire investigation based on surmises and conjectures and has not taken any efforts to collect any evidence on its own.*
- (vii) *Further, I have received copies of an email conversation between a SEBI officer and a person named Prem Agarwal, evidently who was named by India Infoline in one of its emails. It can be seen that Prem*

- Agarwal had initiated the SMS regarding Incap. However, it may be noted that no SCN has been issued to him despite the fact that he had initiated the SMS resulting in a spurt in trading in the scrip.*
- (viii) *The SEBI officer had also asked Prem Agarwal to confirm his relationship with me, to which he replied as follows: “(I’ll) not get any cash and I don’t know who Arvind Goel (Arvind Goyal) is. I just sent SMS (because) Paresb Chauhan told me that TRGT is good and all client earning huge profit so I send SMS to clients (and) nothing else...” From the aforementioned, it is visible that Prem Agarwal has completely denied knowing me and of receiving any monetary benefit or cash for circulating the SMS based on which SEBI had initiated investigation in the scrip of Incap. And yet I’ve been accused of violating PFUTP Regulations 2003 whereas no charges have been levied against Prem. SEBI has not even made any further probe regarding who Prem Agarwal or Paresb Chauhan is or what their motive was, behind sending such SMS. In another e-mail of Prem, he has stated that he received the news for Incap from Paresb Chauhan, who had further received it from Abhay Javlekar (Noticee no. 1).*
- (ix) *It is therefore clear from the above that I have no role in sending the SMS in respect of Incap and that I am completely innocent in the matter. No nexus has been drawn between SMS sent by Prem Agarwal and me and yet I have been accused in the matter on the basis of a few unverified and unsupported statements of people, who themselves are accused.*
- (x) *During September 2010, Jayesh Solanki (employee of Incap who looked after the Mumbai Office) had approached me to look after compliance of Incap and took my documents by cheating and appointed me as the Director on Board of Incap Financial Services Limited. In November 2010, when I became aware of my appointment as Director of Incap, I tendered my resignation. I therefore, had already resigned from the Company even before the beginning of the Investigation period i.e. December 1, 2010. Upon receipt of the SCN, I became aware that the form for cessation of my Directorship from the Company had not been filed. I am submitting a copy of my resignation.*
- (xi) *Through my statement dated January 15, 2014, I had explained facts from my side to SEBI and I once again reiterate the same. Trading account in my name in Yoke Securities was opened at the instance of Jayesh Solanki. Also to facilitate trading, I deposited signed blank cheque book and Delivery Instruction Slips to him in good faith. However, he betrayed my trust and misused them. Many trades were executed in the aforesaid account without my knowledge. Further, Pradeep Makhija, an employee of Yoke Securities along with other employees traded in my account without even informing me.*
- (xii) *I had a fall out with Yoke Securities in this regard and I suspect that this is the reason why Yoke Securities has alleged that I have placed orders on behalf of Abhay Javlekar (Noticee no. 1). It is to be noted that although in its reply dated January 6, 2014, Yoke Securities has stated that I have placed orders in Noticee’s 1 Account, later on, vide a reply dated January 24, 2014, Yoke Securities has vehemently denied the statement given by Noticee no. 1 that I have executed trades in Incap.*
- (xiii) *I have only introduced Abhay Javlekar to Jayesh Solanki and have given my email ID to Abhay Javlekar for incorporating in the KYC documents. I would like to also point out that the cell number given in Abhay Javlekar’s KYC is 9324932949 as opposed to 9322229797, as stated in the SCN. This number, 9324932949, is in fact Abhay Javlekar’s number.*

- (xiv) *Out of the entities alleged as persons acting in concert with me, I am related only to my wife, Pooja Goyal and the rest are only acquaintances. I do not even fall within the category of persons provided in Regulation 2(1)(e)(2) of the Takeover Regulations 1997. The main thrust is that persons acting in concert should acquire shares to gain control over the Target Company; so if few entities have bought shares but they do not have any intention to gain control of the Target Company, then they cannot be considered as persons acting in concert just because they fulfill the criteria laid down in the Regulations. It is further submitted that the combined holding of my wife and I is 4.48%, which does not fulfill the criteria of Regulations 10 and 11(1) of crossing more than 15% or for that matter, even 5% in a financial year.*
- (xv) *Separate adjudication proceedings have also been initiated against me vide SCN dated May 13, 2016. I submit that it amounts to 'double jeopardy' and action cannot be taken against me twice for the same alleged violation.*
- (xvi) *SEBI has relied upon statements given by Ramesh Daga and Dharmendra Bhojak in the present matter. I would request you to grant me an opportunity for cross examining them.*
- (xvii) *In addition to the above submissions, Arvind Goyal also submitted details of trading carried out by him through all brokers during the period 2009–11.*

2.8 **Noticee no. 3:** No reply/written submission was received from Dharmendra Bhojak.

2.9 **Noticee no. 4:** Reply dated (a) August 31, 2017 – Pooja Goyal *inter alia* submitted as under:

- (i) *Arvind Goyal is my husband and we have been married for around 18 years. It is but natural that my address would be the same as my husband's address. Further, my husband used to trade in my account in the securities market and therefore, the mobile number and e-mail ID provided in the KYC belongs to Arvind Goyal. Admittedly, I am connected to my husband to the extent he takes care of all my investments.*
- (ii) *Just because I am connected to my husband and some 100 shares have been bought in my account, it has been alleged that I am a person acting in concert with all the other four Noticees, which is really obnoxious. The SCN does not specify the alleged common purpose or objective which I share with the other Noticees. I reiterate and deny that I know any of the other three entities i.e. Abhay Javlekar, Dharmendra Bhojak and Ramesh Daga. The alleged violation of Regulation 11(1) took place on 2.12.2010 when Abhay Javlekar bought 17,257 shares and the alleged holding crossed 25%. Further, the alleged violation of Regulation 11(1) took place on 6.12.2010 when Abhay Javlekar bought 2,23,215 shares and the alleged holding crossed 30%. I submit that in both instances, the alleged trading by Abhay Javlekar had resulted in violation of Takeover Regulations 1997 and hence, any violation of the same cannot be levied upon me. It is further submitted that the combined holding of my husband and I is 4.48%, which does not fulfill the criteria of Regulation 11(1) i.e. of crossing even 5% in a financial year.*
- (iii) *Separate adjudication proceedings have also been initiated against me vide SCN dated May 13, 2016. I submit that it amounts to 'double jeopardy' and action cannot be taken against me twice for the same alleged violation.*

2.10 **Noticee no. 5:** Replies dated (a) April 19, 2016, (b) August 16, 2017 and (c) July 17, 2018 – Ramesh Daga *inter alia* submitted as under:

- (i) *I am a Computer Hardware Engineer having a firm in the name of Interactive Solutions. I was having a computer maintenance contract with Arvind Goyal of his office located at Goregaon. I got his reference through my friend, Abhay Javlekar. During this period, he told me that if I want a good success in my business, he will support me for which I had opened a Savings Account with IndusInd Bank, Kandivali Branch, Mumbai no 100004434914 and a Demat Account with Aribant Capital, which will be totally operated by him i.e. Arvind Goyal. I had also signed the blank cheque/RTGS/NEFT form and also the blank transaction slips of Aribant Capital, which he used for trading.*
- (ii) *When I saw the transaction and statements of my account, I requested Arvind Goyal to close both my accounts repeatedly but every time he ignored it. When I got the SCN from SEBI, I was shocked and contacted Arvind Goyal who told me he would take all the responsibilities but till date he is not answering or even replied for the SCN in favour of me.*

FINDINGS UPON CONSIDERATION OF FACTS:

3.1 I have considered the Investigation Report, the *Impounding Order*, the SCN along with the replies/submissions made by the Noticees and all the relevant material on record. I note that Noticee no. 3 has not filed any reply to the SCN or made any submissions for consideration during the course of these proceedings; further, the aforementioned Noticee had failed to appear for the personal hearing before me. Even though he remained *ex parte*, I have perused the documents available on record while evaluating the case against him.

3.2 **PRELIMINARY OBJECTIONS RAISED BY THE NOTICEES** – In their submissions, I note that Noticees no. 1, 2 and 4 have submitted that since separate adjudication proceedings have been initiated against them, the instant proceedings amount to ‘*double jeopardy*’ and action cannot be taken against them twice for the same alleged violation.

3.3 In this context, I note from the material available on record that the adjudication proceedings initiated against Abhay Javlekar, Arvind Goyal and Pooja Goyal were on account of the following alleged violations, viz.:

- (i) Noticees no. 1 & 2 – Abhay Javlekar and Arvind Goyal:
 - a. For allegedly failing to make disclosures for change in shareholding as ‘*persons acting in concert*’ as required under Regulations 7(1) and 7(1A) of the Takeover Regulations 1997;

- b. For allegedly failing to make disclosures for change in shareholding to the stock exchanges under Regulation 13 of the Insider Trading Regulations 1992;
 - c. For the acquisition of shares in off-market, which were allegedly not in conformity with the provisions of Section 2(i) of the Securities Contracts (Regulation) Act, 1956 (“SCRA”).
- (ii) Noticee no. 1 – Abhay Javlekar: Besides the above violations, for executing self-trades without the intention of change of ownership of such security and creation of artificial volume by way of synchronised, self and reversal trades allegedly violating the provisions of Sections 12A(a), (b) and (c) of the SEBI Act and Regulations 3(a), (b), (c), (d) read with Regulations 4(1), 4(2)(a), (g) of the PFUTP Regulations 2003.
- (iii) Noticee no. 2 – Arvind Goyal: Besides the above violations, for allegedly violating Clause 1.2 and 4.2 of the Model Code of Conduct for prevention of insider trading for listed companies provided under Schedule I, Part A read with Regulations 12(1) and 12(3) of the SEBI (Prohibition of Insider Trading) Regulations, 2015.
- (iv) Noticee no. 4 – Pooja Goyal: For allegedly failing to make disclosures for change in shareholding as ‘persons acting in concert’ as required under Regulation 7(1A) of the Takeover Regulations 1997.
- (v) Noticees no. 1, 2 & 4 – Abhay Javlekar, Arvind Goyal and Pooja Goyal: For allegedly failing to comply with requirements of disclosures/public announcement/open offer in respect of the acquisition of shares and takeovers under the provisions of Regulations 10 and/or 11 of the Takeover Regulations 1997.

3.4 In this context, I note that the above mentioned adjudication proceedings have been initiated *inter alia* under the provisions of Chapter VIA of the SEBI Act, etc. I note that there can be no question of ‘double jeopardy’ since the enquiries although borne out of the same set of facts, are nonetheless different in nature i.e. one being for the imposition of monetary penalty under the aforementioned provisions for the alleged violation of securities law (disclosure violations, etc.) and the other, being for issue of directions under Sections 11 and 11B of the SEBI Act read with the provisions of PFUTP Regulations 2003 and the Takeover Regulations 1997 read with Takeover Regulations 2011 for the violations alleged in the SCN. Further, it is pertinent to note that in these proceedings, Noticees no. 1 and 4 have not been charged under the SCN for allegedly violating the provisions of Sections 12A(a), (b) and (c) of the SEBI Act and Regulations 3(a), (b), (c), (d) read with Regulations 4(1), 4(2)(a), (g) of the PFUTP Regulations 2003. The SEBI Act enables the Board to initiate parallel proceedings on the same set of facts against a delinquent under

Sections 11 and 11B or under Section 11D, as the case may be, on the one hand and adjudication proceedings under Chapter VIA for the imposition of monetary penalties on the other hand. Further, directions under Sections 11 and Section 11B or an Order under Section 11D are passed by the Board whereas the proceedings under Chapter VIA are conducted by an Adjudicating Officer who adjudicates and imposes monetary penalty. Reliance is also placed on the Order of the Hon'ble SAT in the matter of ***Dipak J. Panchal vs. SEBI, Appeal No. 198 of 2011 (Order dated November 12, 2012)***, wherein it had observed: *"There is no bar under the Act in taking all the three actions (under Chapter IV, Chapter VIA and Section 24 of the SEBI Act) simultaneously or taking only one of the actions as the Board may deem fit..."* In view of the aforesaid, I find no merit in the contention raised by Noticees no. 1, 2 and 4. Incidentally, it is noted that with effect from March 8, 2019, the power to impose monetary penalty has also been included under Chapter IV of the SEBI Act.

3.5 Arvind Goyal has also contended that SEBI had not investigated nor issued any SCN against Prem Agarwal (sender of the SMS) or Paresh Chauhan (from whom Prem Agarwal received information regarding Incap) and therefore, the investigation in the instant proceedings is incomplete. I find no merit in the aforementioned contention on account of the following reasons:

- (i) At the outset, it needs to be stated that the defence of Noticee no. 2 cannot rest upon non-initiation of proceedings against another entity. However, to clarify the matter, Prem Agarwal was a client of India Infoline Limited ("**India Infoline**") and had not traded in the scrip of Incap. No other connection was observed between him and the Promoters/Directors of Incap. However, Prem Agarwal had sent the SMS, which he admitted was at the instance of Paresh Chauhan, who had allegedly received it from Abhay Javlekar.
- (ii) It is reiterated that Prem Agarwal was a client of India Infoline during the Investigation period. From the material available on record, it is observed that Prem Agarwal had not traded as a client of India Infoline since 2009. It is further observed that after India Infoline, Prem Agarwal started trading through Master Capital Services ("**MCS**"). SEBI, upon obtaining the contact number of Prem Agarwal from MCS, had tried contacting him on numerous occasions without any success. Details were thereafter, sought from Ayush Finance Private Limited (Sub-broker of MCS), through whom Prem Agarwal got registered with MCS. No information was available with the aforesaid Sub-broker apart from the fact that Prem Agarwal had not traded since December 2014. Subsequently, SEBI served a letter to Prem Agarwal through its Western Regional Office ("**SEBI-WRO**") at the address mentioned in his KYC documents, which was received by one Shreekant Agarwal,

son of Prem Agarwal. However, Shreekant Agarwal had refused to provide SEBI with any information including contact details of himself or his father. Through the aforementioned letter, SEBI had advised Prem Agarwal to be present at SEBI-WRO on September 18, 2015 but the aforesaid individual failed to turn up or seek further time. While the material available on record does not indicate any further investigation being conducted by SEBI in respect of the aforementioned allegation regarding sending of the SMS (having regard to the subsequent submissions/police complaint filed by Abhay Javlekar), it is nonetheless pertinent to note that there was no corporate announcement regarding dividend by Incap during the Investigation period, which clearly indicates that the SMS was false and misleading. However, based on the limited nature of his role, SEBI has initiated Adjudication proceedings against Prem Agarwal under Section 15HA of the SEBI Act for allegedly violating the provisions of Sections 12A(a), (b) and (c) of the SEBI Act and Regulations 3(b), (c), (d) read with Regulations 4(1), 4(2)(a), (f), (k) and (r) of the PFUTP Regulations 2003 through the planting of false/misleading news for inducing sale/purchase of securities.

- 3.6 In his submissions, Arvind Goyal had stated that he was fraudulently appointed as a Director of Incap sometime in September 2010 and upon being aware of the same, had tendered his resignation in November 2010. However, it was only after the initiation of the investigation by SEBI that he became aware that the form for cessation of his Directorship from the Company had not been filed. I note that the aforementioned contention of Arvind Goyal is clearly an afterthought. He was the Executive Director and Compliance Officer of Incap as on February 23, 2011 and continues to remain a Director as on date, as is evident from the Company data available on the Ministry of Corporate Affairs website i.e. <http://www.mca.gov.in>. Further, apart from submitting a letter indicating his purported intention to resign from the Company, he has not submitted any evidence such as acknowledgment of receipt of resignation letter by the Company, etc. to show that he has actually ceased to be a Director of Incap.

I shall now proceed to take up the charges for consideration as serially listed out in paragraph 2.3.

A. Alleged violation of Sections 12A(a), (b) and (c) of the SEBI Act and Regulations 3(a), (b), (c), (d) read with Regulations 4(1), 4(2)(a) and (g) of the PFUTP Regulations 2003:

- 4.1 The SCN alleges that Arvind Goyal had traded in the scrip of Incap through his trading account and the trading accounts of Noticees no. 1, 3, 4, and 5 i.e. Abhay Javlekar, Dharmendra Bhojak, Pooja Goyal and Ramesh Daga. He allegedly played a pivotal role in trading in the scrip as there was an understanding amongst the aforementioned Noticees that their names and trading accounts shall be lent to and used by Arvind Goyal *inter alia* for reversal, synchronised and self-trades thereby, creating an artificial volume in the scrip of Incap. As a result, Arvind Goyal is alleged to have violated the aforementioned provisions of the SEBI Act and the PFUTP Regulations 2003.
- 4.2 For determining the aforementioned violations, it is important firstly to ascertain whether Noticees no. 1, 3, 4, and 5 were known/connected to Arvind Goyal and if so, whether they may be referred to as belonging to a single group for analysing the trades placed by Arvind Goyal through their trading accounts. In this context, I note that the Investigation Report/SCN had detailed the connections between the Noticees based on the analysis of KYC documents (see also Table IV at page 3) as under:

TABLE V – CONNECTION BETWEEN ABHAY JAVLEKAR, DHARMENDRA BHOJAK, POOJA GOYAL AND RAMESH DAGA WITH ARVIND GOYAL		
SR. No.	NAME	OBSERVATIONS
1.	ABHAY JAVLEKAR	CELL NO 9322229797 BELONGS TO ARVIND GOYAL. THE SAME NUMBER WAS USED TO PLACE ORDERS ON BEHALF OF ABHAY JAVLEKAR, AS CONFIRMED BY THE STOCK BROKER, YOKE SECURITIES. AS PER KYC, agoyal143@yahoo.com WAS MAIL ID FOR CONFIRMATION OF CONTRACT NOTES WITH YOKE SECURITIES, RELIGARE SECURITIES LIMITED. THIS ID ALSO BELONGED TO ARVIND GOYAL. OFF-MARKET TRANSFERS WITH CHANDRAKANTA SATISH MANDOWARA, DHARMENDRA BHOJAK, CHANDRA SHEKHAR SUNIL, MANJULABEN PATEL, DHARMESH VISARIYA, RAMESH DAGA. ACKNOWLEDGED KNOWING ARVIND GOYAL, POOJA GOYAL, DHARMENDRA BHOJAK, RAMESH DAGA AND CHANDRAKANTA SATISH MANDOWARA.
2.	ARVIND GOYAL	DIRECTOR OF THE COMPANY. POOJA GOYAL IS HIS SPOUSE. ACKNOWLEDGED KNOWING ABHAY JAVLEKAR AND HAD GIVEN HIS EMAIL ID FOR INCORPORATING IN KYC DOCUMENTS. HIS CELL NO 9322229797 WAS USED TO PLACE ORDERS IN ABHAY JAVLEKAR'S ACCOUNT.
3.	DHARMENDRA BHOJAK	OFF-MARKET TRANSFER WITH ABHAY JAVLEKAR. ACKNOWLEDGED BY NOTICEE NO. 1 TO BE A FRIEND AND WAS ALSO AN EMPLOYEE OF ARVIND GOYAL. AS PER KYC, E-MAIL IDS I.E. agoyal143@yahoo.com AND csbhatt111@zapak.com FOR CONFIRMATION OF CONTRACT NOTES BELONGED TO ARVIND GOYAL.
4.	POOJA GOYAL	SPOUSE OF ARVIND GOYAL (DIRECTOR). AS PER KYC CELL NO 9322229797 AND E-MAIL ID FOR CONFIRMATION OF CONTRACT NOTES BELONGED TO ARVIND GOYAL.
5.	RAMESH DAGA	OFF-MARKET TRANSFERS WITH ABHAY JAVLEKAR, DHAVAL SHAH, DHARMESH VISARIYA AND ISHWARI DHARMESH VISARIYA. SAME E-MAIL AS THAT OF ARVIND GOYAL AT KYC OF GUINNESS SECURITIES I.E. csbhatt111@zapak.com. ACKNOWLEDGED KNOWING ARVIND GOYAL.

4.3 In this context, the following may also be noted:

- (i) Abhay Javlekar admittedly knew Arvind Goyal, Dharmendra Bhojak and Ramesh Daga. He had opened a bank account with IndusInd Bank to facilitate the trading in the scrip of Incap by Arvind Goyal and had provided him with DIS and signed cheques for the purpose of the aforesaid trading. Further, the KYC of Abhay Javlekar as available with Yoke Securities, Religare Securities Limited, contained the e-mail of Arvind Goyal i.e. agoyal143@yahoo.com instead of his e-mail i.e. abhay_javlekar@yahoo.com. Arvind Goyal had not only introduced Abhay Javlekar to Yoke Securities but as confirmed by Yoke Securities in its letter dated January 6, 2014, also placed orders in the trading account of Abhay Javlekar through his mobile nos. 9322229797 (Abhay Javlekar's no. was 8080729797). In his submissions, Arvind Goyal has contended that *'the cell number given in Abhay Javlekar's KYC is 9324932949 as opposed to 9322229797, as stated in the SCN. This number, 9324932949, is in fact Abhay Javlekar's number. It is to be noted that although in its reply dated January 6, 2014, Yoke Securities has stated that I have placed orders in Noticee's 1 Account, later on, vide a reply dated January 24, 2014, Yoke Securities has vehemently denied the statement given by Noticee no. 1 that I have executed trades in Incap.'* In this regard, it is noted that SCN clearly stated that although Abhay Javlekar had given his mobile number in the KYC, the same was never used for placing orders in the scrip of Incap with Yoke Securities but rather orders were placed through Arvind Goyal's number i.e. 9322229797. Further, I find that Arvind Goyal has not submitted a copy of the aforementioned letter from Yoke Securities dated January 24, 2014, which was sought to be relied upon by him in any of his replies/submissions made before SEBI. Incidentally, I note that Yoke Securities had the highest contribution of 14.16% in gross buy and highest contribution of 33.26% in gross sell on BSE in the scrip of Incap during the Investigation period.
- (ii) Pooja Goyal, wife of Arvind Goyal, had confirmed that her husband took care of all her investments. Further, Arvind Goyal had admittedly opened the trading account of his wife, Pooja Goyal.
- (iii) Abhay Javlekar and Arvind Goyal have both admitted to knowing Dharmendra Bhojak. As noted from Table V, the KYC documents of Dharmendra Bhojak contained Arvind Goyal's e-mail ids i.e. agoyal143@yahoo.com and csbhatt111@zapak.com, for confirmation of contract notes.

- (iv) As noted from Table V, the e-mail id of Arvind Goyal i.e. csbhatt111@zapak.com, was used in the KYC documents of Noticee no. 5 i.e. Ramesh Daga, with his Stock Broker, viz. Guinness Securities Limited. Arvind Goyal has accepted that he knew Ramesh Daga.

4.4 I note that vide his submissions, Arvind Goyal had requested for cross-examination of Noticees no. 3 and 5 although such a specific request was not raised during the personal hearing before me. However, having regard to the fact that Arvind Goyal did not get an opportunity to cross examine Noticees no. 3 and 5, I am inclined to not place reliance on the following submissions reproduced in the SCN, which were stated to have been made by Noticees no. 3 and 5:

- (i) Noticee no. 3 submitted that:
- a. His trading accounts with Religare Securities Limited and Arihant Securities were opened at the insistence of Arvind Goyal and that the orders were placed/confirmed through the e-mail of Arvind Goyal i.e. agoyal143@yahoo.com.
 - b. He had signed all cheques, which were in possession of Arvind Goyal who used to call the Stock Broker for trading in his account and issued cheques for such trading.
 - c. He had provided Arvind Goyal with signed demat instruction slips for satisfying the delivery obligations for trading with the Stock Broker.
 - d. Arvind Goyal promised to pay him a monthly payment for opening the trading account. However, he discontinued his relationship with Arvind Goyal since he did not get any money/ amount from him.
- (ii) Noticee no. 5 submitted that:
- a. His demat account with Arihant Securities and bank account of IndusInd Bank were opened at the insistence of Arvind Goyal and were operated by Arvind Goyal.
 - b. Arvind Goyal promised to pay him a monthly payment for opening the trading account. However, he discontinued his relationship with Arvind Goyal since he did not get any money/ amount from him.

4.5 As noted from paragraphs 4.2–4.3, I find that Arvind Goyal who was the Director of Incap had, in addition to his trading account, operated the trading accounts of Abhay Javlekar and Pooja Goyal.

4.6 Further, although Arvind Goyal has denied the statements given by Dharmendra Bhojak and Ramesh Daga and had also sought their cross-examination to the extent that he had not operated their trading accounts, the KYC documents read with the admission by Arvind Goyal of knowing such individuals (refer to paragraphs 4.2–4.3) clearly establishes the connections between them. However, in the absence of any corroborative evidence and in light of the observations at paragraph 4.4, I am of the view that the allegation as levelled in the SCN against Arvind Goyal of having used/operated the trading accounts of Noticees no. 3 and 5, does not stand established.

4.7 The trading details of the Noticees during the Investigation period, as reproduced below from the Investigation Report/SCN reveals that the gross buy and sell trades of the Noticees were 30.14% and 51.17% of the market volume:

TABLE VI						
CLIENT NAME		HOLDING PRIOR TO INV. PERIOD	GROSS BUY	GROSS BUY % TO MARKET VOL.	GROSS SELL	GROSS SELL % TO MARKET VOL.
1.	ABHAY JAVLEKAR	4,13,900	9,24,482	18.21	18,75,470	36.79
2.	DHARMENDRA BHOJAK	3,50,000	3,42,595	6.72	3,08,626	6.05
3.	POOJA GOYAL	0	1,34,551	2.64	1,32,181	2.59
5.	RAMESH DAGA	0	1,09,224	2.14	1,80,803	3.55
7.	ARVIND GOYAL	1,70,000	22,293	0.43	1,12,030	2.19
TOTAL		9,33,900	15,33,145	30.14	26,09,110	51.17

4.8 An analysis of the trading details of the Noticees during the Investigation period i.e. pre-SMS (1.12.2010–11.01.2011) and post-SMS (12.01.2011–23.02.2011) are provided below:

TABLE VII – GROSS BUY VOLUME				
CLIENT	PRE-SMS	% TO MARKET VOLUME	POST-SMS	% TO MARKET VOLUME
ABHAY JAVLEKAR	9,20,082	23.87	4,400	0.40
ARVIND GOYAL	22,293	0.56	0	0
DHARMENDRA BHOJAK	3,31,583	8.40	11,012	0.96
POOJA GOYAL	1,34,541	3.40	0	0
RAMESH DAGA	96,219	2.44	13,005	1.12
TOTAL	17,04,670	42.90	44,476	3.86
THE TOTAL GROSS BUY VOLUME (PRE-SMS AND POST-SMS) IS REFLECTED IN THE GROSS BUY COLUMN OF TABLE VI.				

TABLE VIII – GROSS SELL VOLUME				
CLIENT	PRE-SMS	% TO MARKET VOLUME	POST-SMS	% TO MARKET VOLUME
ABHAY JAVLEKAR	10,45,115	26.48	8,30,355	72.13
ARVIND GOYAL	1,12,030	2.84	0	0
DHARMENDRA BHOJAK	3,08,626	7.82	0	0
POOJA GOYAL	1,32,181	3.49	0	0
RAMESH DAGA	81,659	2.10	99,144	8.62
TOTAL	22,16,588	56.46	10,10,634	87.40
THE TOTAL GROSS SELL VOLUME (PRE-SMS AND POST-SMS) IS REFLECTED IN THE GROSS SELL COLUMN OF TABLE VI.				

A. Period prior to circulation of SMS (1.12.2010–11.01.2011):

- i. From Table VII and VIII, it is observed that Arvind Goyal (through his account and the trading accounts of Abhay Javlekar and Pooja Goyal) had effectively purchased 10,76,916 shares and sold 12,89,326 shares of Incap accounting for 27.70% (buy) and 32.81% (sale) of the market volume of shares during the pre–SMS period.
- ii. Further, from the aforementioned Tables, it is observed that Dharmendra Bhojak and Ramesh Daga had purchased 3,31,583 shares and 96,219 shares respectively, while also selling 3,08,626 shares and 81,659 shares respectively of Incap during the pre–SMS period.

B. Period post circulation of SMS (12.01.2011–23.02.2011):

- i. From Table VII and VIII, it is observed that Arvind Goyal (through his account and the trading accounts of Abhay Javlekar and Pooja Goyal) had effectively purchased 4,400 shares and sold 8,30,355 shares of Incap accounting for 0.40% (buy) and 72.13% (sale) of the market volume of shares during the post–SMS period.
- ii. Further, from the aforementioned Tables, it is observed that Dharmendra Bhojak and Ramesh Daga had purchased 11,012 shares and 13,005 shares respectively, while Ramesh Daga had sold 99,144 shares of Incap during the post–SMS period.

4.9 From the trading pattern discussed in the preceding paragraph, it is observed that Arvind Goyal using/operating the trading account of Abhay Javlekar, had accumulated/bought shares before circulation of SMS and subsequently, sold such shares in the securities market (including shares obtained through off–market transfers) after the circulation of the false and misleading SMS, which is detailed as under:

TABLE IX – TOTAL TRADES PRE–SMS						
	CLIENT NAME	HOLDING PRIOR TO INV. PERIOD	GROSS BUY PRE–SMS	GROSS BUY % PRE–SMS	GROSS SELL	GROSS SELL %
1.	ABHAY JAVLEKAR	4,13,900	9,20,082	23.87	10,45,115	26.48

TABLE X – TOTAL TRADES POST–SMS						
	CLIENT NAME	HOLDING AS ON 11.01.2011	GROSS BUY	GROSS BUY %	GROSS SELL	GROSS SELL %
1.	ABHAY JAVLEKAR	2,88,867	4,400	0.40	8,30,355	72.13
*FROM THE INVESTIGATION REPORT, IT IS ALSO OBSERVED THAT THERE WERE 6 OFF–MARKET TRANSFERS TO ABHAY JAVLEKAR (ONE EACH FROM CHANDRASHEKHAR SUNIL AND RAMESH DAGA AND TWO EACH FROM CHANDRAKANTA MANDOWARA AND DHARMENDRA BHOJAK) TOTALING 4,84,997 SHARES OF INCAP, WHICH WERE IMMEDIATELY PRIOR TO OR AFTER THE SMS I.E. FROM 7–01–2011 TO 17–01–2011.						

4.10 In addition, Arvind Goyal by using his account and trading accounts of Abhay Javlekar and Pooja Goyal also created false appearance of trading in the scrip of Incap and manipulated the trading volumes through the following synchronised trades, self-trades and reversal of trades, as noted from the Investigation Report/SCN:

- A. Synchronized Trades:** Total synchronized trades (where the buy and sell order quantity and rate were identical and orders for these transactions were placed within time gap of one minute) in the scrip of the company during the investigation period by the synchronized trades in Abhay Javlekar's trading account contributed around 0.613% of total market volume, respectively.

TABLE XI: DETAILS OF SYNCHRONIZED TRADES FROM 2.12.2010 TO 4.01.2011							
BUY CLIENT NAME	SELL CLIENT NAME	SYNC. QTY.	NO. OF TRADES	SUM OF LTP % DIFF.	SUM OF LTP DIFF. (INR)	% OF CLIENT SYNC. VOL. TO MARKET VOL.	% OF CLIENT SYNC. VOL. TO CLIENT'S TOTAL VOL.
ABHAY JAVLEKAR	ARVIND GOYAL	9531	1	0	0	0.187	1.027
ABHAY JAVLEKAR	POOJA GOYAL	1000	1	-1.02	-0.3	0.02	0.108
ARVIND GOYAL	ABHAY JAVLEKAR	5737	5	0.32	0.1	0.113	25.735
DHAVAL SHAH	ABHAY JAVLEKAR	10000	1	1.47	0.45	0.195	5.407
POOJA GOYAL	ABHAY JAVLEKAR	5000	2	2.04	0.55	0.098	3.716

- B. Reversal Trades:** The reversal trades in Abhay Javlekar's trading account contributed around 1.38% of market volume.

TABLE XII: DETAILS OF REVERSAL TRADES					
CLIENT NAME	CLIENT NAME	% OF REVERSAL QUANTITY TO MARKET VOLUME	SUM OF REVERSAL QUANTITY	NO. OF REVERSAL TRADES	NO. OF DAYS OF REVERSAL TRADES
ARVIND GOYAL	ABHAY JAVLEKAR	0.06	3,000	6	1
ABHAY JAVLEKAR	POOJA GOYAL	0.49	25,000	15	3
ABHAY JAVLEKAR	DHARMENDRA BHOJAK	0.58	29,735	34	4
ABHAY JAVLEKAR	RAMESH DAGA	0.24	12,664	9	2
TOTAL		1.38	70,399	64	10

- C.** Reversal transactions were also noticed in trades of Abhay Javlekar's trading account and certain other suspected entities who had transferred the shares in off-market transactions and the same were bought back from the same entities in on market transactions through the exchange mechanism (see Table V). Trades of Abhay Javlekar's trading account contributed in such reversal of shares was the highest i.e. around 1.44% of market volume, as shown below:

TABLE XIII: DETAILS OF OFF-MARKET TRANSFERS BETWEEN THE NOTICEES AND SUSPECTED ENTITIES						
OFF MARKET TRANSFER BY	OFF MARKET TRANSFER TO	NO. OF SHARES	% TO MARKET VOL.	BOUGHT IN ON MARKET BOUGHT BY	NO. OF SHARES	% TO MARKET VOL.
ABHAY JAVLEKAR	MANJULABEN PATEL	95,000	1.86	ABHAY JAVLEKAR	15,000	0.30
	DHARMESH VISARIYA	58,000	1.14	ABHAY JAVLEKAR	58,000	1.14
TOTAL		1,53,000	3.00	TOTAL	73,000	1.44

D. Self-Trades: Arvind Goyal trading through Abhay Javlekar's trading account had entered into self-trades on BSE on several occasions.

TABLE XIV: DETAILS OF SELF TRADES						
CLIENT NAME	TOTAL SELF TRADE VOLUME	NO OF DAYS OF SELF-TRADES	TOTAL SELF-TRADE COUNT	% OF SELF-TRADE TO MARKET VOLUME	LTP CONTRIBUTION BY SELF-TRADES	NLP CONTRIBUTION BY SELF-TRADES
ABHAY JAVLEKAR	47,619	6	30	0.93	0.85	0

4.11 The *modus operandi* adopted by Arvind Goyal was to accumulate the shares as a first step on account of shares held by/through trading in the account of Abhay Javlekar and secondly, to dispose of such shares pursuant to the circulation of the false and misleading SMS. However, as the price of the scrip of Incap did not increase, Arvind Goyal offloaded such shares in the securities market to avoid further loss. Further, Arvind Goyal had entered into manipulative and unfair trade practices such as self-trades without the intention of creating beneficial ownership and also synchronised and reversal trades for artificial volume creation in the scrip of Incap on account of trading in his account and the accounts of Abhay Javlekar and Pooja Goyal.

4.12 I am not inclined to accept the contention raised by Noticee no. 2 that SEBI had failed to consider the fact that since the trading in the scrip of Incap was to be suspended with effect from February 24, 2011 (which was made public vide BSE Notice dated January 25, 2011), there would be no buyers for the scrip and natural/normal trading in the scrip would decrease. It is reiterated that the case of SEBI is that the Noticees had accumulated the shares of Incap with an intention to benefit from the sale of such shares post the circulation of the false and misleading SMS. However, as the SMS did not have the desired effect owing to a drop in the share price of Incap, SEBI had instead considered the avoidance of loss by the Noticees on account of disposal of such shares by them, while issuing the SCN.

4.13 It is also observed from the aforementioned BSE Notice that although it was announced that trading in the scrip of Incap would be suspended w.e.f. February 24, 2011, on account

of non-compliance with the provisions of the Listing Agreement, the lifting of suspension was incumbent upon the Company complying with such Listing Agreement. The contents of the BSE Notice are reproduced as under –

- a. In case the Company complies (to the satisfaction of the Exchange) with all the provisions of the Listing Agreement on or before February 14, 2011, trading in securities of the Company will be suspended for five trading days i.e. upto March 3, 2011.
- b. In case the Company complies (to the satisfaction of the Exchange) with all the provisions of the Listing Agreement on or before March 11, 2011, trading in securities of the Company will be suspended for 30 days i.e. upto March 25, 2011.
- c. However, in case the Company fails to comply with the provisions of the Listing Agreement (to the satisfaction of the Exchange) on or before March 11, 2011, the suspension will continue till such time the Company complies with the procedure prescribed for revoking suspension in a scrip.

4.14 As noted from the above BSE Notice, the suspension envisaged therein was not a total suspension of the scrip of Incap but rather also included time-bound suspension of such scrip subject to rectification of Listing Agreement compliance by the Company. Further, being a Director in Incap, Arvind Goyal was very much aware of the aforesaid position and could also have ensured compliance with the Listing Agreement so as to avoid the impending suspension. Accordingly, I do not find any merit in the aforementioned contention raised by Noticee no. 2.

4.15 Sections 12A(a)–(c) of the SEBI Act read with Regulations 3(a), (b), (c) and (d) of the PFUTP Regulations, 2003 *inter alia* prohibit employment of any manipulative/deceptive device, scheme or artifice to defraud in connection with dealing in securities; engaging in any act, practice, course of business which operates or would operate as fraud or deceit upon any person in connection with dealing in securities. Regulation 4(1) of the PFUTP Regulations, 2003, provides for prohibition on indulging in fraudulent or unfair trade practices in securities while Regulations 4(2)(a) and (g) *inter alia* states that dealings in securities by a person shall be deemed as fraudulent if it involves ‘*fraud*’ including (a) indulging in an act which creates false or misleading appearance of trading in the securities market, (g) entering into a transaction in securities without intention of performing it or without intention of change of ownership of such security. The aforementioned actions of Arvind Goyal as detailed in the preceding paragraphs clearly resulted in ‘*fraud*’ under the PFUTP Regulations, 2003, being committed, which in turn affected the interests of investors in the securities market.

- 4.16 Accordingly, upon a consideration of the preceding paragraphs, I find that Arvind Goyal had violated Sections 12A(a), (b) and (c) of the SEBI Act and Regulations 3(a), (b), (c), (d) read with Regulations 4(1), 4(2)(a) and (g) of the PFUTP Regulations 2003.

B. Alleged violation of Regulations 10 and 11(1) of the Takeover Regulations 1997:

- 4.17 As per the SCN, the combined shareholding of Noticees no. 1, 2 and 3, had crossed 15% on September 30, 2010 and a further 5% twice i.e. on October 10, 2010 (Noticees no. 1, 2, 3) and December 6, 2010 (Noticees no. 1, 2, 3 along with Noticees 4 and 5). For the aforementioned change in shareholding which attracted Regulations 10 and 11(1) of the Takeover Regulations 1997, the Noticees as '*persons acting in concert*' had allegedly failed to make an Open Offer thereby violating the said Regulations. The aforementioned acquisitions by the aforementioned Noticees as '*persons acting in concert*', which had allegedly resulted in a trigger of Open Offer obligations under the Takeover Regulations 1997, are detailed below (as reproduced from the SCN):

TABLE XV: DATES ON WHICH ACQUISITION OCCURRED					
FIRST HOLDER NAME	DATE	DEBIT	CREDIT	TOTAL HOLDING	% OF SHARE CAPITAL
ARVIND GOYAL	30.09.2010	0	170000	170000	4.46
DHARMENDRA BHOJAK	30.09.2010	0	175000	345000	9.05
	30.09.2010	0	175000	520000	13.63
ABHAY JAVLEKAR	30.09.2010	0	150000	670000	17.57
ABHAY JAVLEKAR	5.10.2010	0	71800	741800	19.45
	12.10.2010	0	98400	840200	22.03
	16.10.2010	0	93700	933900	24.49
DHARMENDRA BHOJAK	1.12.2010	0	5448	939348	24.63
ABHAY JAVLEKAR	2.12.2010	0	17257	956605	25.08
ABHAY JAVLEKAR	3.12.2010	0	2728	959333	25.15
ARVIND GOYAL	3.12.2010	0	500	959833	25.17
DHARMENDRA BHOJAK	3.12.2010	0	10817	970650	25.45
POOJA GOYAL	3.12.2010	0	100	970750	25.45
RAMESH DAGA	3.12.2010	0	7500	978250	25.65
ABHAY JAVLEKAR	6.12.2010	0	223215	1201465	31.50

- 4.18 Regulation 10 of the Takeover Regulations 1997, states that no acquirer shall acquire shares or voting rights which (taken together with shares or voting rights, if any, held by him or by '*persons acting in concert*' with him), entitle such acquirer to exercise 15% or more of the voting rights in a company, unless such acquirer makes a public announcement to acquire shares of such company in accordance with the Regulation. Under Regulation 11(1) of the Takeover Regulations 1997, any person, who together with '*persons acting in concert*', already owns 15% or more shareholding in a company but less than 55%, must make a public announcement if he intends to acquire additional shareholding of more than 5% in a company with post acquisition shareholding or voting rights not exceeding 55% in any

financial year ending on March 31 unless such acquirer makes a public announcement to acquire shares in accordance with the Regulations.

4.19 Further, as per Regulation 2(1)(e) of the Takeover Regulations 1997, *‘persons acting in concert’ inter alia* comprises:

- (1) *“persons who, for a common objective or purpose of substantial acquisition of shares or voting rights or gaining control over the target company, pursuant to an agreement or understanding (formal or informal), directly or indirectly co-operate by acquiring or agreeing to acquire shares or voting rights in the target company or control over the target company.”*
- (2) *Without prejudice to the generality of this definition, the following persons will be deemed to be persons acting in concert with other persons in the same category, unless the contrary is established:*
 - (i) *a company, its holding company, or subsidiary of such company or company under the same management either individually or together with each other;*
 - (ii) *a company with any of its directors, or any person entrusted with the management of the funds of the company;*
 - (iii) *directors of companies referred to in sub-clause(i) of clause (2) and their associates;*
 - (iv) *mutual fund with sponsor or trustee or asset management company;*
 - (v) *foreign institutional investors with sub account(s);*
 - (vi) *merchant bankers with their client(s) as acquirer;*
 - (vii) *portfolio managers with their client(s) as acquirer;*
 - (viii) *venture capital funds with sponsors;*
 - (ix) *banks with financial advisers, stock brokers of the acquirer, or any company which is a holding company, subsidiary or relative of the acquirer.*
 - (x) *any investment company with any person who has an interest as director, fund manager, trustee, or as a shareholder having not less than 2% of the paid-up capital of that company or with any other investment company in which such person or his associate holds not less than 2% of the paid up capital of the latter company.*

Note: For the purposes of this clause ‘associate’ means:

- (a) *any relative of that person within the meaning of section 6 of the Companies Act, 1956; and*
- (b) *family trusts and Hindu Undivided Families.*

4.20 Having regard to the facts in the instant proceedings, a requirement for proving violation of Regulations 10 and 11(1) of the Takeover Regulations 1997 (apart from the acquisition of shares over the threshold limits specified therein) in the instant proceedings is that the Noticees who had acquired shares in the Target Company were *‘persons acting in concert’* with the Acquirer in terms of Regulation 2(1)(e) of the Takeover Regulations 1997.

4.21 In this context and as stated at paragraph 4.5, I note that Arvind Goyal who was the Director of Incap had, in addition to his trading account, used/operated the trading accounts of Abhay Javlekar and Pooja Goyal. Further, in his submissions, I note that Abhay Javlekar had admittedly opened his trading account at the instance of Arvind Goyal in lieu of monetary compensation. The aforementioned action of Abhay Javlekar not only resulted in the operation of such account by Arvind Goyal but practically ensured the ownership and custody of the funds/securities in such account with him while at the same time ensuring the concealment of the real owner of such funds/securities in the records of the Depositories, etc. since the same continued to vest with name-lending account holder i.e. Abhay Javlekar. Having regard to the aforementioned facts, I find that Noticees no. 1 and 4 qualify as ‘persons acting in concert’ with the Acquirer i.e. Arvind Goyal (Noticee no. 2) in terms of Regulation 2(1)(e)(1) of the Takeover Regulations 1997 for acquiring shares in Incap. I further find that the acquisitions made by Arvind Goyal along with ‘persons acting in concert’ with him (as reproduced below) was over the threshold limits specified under Regulation 10 (as on October 16, 2010 – Arvind Goyal along with Abhay Javlekar) and Regulation 11(1) (as on December 6, 2010 – Arvind Goyal along with Abhay Javlekar and Pooja Goyal) of the Takeover Regulations 1997.

TABLE XVI: DATES ON WHICH ACQUISITION OCCURRED					
FIRST HOLDER NAME	DATE	DEBIT	CREDIT	TOTAL HOLDING	% OF SHARE CAPITAL
ARVIND GOYAL	30.09.2010	0	#170000	170000	4.46
ABHAY JAVLEKAR	30.09.2010	0	#150000	320000	8.40
ABHAY JAVLEKAR	5.10.2010	0	71800	391800	10.28
	12.10.2010	0	98400	490200	12.86
	16.10.2010	0	93700	583900	15.32
ABHAY JAVLEKAR	2.12.2010	0	17257	601157	15.77
ABHAY JAVLEKAR	3.12.2010	0	2728	603885	15.84
ARVIND GOYAL	3.12.2010	0	500	604385	15.86
POOJA GOYAL	3.12.2010	0	100	604485	15.86
ABHAY JAVLEKAR	6.12.2010	0	223215	827700	21.71
#SHARES WERE ACQUIRED THROUGH OFF-MARKET TRANSFERS WITH SHAREHOLDERS OF THE COMPANY WHO HELD SHARES IN PHYSICAL FORM. THESE SHARES WERE CONVERTED FROM PHYSICAL TO DEMAT AND THEN SOLD OFF-MARKET TO ARVIND GOYAL AND ABHAY JAVLEKAR.					

4.22 Accordingly, upon a consideration of the preceding paragraphs, I find that Arvind Goyal along with ‘persons acting in concert’ with him i.e. Noticee no. 1 and 4, had failed in making an Open Offer thereby violating Regulation 10 (Arvind Goyal along with Abhay Javlekar) and Regulation 11(1) (Arvind Goyal along with Abhay Javlekar and Pooja Goyal) of the Takeover Regulations 1997.

4.23 In this context, I note that Noticee no. 1 vide his submissions has contended that “there is no transaction reflected in the demat statements on 2.12.2010 and 3.12.2010 ...” Without prejudice to the aforementioned paragraph, even if his submission were to be accepted, it is still

observed that the total acquisition in the Target Company by Arvind Goyal and '*persons acting in concert*' with him i.e. Abhay Javlekar and Pooja Goyal (excluding the two acquisitions on December 2–3, 2010 in Abhay Javlekar's account), were still beyond the threshold limit specified under Regulation 11(1) of the Takeover Regulations, 1997.

4.24 As concluded in the preceding paragraphs, Noticee no. 2 (trading through his account and the trading accounts of Noticees no. 1 and 4) had violated the provisions of the SEBI Act read with the PFUTP Regulations 2003 by indulging in manipulative and unfair trade practices in the scrip of Incap. When such Noticee along with '*persons acting in concert*' with him, driven by the motive of market manipulation/unfair trade practices crosses the stipulated thresholds and later reduces his position in the Target Company, directing him along with '*persons acting in concert*' with him to make an open offer and acquire substantial number of shares and control over the Company, may not be in accordance with the underlying spirit of the Takeover Regulations 1997. It may actually lead to a situation where persons who perpetrated '*fraud*' with respect to a listed company's scrip, are forcibly asked to be substantial shareholders of the Target Company which may be detrimental to the public shareholders of such Company. Therefore, while their acquisition does violate the thresholds stipulated in the Takeover Regulations 1997, in the interest of the investors and the securities market, I am convinced that a different set of directions must follow against Noticee no. 2 and '*persons acting in concert*' with him i.e. Noticees no. 1 and 4.

4.25 However, as regards the allegations levelled against Noticees no. 3 and 5, I am of the considered view that in the facts of the present proceedings (see paragraph 4.4 and 4.6), sufficient evidence has not been adduced in the Investigation Report or SCN to demonstrate that they had collectively shared with Noticees no. 1, 2 and 4, a common objective or purpose of substantial acquisition of shares or voting rights or gaining control over the Target Company i.e. Incap or in other words, were '*persons acting in concert*' under Regulation 2(1)(e) of the Takeover Regulations 1997. Upon a consideration of the aforementioned, I am inclined to drop the allegation as contained in the SCN that Noticees no. 3 and 5 had violated the provisions of Regulation 10 and 11(1) of the Takeover Regulations 1997, without any adverse inference.

C. Disgorgement of wrongful gains/loss avoided:

4.26 From the *Impounding Order*, it is observed that the wrongful gains/loss avoided by Arvind Goyal and Abhay Javlekar (through sale of shares when the price of the scrip of Incap was falling thereby avoiding loss) amounted to **₹5,43,88,397.34**. As noted from the findings contained in the preceding paragraphs, Arvind Goyal had traded, by means of manipulative and unfair trade practices, in his own account and the account of Abhay Javlekar. In view

of the aforesaid, I am inclined to direct disgorgement only against Arvind Goyal in respect of the wrongful gains/loss avoided through his trading account and the trading account of Abhay Javlekar. From the material available on record, I also note that the aforementioned amount has not been deposited in an Escrow Account as directed vide the *Impounding Order*. Having regard to the same, I am of the opinion that the interest amount computed under the *Impounding Order* should be extended till the date of this Order.

- 4.27 Accordingly, the total loss avoided by Arvind Goyal through his account and the trading account of Abhay Javlekar as on the date of this Order is **₹7,08,51,405**, which has been computed as under:

TABLE XVII: LOSS AVOIDED			
NAME	LOSS AVOIDED [AMOUNT IN ₹]	INTEREST 12% PER ANNUM*	TOTAL
ARVIND GOYAL ABHAY JAVLEKAR	3,42,74,456	3,65,76,949	7,08,51,405
*INTEREST CALCULATED ON ILLEGAL LOSS AVOIDED FROM DECEMBER 1, 2010 TILL THE DATE OF THIS ORDER I.E. OCTOBER 23, 2019.			

- 4.28 As regards, the wrongful gains/loss avoided by Ramesh Daga, I am of the view that the directions as contained in the *Impounding Order* be vacated as against him for the reasons mentioned in the preceding paragraphs (see paragraph 4.4 and 4.6).

ORDER:

- 5.1 I, in exercise of the powers conferred on me under Sections 11(1), 11(4) and Section 11B of the SEBI Act read with Regulation 11 of the PFUTP Regulations, 2003, Regulation 44 of the Takeover Regulations, 1997 and Regulation 32 of the SEBI (Substantial Acquisition of Shares and Takeovers) Regulations, 2011, hereby direct as under:
- A. Arvind Goyal shall not access the securities market or buy, sell or otherwise deal in the securities market, either directly or indirectly for a period of **4 years** from the date of this Order. Further, Arvind Goyal shall not associate himself with any listed company or company proposing to list, or any registered intermediary, whether in the capacity of a Director, Key Management Personnel or Partner (in the case of a partnership firm), for a period of **4 years** from the date of this Order.
 - B. Abhay Javlekar and Pooja Goyal shall not access the securities market or buy, sell or otherwise deal in the securities market, either directly or indirectly for a period of **3 years** from the date of this Order.

- C. Arvind Goyal shall disgorge an amount of **₹7,08,51,405** being the loss avoided as per the *Impounding Order* along with interest calculated at the rate of 12% per annum from December 1, 2010 till the date of this Order i.e. October 22, 2019. The aforementioned Noticee shall pay the said amount within 45 days from the date of this Order either by way of demand draft drawn in favour of “*Securities and Exchange Board of India*”, payable at Mumbai or by e-payment* to SEBI account as detailed below:

BANK	BRANCH	RTGS CODE	BENEFICIARY NAME	BENEFICIARY ACCOUNT NO.
BANK OF INDIA	BANDRA KURLA BRANCH	BKID 0000122	SEBI	012210210000008

**Noticees who are making e-payment are advised to forward the details and confirmation of the payments so made to the Enforcement Department of SEBI for their records as per the format provided in Annexure A of Press Release No. 131/2016 dated August 9, 2016, which is reproduced as under:*

1. CASE NAME:	
2. NAME OF THE PAYEE:	
3. DATE OF PAYMENT:	
4. AMOUNT PAID:	
5. TRANSACTION NO:	
6. BANK DETAILS IN WHICH PAYMENT IS MADE:	
7. PAYMENT IS MADE FOR: (LIKE PENALTIES/ DISGORGEMENT/RECOVERY/SETTLEMENT AMOUNT AND LEGAL CHARGES ALONG WITH ORDER DETAILS:	

- 5.2 I hereby also dispose of the SCN dated February 29, 2016 against Dharmendra Bhojak and Ramesh Daga, without any further directions. Further, the directions in the *Impounding Order* against Ramesh Daga shall stand revoked.
- 5.3 This Order shall come into force with immediate effect.
- 5.4 A copy of this Order shall be served on the recognized Stock Exchanges, Depositories, Registrar and Share Transfer Agents and Banks for their information and necessary compliance.

Place: Mumbai
Date: October 23, 2019

G. MAHALINGAM
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA