

BEFORE THE SECURITIES AND EXCHANGE BOARD OF INDIA
CORAM: MADHABI PURI BUCH, WHOLE TIME MEMBER
FINAL ORDER

**Under Sections 11(1), 11(4) 11 (4A), 11B (1) and 11B (2) of the Securities and
Exchange Board of India Act, 1992**

In the matter of Biocon Ltd.

In re SEBI (Prohibition of Insider Trading) Regulations, 2015

In respect of:

Sl. No.	Name of the Entity	PAN
1.	Shreehas P Tambe	ACHPT2165L

Background

1. Biocon Limited (hereinafter referred to as “**Biocon / Company**”) was incorporated on November 29, 1978 and got listed on BSE and NSE on April 7, 2004. Biocon is a biopharmaceutical company and is in the business of manufacturing and research of the pharmaceutical ingredients. Biocon had made an announcement on January 18, 2018, on BSE at 15:44 hours and on NSE at 15:47 hours regarding Press Release titled “*Biocon Announces Exclusive Global Collaboration with Sandoz on Next-Generation Biosimilars*”.
2. SEBI observed that after the public announcement was made, the scrip witnessed rise of 5.6% in the closing price on the next day post the announcement. SEBI initiated an investigation to ascertain whether certain persons / entities have traded in the scrip of Biocon when they were in possession of Unpublished Price Sensitive Information (hereinafter referred to as “**UPSI**”) and was thus in violation of the provisions of the Securities and Exchange Board of India, Act 1992

(hereinafter referred to as the “**SEBI Act**”) and SEBI (Prohibition of Insider Trading) Regulations, 2015, (hereinafter referred to as the “**PIT Regulations**”) during the period December 4, 2017 to January 18, 2018 (hereinafter referred to as the “**investigation period**”).

Show Cause Notice

3. Consequent to the investigation, a show cause notice dated August 3, 2020 (hereinafter referred to as “**SCN**”) was served on Mr. Shreehas P Tambe, Senior Vice President of Biocon (hereinafter referred to as “**Noticee**”) in the extant matter. The SCN *inter alia* alleged as follows:
 - 3.1. The information relating to collaboration with Sandoz which was announced vide press release dated January 18, 2018 was an information that is not generally available information in terms of regulation 2 (1)(e) of PIT Regulations.
 - 3.2. It is alleged that the information related to the collaboration of Biocon with Sandoz on next-generation Biosimilars is material and before it was published on the website of the Exchanges, was UPSI in terms of regulation 2 (1)(n)(vi) of PIT Regulations.
 - 3.3. Based on the chronology of key events leading up to the corporate announcement, it was alleged that the UPSI period was from December 4, 2017 to January 18, 2018.
 - 3.4. As per company’s letter dated January 14, 2019, Noticee was aware of the UPSI. Therefore, in terms of regulation 2(1)(g)(ii) of PIT Regulations, Noticee is an “insider”, as he was in possession of UPSI.
 - 3.5. It is alleged that the Noticee being an insider has sold 17,440 shares of Biocon during the period December 19, 2017 to December 27, 2017 while in possession of UPSI. Thus, it is alleged that Noticee engaged in insider trading in the scrip of Biocon. Therefore, it is alleged that Noticee has violated regulation 4(1) of PIT Regulations and Section 12A (d) of SEBI Act. Further,

it is also alleged that by dealing in securities of Biocon while in possession of material and non-public information, Noticee has also violated Section 12A(e) of SEBI Act.

- 3.6. It is further alleged that Noticee being a designated person and allegedly in possession of UPSI had applied for pre clearance of trade to deal in securities of Biocon. It is therefore alleged that Noticee has violated clause 6 of Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders, specified in Schedule B read with regulation 9(1) of PIT Regulations (hereinafter referred to as “**Code of Conduct**”).
- 3.7. It is also alleged that Noticee has failed to make the timely requisite disclosures to Biocon when he had sold shares on December, 19-20, 2017 whose value exceeded ten lakh rupees. Hence, Noticee being an employee of Biocon, had allegedly violated regulation 7(2)(a) of PIT Regulations.

4. In view of the above, the Noticee was called upon to show cause as to why suitable directions under Sections 11B (1) and 11(4) read with Section 11(1) of SEBI Act, including debarment for an appropriate period should not be issued against him for the alleged violations of aforesaid provisions of PIT Regulations and SEBI Act for trading while in possession of UPSI. He was also show caused as to why suitable directions for imposing monetary penalty under Sections 11B (2) and 11(4A) read with Sections 15HB and 15A(b) of the SEBI Act should not be issued against him for the alleged violations of provisions of Code of Conduct and regulation 7(2)(a) of PIT Regulations.

Reply & Hearing

5. In response to the SCN, Noticee vide his letter dated August 14, 2020 requested for certain information / documents in the matter. By SEBI letter dated August 17, 2020, he was provided with document / information and was also granted an opportunity of inspection on August 21, 2020. On the day of inspection, the authorized representative of Noticee, Mr. Robin M. Shah (hereinafter referred to as

“AR”) appeared and conducted the inspection in the matter.

6. Pursuant to the inspection, Noticee vide his letter dated September 25, 2020 *inter alia* submitted as follows:

6.1. The SCN proceeds on the fundamentally incorrect assumption that the UPSI crystallised on December 7, 2017. The potential collaboration between Biocon and Sandoz was yet to be finalised even in January, 2018, much after his trades.

6.2. The sales were effected by him for the *bona fide* purpose of acquiring self-occupancy residential premise.

6.3. There was no UPSI at the time when he sold the shares is also apparent from the fact that Biocon correctly did not close the trading window and did not deny him pre-clearance for his trades.

6.4. The announcement being ‘positive’ in nature should have led to him buying shares of Biocon. The fact that he sold shares clearly demonstrates that there was no UPSI and neither was there any intention of engaging in insider trading on his part. In fact, if he would have retained the shares till January 18, 2018, he could have sold them at a price higher than his actual selling price.

6.5. He had entered into a Memorandum of Understanding to purchase a residential apartment on December 16, 2017. The sale proceeds which were received by him by December 28, 2017 were used to make the payment to the Developer and the Seller of the apartment on December 28, 2017.

6.6. He relied upon the matter of *Chandrakala vs. SEBI* (Appeal 209 of 2011) and submitted that in the said case Hon’ble Securities Appellate Tribunal (hereinafter referred to as “SAT”) concluded that the appellant was not guilty of insider trading despite having traded while in possession of UPSI, merely because such trade was not induced by the UPSI.

6.7. All that happened on December 7, 2017 was identification of the key pending points. This does not mean that the arrangement had been crystallised on December 7, 2017. Unless the critical pending points were concluded amicably, the

collaboration agreement between Biocon and Sandoz would not have happened. He has submitted emails by the aforesaid two companies dated December 29, 2017, January 5, 9 & 13, 2018 to substantiate that there were several critical pending points on account of which the potential collaboration agreement was not finalised on December 7, 2017.

6.8. Assuming while denying that there did exist any information about the potential collaboration, the same was not certain as it was subject to negotiations and closure of important points. There was a distinct possibility until January 16, 2018 for the potential collaboration not to happen.

6.9. It is a trite law that a person can only be penalised for being an insider only when it is proved that there is some secret profit or personal gain made by virtue of being a connected person. For his submission Noticee relied upon the matter of *Rakesh Agarwal vs. SEBI* (2004 49 SCL 351) wherein it was held by Hon'ble SAT as follows:

"The clearest evidence of the "manipulation" or "deception" being perpetrated by a corporate insider is when an insider uses the unpublished price sensitive information to make secret profit/personal gains. The necessary circumstance for liability is to ascertain whether the insider has made any secret profits or personal gains. If such benefit can be established, the insider is liable for the offence for insider trading."

6.10. As for the delay in making disclosures is concerned, he submitted that his *bona fide* reading of the provision was that the disclosures ought to be affected upon the completion of a series of transactions which he promptly did.

7. Considering the facts and circumstances of the case, Noticee was granted an opportunity of hearing in the matter on November 5, 2020. The said hearing notice was sent to the Noticee vide email dated October 22, 2020.
8. At the time of hearing, Noticee appeared in person along with his AR, Mr. Ravichandra S. Hegde. The AR reiterated the submissions made in the reply submitted in response to the SCN and *inter alia* submitted as follows:

8.1. There was no UPSI when the Noticee had executed trades in the scrip. The deal was inconclusive as critical points were still pending.

8.2. Even assuming there existed an UPSI, Noticee's trades were not motivated by UPSI but were because of his financial requirements.

8.3. Nature of transaction and conduct of party are important to be considered before arriving at the conclusion of insider trading. Nature of Noticee's trading being contrary to the development in question demonstrates that there was no co-relation between Noticee's trades and the information in question.

8.4. If he was in possession of UPSI, the Compliance Officer would not have approved his trades. In fact, if he would have retained the shares till January 18, 2018, he would have sold them at a higher price than his actual selling.

8.5. Noticee was given time till November 9, 2020 to make post hearing submissions, if any.

9. Post hearing, Noticee vide his letter dated November 9, 2020, *inter alia* submitted as follows:

9.1. There was a 'stalemate' even on December 29, 2017 i.e. one day after his trading, which was yet to be resolved leading to uncertainty about the potential collaboration. This is demonstrated by the email sent by the Managing Director to Sandoz on December 29, 2017 with '*Some thoughts to resolve stalemate*'. Even on January 13, 2018 there was an email sent by Sandoz with 44 items that were yet to be finalized.

9.2. The fact that neither trading window was closed nor the Noticee was refused pre-clearance for his trades, demonstrates that there was no UPSI in existence when the sales were effected. This position has been accepted by a Ld. Adjudicating Officer

(order dated October 14, 2020) in the case of *Mr. Subhash Chander Kalia* in the scrip of Yes Bank Ltd.

9.3. Noticee did not gain any advantage from the alleged information about the potential collaboration. This is an important factor that needs to be considered even when applying the standard of 'while in possession of'.

9.4. The entire amount of Rs. 94.46 lakh received from the sales (between December 22, 2017 and December 28, 2017) forms part of the payment made to Mr. Lalit Ahuja and Mr. Vikram Ahuja on December 29, 2017 of Rs. 1.28 crore. This is apparent from the fact that prior to the receipt of the sale proceeds of the shares on December 22, 2017, Noticee's bank balance was Rs. 64.13 lakh and after making the payments on December 29, 2017 was Rs. 40.09 lakh. This demonstrates that the payment of the monies to Mr. Vikram Ahuja and Mr. Lalit Ahuja was from the sale proceeds from sale of Biocon shares. Another cheque for Rs. 27.63 lakh was given by Noticee to M/s. Adarsh Developers, the developer of the flat on December 28, 2017, which cleared subsequently.

9.5. It is submitted that the violation with respect to disclosure, if any in the present case at best being a technical one, no penalty should be imposed. Reference is made to the order of Hon'ble SAT in the case of *P. G. Electroplast & Ors. vs. SEBI* (decided on August 2, 2019).

10. Vide his letter dated January 25, 2021, the Noticee *inter alia* made the following additional submissions by placing reliance on the order of WTM in the matter of *Udayant Malhotra* decided on December 18, 2020:

10.1. Even if the UPSI existed, the aforesaid WTM order rules that it ought to be demonstrated that such UPSI was available with the Noticee. The record shows that emails in relation to the proposed transactions were not marked to the Noticee. The Noticee has not been named as one of the parties who was involved in the transaction in question. There is nothing on record or in the SCN to demonstrate

that the alleged UPSI, if it did exist, was therefore available with the Noticee.

10.2. The aforesaid WTM order rules that the circumstances mentioned in regulation 4 (1) of PIT Regulations are only illustrative. It is ruled that there can be other factors that can be shown to prove innocence. The Noticee has already demonstrated that the sales were effected to purchase a flat. It is submitted therefore that the proof of innocence specified under regulation 4 (1) of PIT Regulations has also been provided in the present matter.

Findings and Consideration

11. I have perused the SCN, written and oral submissions and other materials available on record. On perusal of the same, the following issues arise for consideration.

- i. *Whether the information relating to the collaboration between Biocon and Sandoz was UPSI, in terms of PIT Regulations?*
- ii. *If the information relating to the collaboration between Biocon and Sandoz was UPSI, whether the period of UPSI was from December 4, 2017 to January 18, 2018, as alleged in the SCN?*
- iii. *Whether the Noticee is an 'insider' in terms of PIT Regulations?*
- iv. *If Noticee is an 'insider' in terms of PIT Regulations, whether the Noticee has violated the applicable provisions of insider trading under PIT Regulations and SEBI Act, as alleged in the SCN? Further, whether the Noticee has violated provisions related to code of conduct and continual disclosures under PIT regulations, as alleged in the SCN?*
- v. *If the answer to the aforesaid question is in affirmative, whether directions as proposed in the SCN and direction of penalty, if any, needs to be issued against the Noticee?*

12. I now proceed to deal with the issues as enumerated earlier.

Issue No. 1- *Whether the information relating to the collaboration between Biocon and Sandoz was UPSI, in terms of PIT Regulations?*

13. Before proceeding further, it will be appropriate here to refer to the definition of UPSI as mentioned under regulation 2(1)(n) of PIT Regulations. The same reads as follows:

2(1) In these regulations, unless the context otherwise requires, the following words, expressions and derivations therefrom shall have the meanings assigned to them as under:

...

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

(i)...

...

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

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

14. Thus, from the aforesaid definition of UPSI, it is observed that the following three ingredients are essential to qualify an information as an UPSI:

14.1. The information must be directly or indirectly related to a company or its securities;

14.2. The information must not be generally available;

14.3. The information upon becoming generally available, is likely to materially

affect the price of the securities.

Moreover, in terms of regulation 2 (1)(n)(vi) of PIT Regulations as it existed then, material events in accordance with listing agreement are types of matters that ordinarily give rise to UPSI.

15. In the present matter, the information that has been alleged in the SCN as UPSI is the information relating to the collaboration between Biocon with Sandoz on next generation biosimilars, the announcement for which was made by Biocon on January 18, 2018, on BSE at 15:44 hours and on NSE at 15:47 hours vide a Press Release titled "*Biocon announces exclusive global collaboration with Sandoz on next-generation Biosimilars*". It is observed from the submissions of the Noticee that he has not disputed that information relating to collaboration between Biocon and Sandoz was not UPSI.

16. I now proceed to examine whether the aforesaid information satisfies the three criteria mentioned in the preceding paragraph. With respect to the first criterion, it is not in dispute that the information of the collaboration between Biocon and Sandoz pertains directly to Biocon.

17. To meet the second criterion, the information should not be "generally available". The phrase, "generally available information" has been defined under regulation 2 (1)(e) of PIT Regulations, as follows:

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

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

18. The aforesaid definition which essentially means that the information should be

equally accessible to the public on a non-selective and in a transparent manner i.e., accessible to the public. To put it differently, for an information to be held as generally available, the information must be uniformly and universally disseminated. One of the ways of doing so is publishing it on the official website of the company or on the website of a stock exchange.

19. In the instant matter, the collaboration was announced by the company, pursuant to the signing of contract on January 18, 2018 between Biocon and Sandoz. The information being published on the website of the stock exchanges was uniformly and universally accessible to the public on a non-discriminatory basis. Corollary to the aforesaid is that the information regarding collaboration between Biocon and Sandoz on next generation biosimilars, was not generally available to the public prior to January 18, 2018.
20. As per the third criterion, the information upon becoming generally available, is likely to materially affect the price of the securities. Here it will be appropriate to quote the code of conduct of Biocon which has, *inter alia*, defined UPSI under para 16(vi)(e) as “*Any other information having bearing on the financials/operation/performance of the company or the Group.*” In this regard, it is observed that the press release of Biocon with respect to the collaboration of Biocon with Sandoz on next-generation Biosimilars, *inter alia*, stated that “*...Worldwide commercialization responsibilities will be divided and each company’s strength will be leveraged within specific geographies. Sandoz shall lead commercialization in North America and the EU while Biocon will lead commercialization in rest of the world*”. Further, Biocon’s Managing director, Ms. Kiran Mazumdar Shah in this regard stated that “*...This synergistic partnership will enable us to scale up our capabilities for an ‘end to end’ play in the global biosimilars space...*”. A perusal of the aforementioned press release dated January 18, 2018 shows that it had the relevant information regarding the collaboration of Biocon with Sandoz on next generation biosimilars with respect to

the product / category in which the collaboration was made, extent of the collaboration and the commercial jurisdiction of each companies. Thus, the aforesaid information which will have a bearing on the financials / operation / performance of Biocon, was not generally available and upon becoming generally available was likely to materially affect the price of the securities.

21. Further, the following is noted from the trading in the scrip of Biocon on BSE:

Date	Open (Rs)	High (Rs)	Low (Rs)	Close (Rs)	No. of shares traded	No. of trades	BSE (close)
18/1/2018	553	555	536.75	539.60	1,63,805	2,443	35260.29
19/1/2018	548	575.30	545.35	569.85	8,71,801	15,881	35511.58

From the above table, it is noted that the scrip opened at Rs. 548 from the previous day closing price of Rs 539.60, reached a high of Rs. 575.30 and closed at Rs. 569.85, which is 5.6% higher in comparison to the previous closing price. Sensex during that time had increased only marginally by 0.71% points. Moreover, the number of trades executed in the scrip also increased by 550%.

22. From the above, it is observed that the information of the collaboration upon becoming generally available has materially affected the price of the securities of Biocon, though the definition of UPSI requires only the likely impact on the price of the security.

23. In view of the aforesaid discussions, it has been demonstrated that all the three ingredients of the definition of UPSI have been met by the information relating to the collaboration between Biocon and Sandoz and hence, it can be concluded that the information relating to the collaboration was an UPSI, in terms of regulation 2(1)(n) of PIT Regulations as well as para 16(vi)(e) of code of conduct of Biocon,

prior to January 18, 2018.

24. Moreover, it is observed that aforesaid announcement was made under regulation 30 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (hereinafter referred to as “**LODR Regulations**”) to the Exchanges. Regulation 30 (1) of LODR Regulations states “*Every listed entity shall make disclosures of any events or information which, in the opinion of the board of directors of the listed company, is material.*”. Thus, in the opinion of Board of Directors of Biocon, collaboration with Sandoz was a material event and hence it was disclosed under regulation 30 of LODR Regulations. Therefore, as per regulation 2(1)(n)(vi) of PIT Regulations as it existed then, also it can be concluded that information relating to the collaboration between Biocon and Sandoz was UPSI, prior to January 18, 2018. It is noted that regulation 2(1)(n)(vi) of PIT Regulations as it existed then, was part of the illustrative guidance of UPSI which is given under the definition of UPSI in regulation 2(1)(n) of PIT Regulations. It is observed that whether a particular information is UPSI, must be examined as per definition of UPSI and as per the facts and circumstances of each case. As noted in the preceding paragraphs, there are three parameters that must be met by an information to fall within the ambit of UPSI. The first parameter of the information relating directly or indirectly to company or its securities, is a question of fact. The second parameter of information not being generally available is a mixed question of fact and law, as a factual verification of the availability of information must be done considering the definition of “generally available information” as given under PIT Regulations. The third parameter of the information likely to affect the price of the securities, is another requirement. Thus, even the types of matters that have been given in the illustrative list as the Regulation considers the three parameters are already met with. Even though the information which was announced by Biocon as material event under regulation 30 of LODR Regulations is falling within one of the illustrative lists, independent of that it has satisfied all the three parameters of the

definition of UPSI given under regulation 2(1)(n) of PIT Regulations as well. Therefore, the announcement made by Biocon under regulation 30 of LODR Regulations, was UPSI.

Issue No. 2 - *If the information relating to the collaboration between Biocon and Sandoz was UPSI, whether the period of UPSI was from December 4, 2017 to January 18, 2018, as alleged in the SCN?*

25. SCN alleges that the UPSI period is from December 4, 2017 to January 18, 2018. In this regard, the Noticee has submitted that the SCN proceeds on the fundamentally incorrect assumption that the UPSI got crystallised on December 7, 2017. The potential collaboration between Biocon and Sandoz was yet to be finalised even in January, 2018. All that happened on December 7, 2017 was identification of the key pending points. Unless the critical pending points were concluded amicably, the collaboration agreement between Biocon and Sandoz would not have happened. He has submitted emails by the aforesaid two companies dated December 29, 2017, January 5, 9 & 13, 2018 to substantiate his submission.

26. The chronology of events leading up to the corporate announcement on January 18, 2018, as submitted by Biocon vide its letter dated January 14, 2019, is as follows:

Date	Event
07/10/2016	Meeting held in Munich. This was the initiation of the discussion between the parties. Discussed on the potential collaboration with Sandoz and put forth outlines for further discussing mutual terms for the collaboration.
19/12/2016-20/01/2017	Discussion on feasibility of the working model, potential portfolio for proposed collaboration and due diligence process
24/01/2017-2/12/2017	Due Diligence and Negotiations in Collaboration Agreement under progress.
04/12/2017	Negotiation of critical pending points
07/12/2017	Senior management meeting in Bangalore to address outstanding issues
09/12/2017-11/12/2017	Draft of Collaboration agreement received from Sandoz followed by email proposal on unresolved issues
20/12/2017	Draft of press release and question & answers exchanged between the respective PR teams of the parties subject to the resolution of the issues pending between the parties, which was ongoing simultaneously.

Date	Event
22/12/2017-05/01/2018	Follow up on the collaboration agreement
11/01/2018	Senior management meeting in Dubai to address outstanding issues
16/01/2018	Senior Management and Deal teams came on multiple webex Video conference and resolved all open issues and points
17/01/2018	Circulation of execution version of contract
18/01/2018	Contract signed and Press Release was issued.

Based on the aforesaid chronology, SCN has alleged that negotiations in respect of the collaboration agreement were under progress since October 7, 2016. As on December 4, 2017, only critical points in collaboration agreement had been pending which were discussed through subsequent meetings of senior management in Bangalore and Dubai and finally resolved on January 16, 2018. In view of the above, SCN has alleged that the negotiation of critical pending points in the collaboration on December 4, 2017 was the last leg of the negotiations for the agreement which led to the announcement of collaboration with Sandoz on January 18, 2018. Thus, the SCN has alleged that the UPSI period is from December 4, 2017 to January 18, 2018.

27. The submission of the Noticee that the SCN has assumed that the UPSI got crystallised on December 7, 2017, is an incorrect reading of SCN. In the SCN it has been alleged that the last leg of negotiations started on December 4, 2017 which led to the announcement of collaboration with Sandoz on January 18, 2018. Thus, over a period of one and half months, various issues which were specific to the collaboration were discussed and in the said process information was getting crystallised leading to the announcement on January 18, 2018. Therefore, it is incorrect to submit that the SCN has proceeded on the assumption that the information relating to collaboration was crystallised on December 7, 2017.

28. Further, there is no denying that the collaboration between Biocon and Sandoz was not finalised prior to January 18, 2018 and as on December 7, 2017 key points were still pending. However, it may be noted that there exists a distinction between the

timelines when the parties to a transaction have opened discussions, UPSI period and the final signing. During the former, the parties are still exploring the possibilities of a potential transaction between them. Thus, the discussions are exploratory in nature and the information generated at this stage is imprecise in nature, without a reasonable probability of the transaction going through and without any specific details. Juxtapose this with the UPSI period. Discussions during UPSI period starts with high degree of crystallisation and proceeds towards a greater degree of crystallisation with a reasonable probability of the transaction going through. This is done in a structured way by resolving issues. In other words, during the UPSI period, with each passing day, the outcome of the transaction moves towards higher and higher degree of concreteness, as the discussions are centered around resolution of specific issues. It is noted that it cannot be said with 100% certainty what will be the outcome / information before the public announcement is actually made as there is still room for the parties to the transaction to change / modify their decision till the time the decision has been publicly announced. The certainty of information can only be measured in terms of probability/degree of crystallisation and concreteness. In the present matter, as seen from the chronology provided by Biocon, on December 20, 2017, a draft of press release and question and answers were exchanged between the respective PR teams of the companies. The same indicates that the negotiations between the companies had reached a stage where there was a high probability of the transaction to go through. In other words, the events of December 20, 2017 indicate a high degree of crystallisation of information and certain specific points were pending to be ironed out. The reason being that apart from the deal team who were working on the negotiations for the collaboration, now the PR teams of the respective companies were also involved in the transaction, indicating that in-principle agreement was reached / crystallised between the companies, though certain specific details were still being discussed. Thus the wheels for the process of finalisation were set in motion by entering into a

phase of final discussion on December 20, 2017, after almost 14 months of ongoing discussion since October 7, 2016. It is at this point that a reasonably high degree of concreteness/crystallisation / probability of transaction going through happened.

29. With respect to the email dated December 29, 2017 between the companies referred to by the Noticee, it is observed that reference to the stalemate in negotiations, in the aforesaid email was with respect to “termination clause”. The said termination clause referred to the events / breaches which in future may end the collaboration and the discussion had to center around simplification of termination clause and reflection of the same in legal language. The same reflects that the negotiations between the parties has already passed through a high degree of concreteness or crystallization and was moving towards a finality. Credence to this is lent by the fact that prior to December 29, 2017, a draft of press release and question and answers were exchanged between the respective PR teams of the companies on December 20, 2017.

30. With respect to the emails dated January 5, 9 and 13, 2018, Noticee has submitted that the said emails show that several critical points were pending and the information was not certain. There was a distinct possibility as on January 16, 2018 that the potential collaboration would not happen. As noted in preceding paragraphs, the certainty of outcome of a transaction can only be measured in terms of degree of crystallisation of information. In the instant matter, during the period January 5-13, 2018, the parties to the transaction were negotiating on specific issues. The negotiations represent a series of steps taken by the respective teams of the companies working on the deal and the senior management of the companies to resolve the outstanding issues and fine tune the terms of the deal. The various events during the period January 5-13, 2018, were in fact giving more and more certainty and the nature of discussions moved towards the complete crystallisation and concreteness of the UPSI on January 18, 2018. Credence to the aforesaid is lent

by the following emails exchanged between the companies during the period January 5-13, 2018:

30.1. Email dated January 8, 2018 from Biocon to Sandoz wherein the following is stated: *"We would like to have a call today & tomorrow to close out as many issues as possible so that we have limited issues to deal with in the face to face meeting."*

30.2. Email dated January 13, 2018 from Sandoz to Biocon had the subject "Thor-next steps to closing". The body of the email referred to productive few days that the companies had in Dubai and the email concluded as follows: *"...speak with you soon as we work to close our collaboration agreement this week."*

Thus, from the tone and tenor of the above emails, it can be reasonably inferred that the probability of the transaction to go through was high as the negotiations were resulting in ironing out of the issues and the terms of the collaboration agreement were getting crystallised. Therefore, the submission of the Noticee that during the period January 5-13, 2018, several issues were pending, information was uncertain and that the potential collaboration would not happen, is unacceptable as during the said period there was high degree of crystallisation and concreteness of information as deal teams were successfully fine tuning the terms of the collaboration agreement through their negotiations and the probability of the transaction to go through was high.

31. It is further observed that with respect to UPSI period, it should be kept in mind the requirement of UPSI period does not mitigate against the idea of a possibility of failure of the deal. To elaborate on it further, if the UPSI period has to begin only when the deal or the transaction in question will 100% go through and there is no room for failure, then the only period which can be defined as UPSI period would be between the signing of the contract / agreement and the press release. This will make the concept of "UPSI period" infructuous and will lead to mischief as multitude

of steps are involved before a deal or a transaction can be consummated. The initial steps of any transaction / deal, as discussed in preceding paragraphs, are explorative and uncertain in nature and only when it can be reasonably inferred that the probability of transaction of going through is high, then only the UPSI period can begin. The individuals who are part of the deal / transaction team, during the UPSI period will know with a higher degree of certainty, the probable outcome of the deal / transaction and being in possession of the said information they may trade. Therefore, if the UPSI period will begin when there is no room for the deal / transaction to fail, then the situation as mentioned above would not be covered as insider trading, even though it leads to information asymmetry.

32. Further, the Noticee has submitted that the fact that the trading window was not closed, demonstrates that there was no UPSI in existence. In this regard, it is noted that trading window is an instrument to prevent insider trading by designated employees by monitoring their trading activity. Thus, it is a preventive measure and cannot be the sole basis for determining the existence of UPSI. The reason being that chronologically, it is the UPSI which comes into existence first and based on that trading window is closed. There are a host of factors that determines the existence of UPSI viz., nature of the transaction, progress of the discussions, outcome of various stages of negotiations, increasing probability of transaction going through etc. Therefore, for each matter, the entire facts and circumstances of the matter must be examined without giving undue weightage to any one facet, before arriving at the conclusion of existence of an UPSI. The submission of the Noticee can also be examined from the perspective of a trading plan. There are certain insiders who may possess UPSI round the year. However, they are still able to trade as they have an approved trading plan. This highlights a situation where UPSI is in existence, but the trading window may or may not be closed. If the trading window is closed throughout the year because of the existence of perpetual insiders, then it would make the whole concept of “trading plan” redundant. On the other hand, if the

trading window is not closed for designated employees then it may lead to insider trading. Therefore, there cannot be these two extremes and the closure of the trading window must be seen from the perspective of prevention of insider trading rather than as a sole determining factor for the existence of UPSI. Hence, the submission of the Noticee that the trading window was not closed, demonstrates that there was no UPSI in existence, is untenable. The reliance placed by the Noticee on the order of the Adjudicating Officer in the matter of *Mr. Subhas Chander Kalia* is incorrect as in that matter, on the peculiar facts of the matter, the Adjudicating Officer has placed reliance on the fact of non-closure of trading window as an additional circumstance to conclude the non-existence of UPSI. It was not his sole criteria. In any event, interpretation of any fact situation for evidence analysis in other SEBI order is not binding in the present proceedings.

33. In view of the aforesaid discussions, it is observed that the probability of the transaction to go through was high from December 20, 2017 onwards and the information relating to the collaboration between Biocon and Sandoz on next generation biosimilars was published when the public announcement was made to the Exchanges by Biocon, on January 18, 2018, post market hours.

34. Considering the aforesaid discussions and the timelines as noted in the preceding paragraph, it is held that the period of UPSI is from December 20, 2017 to January 18, 2018.

Issue No. 3 - *Whether the Noticee is an 'insider' in terms of PIT Regulations?*

35. Here, it will be appropriate to refer to the relevant provision pertaining to the definition of 'insider'. In terms of regulation 2 (1) (g) of PIT Regulations, 'insider' means any person who is:

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

36. SCN has alleged that the Noticee is insider in terms of regulation 2 (1) (g) (ii) of PIT Regulations. Noticee on the other hand has submitted that if he was in possession of UPSI, the Compliance Officer would not have given him preclearance for his trades. The said submission of the Noticee is flawed as whether, Noticee is in possession of UPSI is a matter of fact which must be determined based on the circumstances of the matter. The Compliance Officer apart from independent facts can rely on the declaration of the seeker for preclearance which in the instant case is based on incorrect undertaking given by the Noticee. The fact whether Noticee was in possession of UPSI was not dependent on the Compliance Officer's preclearance which as stated can also be based on incorrect undertaking of the Noticee himself apart from incorrect appreciation by the Compliance officer of facts which indicate possession of UPSI by the Noticee. In the instant matter, in response to the query of SEBI to provide details of the persons who were aware of the information at every stage of the event, Biocon vide its letter dated January 14, 2019 had replied that the Noticee was one of the said persons. This coupled with the fact that Noticee being one of the senior most employee of the company as he was the Senior Vice President, on a preponderance of probability basis leads to a reasonable conclusion that he was in possession of the UPSI.

37. Further, the Noticee has submitted that there is nothing on record or in the SCN to demonstrate that the alleged UPSI, if it did exist, was available with the Noticee. The said submission of the Noticee is without any merit as it has been noted in the immediate preceding paragraph that based on Biocon's submission and his position in the corporate hierarchy of Biocon, it is reasonable to conclude that the Noticee was in possession of UPSI.

38. The Noticee's submission that emails in relation to the proposed transactions were not marked to the Noticee and therefore UPSI, if it did exist, was not available with the Noticee, is unacceptable. Being marked in the emails is one of the ways of coming

in possession of UPSI but that is not the sole parameter based on which a finding of being an insider can be arrived at. The reason being that in any deal / transaction a team of officers / employees work together wherein each person's role is delineated. While some of the team members directly interact with the opposite party, others work on the various other aspects of the deal / transaction which facilitates the discussions / negotiations. In the present case, the collaboration with Sandoz is a major transaction which will necessarily require multiple officers of Biocon apart from specific officers who were designated to correspond with Sandoz. Therefore, weightage must be given to the fact that the Noticee is a designated employee who was high in the corporate hierarchy of Biocon and the fact that Biocon in its submission has stated unequivocally that the Noticee was in possession of the UPSI. Thus, on a preponderance of probability basis, it leads to a conclusion that the Noticee was in possession of the UPSI.

39. In view of the aforesaid discussion, it is held that the Noticee is an insider under regulation 2(1)(g)(ii) of PIT Regulations as he was in possession of the UPSI.

Issue No. 4 - *If Noticee is an 'insider' in terms of PIT Regulations, whether the Noticee has violated the applicable provisions of insider trading under PIT Regulations and SEBI Act, as alleged in the SCN? Further, whether the Noticee has violated provisions related to code of conduct and continual disclosures under PIT regulations, as alleged in the SCN?*

40. SCN has alleged that the Noticee has violated the following provisions of law, as he, being an insider has traded in the securities of Biocon while in possession of UPSI:

PIT Regulations

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:

Provided that the insider may prove his innocence by demonstrating the circumstances including the following:

- (i) the transaction is an off-market inter-se transfer between promoters who were in possession of the same unpublished price sensitive information*

- without being in breach of regulation 3 and both parties had made a conscious and informed trade decision;*
- (ii) in the case of non-individual insiders: –*
- ...*
- (iii) the trades were pursuant to a trading plan set up in accordance with regulation 5.*

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

SEBI Act

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;*

41. Noticee has contended that sales were effected by him for the *bona fide* purpose of acquiring self-occupancy residential premise. He has used the sale proceeds which were received by him by December 28, 2017, to make the payment to the Developer and the Seller of the apartment on December 28, 2017. Noticee has placed reliance upon the matter of *Chandrakala vs. SEBI*. Noticee has also placed reliance in the matter of *Udayant Malhotra* decided by SEBI to state that circumstances mentioned

in regulation 4 (1) of PIT Regulations are only illustrative. Noticee has already demonstrated that the sales were effected to purchase a flat. It is therefore submitted that he has proved his innocence.

42. It is seen from the payment receipt which is on a stamp paper that the Noticee has made a part payment of Rs. 1,45,89,999/- to the Sellers for the residential premise on December 28, 2017. Payment of Rs. 1,18,27,341/- is also supported by bank statement. It is noted from Noticee's submission that he had received Rs. 94.46 lakh as sale proceeds. Thus, the submission of the Noticee that he used the sale proceeds and his savings to pay the Sellers, is acceptable. However, the relevant consideration under regulation 4 (1) of PIT Regulations, which has been alleged against the Noticee, is that an insider should not trade in securities "when in possession of UPSI". Similarly, under Section 12A(e) of SEBI Act, an insider should not deal in securities "while in possession of material or non-public information". Therefore, the justification provided by the Noticee must negate the fact that he was not in possession of UPSI when he executed the impugned trades. In the instant matter, though Noticee has furnished reasons for his trades, the same is not a relevant consideration under regulation 4 (1) of PIT Regulations and Section 12A(e) of SEBI Act, as the charge is based on the fact that the Noticee was in possession of UPSI. The reliance placed by the Noticee on *Udayant Malhotra* matter to submit that the circumstances mentioned under proviso to regulation 4 (1) of PIT Regulations is illustrative, is acceptable. However, that does not translate into a negation of the finding that the Noticee has traded while in possession of UPSI in contravention of regulation 4 (1) of PIT Regulations. In the present facts and circumstances of the case, it has been held that the information relating to the collaboration of Biocon with Sandoz on next generation biosimilars is an UPSI and the UPSI period is from December 20, 2017 to January 18, 2018. Further, the Noticee has not disputed that he has traded during the UPSI period. Therefore, it has been held that he has traded while he was in possession of the UPSI. However, the Noticee has submitted that he

has traded contrary to the UPSI and he has used the proceeds to purchase a residential flat. The justifications given by the Noticee has to be examined to see whether they are in the same class as the circumstances mentioned under proviso to regulation 4 (1) of PIT Regulations. The first circumstance mentioned therein pertains to inter se transfers in off market between promoters who were in possession of the same UPSI. Thus, there is information symmetry between them. The second circumstance pertains to non-individual insiders where individuals who are in possession of UPSI are different from individuals who are taking trading decisions. Thus, information symmetry is maintained between the non-individual insider and the market participants. The third circumstance deals with the trades that are pursuant to a trading plan. Considering the trading plan is a pre-determined plan / action, question of information asymmetry does not arise. Therefore, the justification which has been provided by the Noticee must adhere to the basic principle on which the PIT Regulations has been drafted that is to maintain a level playing field in terms of access to material information between the insiders and market participants i.e., information symmetry. In the present matter, the Noticee executed his trades while he was in possession of UPSI. However, the counter party to his trades was not in possession of UPSI. Therefore, there was information asymmetry and I am constrained to find his justification as invalid justification. Circumstances justifying Noticee's trades should either fall under the statutory exceptions or the circumstances should be in the same class as the statutory exceptions. However, the justification provided by the Noticee may be taken into consideration for proportionality of directions, if any.

43. The reliance placed by the Noticee in the matter of *Chandrakala vs. SEBI* is misplaced as facts and circumstances including the basis of allegation were different from the present matter. In the former matter, the Noticee was alleged to be deemed to be a person connected to the company, who had access to UPSI and hence she was alleged to be an insider. Further, the allegation against her was that she had

traded in the scrip of the company on the basis of the UPSI. In the instant matter, on the other hand, the Noticee has been charged for trading while he was in possession of UPSI.

44. The Noticee has submitted that the announcement being 'positive' in nature should have led to him to buying shares of Biocon. The fact that he sold shares clearly demonstrates that there was no intention of engaging in insider trading. Further, he did not gain any advantage from the UPSI. In this regard, it is noted that to establish a charge of insider trading under regulation 4 (1) of PIT Regulations, two criteria must be satisfied; the first being that the insider was in possession of UPSI and secondly, the insider traded when he was in possession of UPSI. Similarly, under Section 12A(e) of SEBI Act, one must establish that the person dealt in securities while in possession of material or non-public information. Parameters mentioned in the aforesaid provisions have been established in the matter. The behaviour of the Noticee during the UPSI has to be seen in the context of entire facts and circumstances of the matter, more so in light of the requirements of the charging provisions. PIT Regulations is neutral to investor behavior in terms of possession of UPSI. The thrust of the PIT Regulations is information asymmetry between insiders and non-insiders. In view of the same, PIT Regulations only require examination of an UPSI from the perspective of price sensitivity which may either likely to affect the price positively or negatively and has not classified some UPSI as likely to affect the price positively and others as likely to affect the price negatively. Therefore, I am constrained to find that the aforesaid submissions of the Noticee is untenable in light of the charging provision which prohibits trading in securities when in possession of UPSI. However, trading behaviour of the Noticee may be considered as a circumstance, for proportionality of directions, if any.

45. Noticee, while placing reliance on the matter of *Rakesh Agarwal vs. SEBI* has submitted that a person can only be penalised for being an insider only when it is

proved that there is some secret profit or personal gain made by virtue of being a connected person. However, I note that factors such as making profit or gain, are external to the parameters mentioned under regulation 4 (1) of PIT Regulations and Section 12A(e) of SEBI Act. The said factor is not essential to establish a charge of insider trading. Moreover, the reliance placed by the Noticee on *Rakesh Agarwal* matter is misplaced. In the said matter, Hon'ble SAT while discussing various principles as established in USA via case laws, referred to one such principle based on which liability of an insider arises, discussed the matter of *Dirks vs. SEC* 406 US 646. In the *Dirks* matter it was held that breach of duty has to be established by the insider and the same necessarily requires manipulation or deception. In order to establish manipulation, the clearest evidence is making of secret profit by the insider. Hon'ble SAT in the *Rakesh Agarwal* matter held that it is abundantly clear that what was intended to be prohibited under regulation 3 was the dealing in securities which was with a view to misuse information for obtaining unfair advantage. One of the indicia of that unfair advantage was making of profit. Thus, Hon'ble SAT has held that making profit is one of the circumstances which will come in aid for establishing the charge of insider trading. But the same cannot be the only factor that has to be taken into consideration while examining insider trading matters.

46. From the available records, it is observed that the Noticee has not bought any shares of Biocon during the UPSI period. He has sold the shares of Biocon during UPSI period. The details for the same are hereunder:

Date	Shares Sold	Sell Value (Rs.)
20/12/2017	3,000	15,96,299
22/12/2017	1,300	7,03,290
26/12/2017	1,640	8,86,333
27/12/2017	500	2,73,800
Total	6,440	34,59,722

47. It has been established in the preceding paragraphs that based on a preponderance

of probability, Noticee was in possession of UPSI during the UPSI period. Moreover, it is an admitted fact that Noticee has traded during the period December 19-27, 2017, which is within the UPSI period. Hence, it is held that the Noticee has violated regulation 4 (1) of PIT Regulations and Section 12A(d) of SEBI Act. Further, it has been established in preceding paragraphs that the UPSI was a material information and was not generally available to the public prior to January 18, 2018 i.e., it was non-public information. Therefore, it is further held that Noticee by dealing in securities of Biocon while in possession of material and non-public information, has also violated Section 12A(e) of SEBI Act.

Other Violations

48. It has been alleged in the SCN that the Noticee has violated clause 6 of Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders, specified in Schedule B read with regulation 9(1) of PIT Regulations. The text of the said provisions is reproduced below:

PIT Regulations

9(1) The board of directors of every listed company and market intermediary shall formulate a code of conduct to regulate, monitor and report trading by its employees and other connected persons towards achieving compliance with these regulations, adopting the minimum standards set out in Schedule B to these regulations, without diluting the provisions of these regulations in any manner.

Code of Conduct

...

6. No designated person shall apply for pre-clearance of any proposed trade if such designated person is in possession of unpublished price sensitive information even if the trading window is not closed.

49. Biocon vide its letter dated January 14, 2019, has submitted that the Noticee is a designated employee of the company. It is observed from the records that the Noticee vide its applications dated December 15, 2017 and December 27, 2017 had

sought pre-clearance for selling shares of the company during the UPSI period from the company. The aforesaid facts have not been disputed by the Noticee. Further, as held in preceding paragraphs Noticee was in possession of UPSI during the period when he executed the impunged trades. Therefore, it is held that the Noticee has violated clause 6 of Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders, specified in Schedule B read with regulation 9(1) of PIT Regulations. It is also noted that at the time of applying for pre-clearance of trades from Compliance Officer, Noticee also has to give a declaration that he is not in possession of UPSI. As discussed in preceding paragraphs that Noticee was in possession of UPSI but still he sought pre-clearance for his trades. Thus, it is observed that the Noticee has given a false declaration to the Compliance Officer.

50. It has been further, alleged in the SCN that the Noticee has failed to make requisite disclosure under regulation 7(2)(a) of PIT Regulations. The text of the said provision is reproduced below:

7 (2) Continual Disclosures.

(a) Every promoter, employee and director of every company shall disclose to the company the number of such securities acquired or dispose of within two trading days of such transaction if the value of the securities traded, whether in one transaction or a series of transactions over any calendar quarter, aggregates to a traded value in excess of ten lakh rupees or such other value as may be specified.

51. As per BSE website and submission of the company vide its email dated January 28, 2020, it is observed that the Noticee had made disclosures to the company for the trades provided in the table below. The status of disclosures made by the Noticee to Biocon is as follows:

Date of transaction	Sell	Sell Value (in Rs.)	Due Date for Disclosure to Biocon	Date of Intimation to Biocon	Delay in disclosures (in Days)
19/12/2017	11,000	58,90,100.00	21.12.2017	27.12.2017	3 Days

20/12/2017	3,000	15,96,299.75	22.12.2017		2 Days
22/12/2017	1,300	7,03,290.00	28.12.2017		No Delay
26/12/2017	1,640	8,86,333.00			
27/12/2017	500	2,73,800.00	Not Applicable		No Delay

52. For the delay in making disclosures, the Noticee has submitted that his *bona fide* reading of the provision was that the disclosures ought to be effected upon the completion of a series of transactions which he promptly did. In this regard, on perusal of the regulation, it is observed that the regulation unequivocally mentions that whether there is one transaction or a series of transaction, if the aggregate value is more than Rs 10 lakh, same must be disclosed within 2 days. Thus, the text of the provision leaves no room for doubt or ambiguity. Hence, the submission of the Noticee is untenable.

53. Further, the Noticee has submitted that violation with respect to disclosure, if any in the present case at best being a technical one. Noticee has placed reliance on the order of Hon'ble SAT in the case of *P. G. Electroplast & Ors. vs. SEBI* in support of his submission. It is noted that the requirement to make disclosure is by operation of law and is mandatory in nature. Disclosure obligations cannot be brushed aside lightly. It may be noted that SEBI has adopted a disclosure based regulatory regime. Full, fair and timely disclosures form the corner stone of any disclosure requirement stipulated by SEBI. The same is with a view to bring transparency in the market and to keep the market informed about substantial acquisition or sale of shareholding by any entity in a listed company. This obligation is especially significant in case of transactions by insiders. The Hon'ble SAT in the matter of *Milan Mahendra Securities Pvt. Ltd. vs. SEBI* dated November 15, 2006, regarding the importance of disclosures, has held that, "*the purpose of these disclosures is to bring about transparency in the transactions and assist the Regulator to effectively monitor the transactions in the market*". Thus, any violation of the said disclosure requirements must be viewed seriously. Therefore, the submission of the Noticee that the violation of disclosure

provisions, is technical in nature is unacceptable. Further, the reliance placed by the Noticee on the matter of *P. G. Electroplast* is incorrect. The said matter dealt with an IPO matter where the Hon'ble SAT had held that in the peculiar facts and circumstances of the matter certain disclosure and partial non-disclosure in the prospectus, was technical in nature. In the present matter the disclosure requirement is pursuant to mandatory provision of law. Thus, there is no room for discretion to not follow the letter of law. In the absence of strict adherence to the mandatory provision of law, penalty must follow.

54. From the records it is observed that for the sale of shares on December 19 and 20, 2017, where the sell value was more than Rs. 10 lakh, Noticee made a delayed disclosure to Biocon. In view of the mandatory obligation under regulation 7(2)(a) of PIT Regulations to make disclosure within two trading days from the date of sale of shares, it is held that the Noticee has violated regulation 7(2)(a) of PIT Regulations.

Issue No. 5 - If the answer to the aforesaid question is in affirmative, whether directions as proposed in the SCN and direction of penalty, if any, needs to be issued against the Noticee?

55. I note that the purpose of the insider trading regulations is to prohibit trading by an insider who trades with information asymmetry by virtue of his access to price sensitive information and the aforesaid relevant provisions of SEBI Act and PIT Regulations make it crystal clear that there is a total prohibition on an insider to deal in the shares of the company when in possession of UPSI.

56. Furthermore, I note that SEBI is mandated to protect the interests of investors and promote the development of and to regulate the securities market. For this purpose SEBI is empowered to take suitable measures. Healthy growth and development of securities market depends to a large extent on the quality and integrity of the market. Such a market can alone inspire the confidence of investors. Factors on

which this confidence depends, include, among others, the assurance the market should afford to all investors that they are placed on an equal footing and will be protected against unlawful use of inside information. Inequitable and unfair trade practice such as insider trading affect the integrity and fairness of the securities market and impairs the confidence of the investors. Therefore, in view of the violations committed by the Noticee, it becomes necessary for SEBI to issue appropriate directions against the Noticee.

57. Further, I note that the Hon'ble Supreme Court of India in the matter of *The Chairman, Sebi vs. Shriram Mutual Fund & Anr* decided on May 23, 2006 held that *"In our considered opinion, penalty is attracted as soon as the contravention of the statutory obligation as contemplated by the Act and the Regulation is established and hence the intention of the parties committing such violation becomes wholly irrelevant. A breach of civil obligation which attracts penalty in the nature of fine under the provisions of the Act and the Regulations would immediately attract the levy of penalty irrespective of the fact whether contravention must made by the defaulter with guilty intention or not...Hence once the contravention is established then the penalty is to follow"*.

58. Thus, in view of above Hon'ble Supreme Court order and the findings arrived at preceding paragraphs, I am of the view that the Noticee is liable for a monetary penalty under Section 15HB of SEBI Act for the violation of clause 6 of Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders, specified in Schedule B read with regulation 9(1) of PIT Regulations. The Noticee is also liable for a monetary penalty under Section 15 A(b) of SEBI Act for the violation of regulation 7(2)(a) of PIT Regulations for the failure to report within the time prescribed under the Regulations. The text of the penalty provisions is reproduced herein below:

Penalty for failure to furnish information, return, etc.

15A.

If any person, who is required under this Act or any rules or regulations made thereunder,—

(b) to file any return or furnish any information, books or other documents within the time specified therefor in the regulations, fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one lakh rupees for each day during which such failure continues subject to a maximum of one crore rupees.

Penalty for contravention where no separate penalty has been provided.

15HB.

Whoever fails to comply with any provision of this Act, the rules or the regulations made or directions issued by the Board thereunder for which no separate penalty has been provided, shall be liable to a penalty which shall not be less than one lakh rupees but which may extend to one crore rupees.

59. While adjudging the quantum of penalty I may refer to the judgment of the Hon'ble Supreme Court in *Adjudicating officer, SEBI vs. Bhavesh Pabari* decided on February 28, 2019, wherein it is held that “...Section 15J of the SEBI Act enumerates by way of illustration(s) the factors which the Adjudicating Officer should take into consideration for determining the quantum of penalty imposable. The imposition of penalty depends upon satisfaction of the substantive provisions as contained in Sections 15A to Section 15HA of the SEBI Act...”

60. I note that the following illustrative factors are mentioned under Section 15J of SEBI Act for adjudging the quantum of the penalty:

15J - Factors to be taken into account while adjudging quantum of penalty

While adjudging quantum of penalty under section 15-I, the adjudicating officer shall have due regard to the following factors, namely:-

- (a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;*
- (b) the amount of loss caused to an investor or group of investors as a result of the default;*
- (c) the repetitive nature of the default.*

61. In respect of whether these factors have to be mandatorily considered at the time of adjudging the penalty the Hon'ble Supreme Court in the *Adjudicating officer, SEBI vs. Bhavesh Pabari* held that “...At this stage, we must also deal with and reject the argument raised by some of the private appellants that the conditions stipulated in clauses (a) to (c) of Section 15J are mandatory conditions which must be read into Sections 15A to 15HA in the sense that unless the conditions specified in clauses (a) to (c) are satisfied, penalty cannot be imposed by the Adjudicating Officer under the substantive provisions of Sections 15A to 15HA of the SEBI Act.” The Hon'ble Supreme court further held that “...We, therefore, hold and take the view that conditions stipulated in clauses (a), (b) and (c) of Section 15J are not exhaustive and in the given facts of a case, there can be circumstances beyond those enumerated by clauses (a), (b) and (c) of Section 15J which can be taken note of by the Adjudicating Officer while determining the quantum of penalty...”

62. In view of the above discussion, I have considered the following factors for adjudging the quantum of penalty in the instant matter.

- 57.1. There is no material on record to show that the Noticee has made a disproportionate gain.
- 57.2. There is no material on record to show loss caused to an investor or group of investors as a result of Noticee's default.
- 57.3. There is no material on record to show that the default by the Noticee is repetitive in nature.

57.4. I also take note of the fact that delay in disclosure is not substantial, as a factor of mitigation for adjudging the quantum of penalty.

ORDER

63. In the facts and circumstances of the case, I, in exercise of the powers conferred upon me under Sections 11(1), 11(4), 11(4A), 11A and 11B(1), 11B(2) of SEBI Act read with Section 19 and Rule 5 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995, hereby issue following directions:

- a) Mr. Shreehas P Tambe shall not buy, sell or otherwise deal in the securities market in any manner whatsoever or access the securities market, directly or indirectly, for a period of three months from the date of this order. Further, Mr. Shreehas P Tambe is also restrained from associating himself with any listed public company and any public company which intends to raise money from the public or any intermediary registered with SEBI other than Biocon for a period of three months from the date of this order.
- b) Needless to say, in view of prohibition on sale of securities, it is clarified that during the period of restraint, the existing holding, including units of mutual funds, of Mr. Shreehas P Tambe shall remain frozen. It is made clear that if Mr. Shreehas P Tambe has any open positions in any exchange traded derivative contracts, he can close out / square off such open positions within 3 months from the date of order or at the expiry of such contracts, whichever is earlier. It is also clarified that Mr. Shreehas P Tambe can settle the pay-in and pay-out obligations in respect of transactions, if any, which have taken place before the close of trading on June 30, 2021.
- c) I hereby also impose the following penalty on Mr. Shreehas P Tambe:

Sl. No.	Provisions under which penalty imposed	Violation	Penalties
1.	Section 15A(b) of SEBI Act	Regulation 7(2)(a) of PIT Regulations	Rs. 1,00,000/- (Rupees One Lakh).
2.	Section 15HB of SEBI Act	Clause 6 of Minimum Standards for Code of Conduct to Regulate, Monitor and Report Trading by Insiders, specified in Schedule B read with regulation 9(1) of PIT Regulations	Rs. 1,00,000/- (Rupees One Lakh).

- d) The Noticee is directed to pay the penalties within a period of forty-five (45) days, from the date of service of this order, by way of crossed 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.

Name of the Bank	Branch Name	RTGS Code	Beneficiary Name	Beneficiary Account No.
Bank of India	Bandra Kurla Branch	BKID 0000122	Securities and Exchange Board of India	012210210000008

- e) Payment can also be made online by following the below path at SEBI website www.sebi.gov.in: ENFORCEMENT -> Orders -> Orders of Chairman/ Members -> PAY NOW. In case of any difficulties in online payment of penalties, the Noticee may contact the support at portalhelp@sebi.gov.in. The demand draft or the details/ confirmation of e-payment should be sent to "The Division Chief, IVD-ID3, Securities and Exchange Board of India, SEBI Bhavan II, Plot no. C-7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai -400 051" and also to e-mail id:-tad@sebi.gov.in, in the format as given in table below:

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:	

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

65. This order is without prejudice to any other actions that SEBI may take in accordance with securities laws.

66. A copy of this order shall be served upon Mr. Shreehas P Tambe, Stock Exchanges, Depositories and Registrar to Transfer Agents for necessary action and compliance with the above directions.

-Sd-

DATE: June 30, 2021

PLACE: Mumbai

**MADHABI PURI BUCH
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**