

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.	Kunal Ashok Kashyap	ABDPK8835H
2.	M/s Allegro Capital Pvt. Ltd.	AAGCA6221J

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to ascertain whether certain persons / entities have traded in the scrip of Biocon while they were in possession of unpublished price sensitive information and were thus in violation of the provisions of the Securities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 common show cause notice dated August 3, 2020 (hereinafter referred to as “**SCN**”) was served on Mr. Kunal Ashok Kashyap (hereinafter referred to as “**Noticee No. 1**”) and M/s Allegro Capital Private Limited (hereinafter referred to as “**Noticee No. 2**”) in the extant matter. The SCN *inter alia* alleged as follows:

- 3.1. The information relating to the collaboration with Sandoz which was announced vide press release dated January 18, 2018 was an information that was not generally available information in terms of regulation 2 (1)(e) of PIT Regulations.
- 3.2. The information related to the collaboration of Biocon with Sandoz on next-generation Biosimilars was 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 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. Noticee No. 1 is Director and major shareholder (Noticee No. 1 holds 99.99% -19,999 shares out of total 20,000 shares) of Noticee No. 2.
- 3.5. Noticee No. 2 was in a temporary business relationship with the company and consequent to the same Noticee No. 1 was in frequent communication with the officers of the company. Further, by virtue of Noticee No. 1’s directorship in M/s Mazumdar Shaw Medical Foundation and his majority

shareholding in the trading member which was used by the officers of the company, it is alleged that it puts Noticee No. 1 in a position where he was in regular touch with the officers of the company. Moreover, the allotment of ESOPs to Noticee No. 1 by Biocon shows that the company values his contribution and that there exists a professional relationship between them.

- 3.6. Biocon was concurrently negotiating agreements with CIMAB and Sandoz which would have had an impact on company's finances and operations. Noticee No. 1 was having overall responsibility for the negotiation with CIMAB. This when seen along with the frequent communication that Noticee No. 1 had with the CEO and CFO of the company, who had direct knowledge of the unpublished price sensitive information, it is alleged that Noticee No. 1 is reasonably expected to have access to the unpublished price sensitive information. It is therefore, alleged that he is a connected person to the company in terms of regulation 2(1)(d)(i) of PIT Regulations. Hence, it is further alleged that Noticee No. 1 is an "insider" as per regulation 2(1)(g)(i) of PIT Regulations.
- 3.7. Furthermore, Noticee No. 2 is an artificial person which had a temporary business relationship with the company. Noticee No. 2's majority shareholder and Director is Noticee No. 1 who as alleged above is reasonably expected to have access to unpublished price sensitive information. Therefore, Noticee No. 2 indirectly through Noticee 1 is reasonably expected to have access to the unpublished price sensitive information and hence it is alleged that Noticee No. 2 is a connected person to the company in terms of regulation 2(1)(d)(i) of PIT Regulations. Therefore, it is further alleged that Noticee 2 is an "insider" as per regulation 2(1)(g)(i) of PIT Regulations.
- 3.8. It is alleged that Noticees have traded in the scrip of Biocon during unpublished price sensitive information period and details of those trades are tabulated in following table.

Trading during UPSI period			
Noticee	Date	Gross Buy Quantity	Gross Sell Quantity
Kunal Ashok Kashyap	18-01-2018	4,000	0
Allegro Capital Pvt. Ltd.	15-01-2018	50,000	0
	18-01-2018	35,000	0

- 3.9. It is alleged that the trades of the Noticees in the scrip of Biocon during unpublished price sensitive information period are on the basis of unpublished price sensitive information and while in possession of unpublished price sensitive information.
- 3.10. Thus, it is alleged that Noticees engaged in insider trading in the scrip of Biocon. Thus, it is alleged that Noticees have 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, Noticees have also violated Section 12A(e) of SEBI Act. Moreover, by dealing in securities of Biocon on the basis of unpublished price sensitive information, it is alleged that Noticees have also violated Section 15G(i) of SEBI Act.
- 3.11. It is also alleged that the Noticees have made a cumulative wrongful notional gain on account of insider trading to the tune of Rs. 24,68,752/-.
- 3.12. In view of the above, the Noticees were 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, and disgorgement of wrongful gain should not be issued against them for the alleged violations of regulation 4(1) of PIT Regulations and Sections 12A (d) and 12A (e) of SEBI Act for trading in the scrip of Biocon during the UPSI period. The Noticees were called upon to show cause as to why suitable directions for imposing monetary penalty under Sections 11B(2) and 11(4A) read with Section 15G(i) of SEBI Act should not be issued against them for the alleged violation of Section 15G(i) of SEBI Act.

Reply & Hearing

4. In response to the SCN, Noticees vide their letter dated August 26, 2020 requested for certain documents / information in the matter along with an opportunity of inspection. SEBI vide its letter dated August 31, 2020, provided the Noticees, Code of Conduct of Biocon and further informed the Noticees that the documents that were relied upon in the SCN have been provided to the Noticees along with the SCN. Noticees were also granted an opportunity of inspection on September 4, 2020. However, based on Noticees request vide their letter dated September 1, 2020, Noticees were granted virtual inspection in the matter on September 9, 2020. Pursuant to inspection, the Noticees vide their letter dated September 10, 2020, *inter alia* submitted that the inspection of the documents is incomplete as few annexures to Biocon's letter dated January 14, 2019 was not shown for inspection along with all the documents collected by SEBI at the time of inspection including statement recordings and digital records. Further, the Noticees requested for four weeks' time to submit their reply to the SCN. SEBI vide an email dated September 10, 2020, granted Noticees a weeks' time to submit their response to the SCN. Noticees vide their letter dated September 15, 2020, sought two weeks' time to submit their response. Subsequently, Noticees had filed a settlement application dated September 30, 2020 to opt for the settlement process in the matter.
5. In the meantime, Noticees vide their letter dated October 26, 2020 *inter alia* submitted as follows:
 - 5.1. It is stated that the denial of complete inspection and copies of documents as requested are in gross violation of the basic principles of Natural Justice which has impaired and prejudiced the ability of Noticees to put in an effective reply to the SCN.
 - 5.2. The fundamental premise of the SCN that the Noticees allegedly had access to UPSI i.e. the collaboration with Sandoz, an assignment that admittedly the Noticees

had no role whatsoever, by virtue of acting as advisors on unconnected, separate and independent transactions for which they had interactions with officers of Biocon, is flawed.

5.3. The SCN alludes to the Noticees' frequent communication with officers and Directors of Biocon, who were privy to the UPSI, to allege that the Noticees had access to UPSI. This is untenable for several reasons, namely that:- (a) the frequent communication with the officers of Biocon was in relation to discussions the Noticees were having in connection with the Equillium Transaction and CIMAB Licensing Deal; (b) Biocon itself in its letter dated 14th January 2019 to SEBI has not identified the Noticees as persons to whom the UPSI was communicated in the list of "connected persons" furnished to SEBI; (c) the SCN does not even allege let alone establish that Biocon's letter dated January 14, 2019 to SEBI identifying the list of connected persons as is either wrong or false; (d) any communication by Biocon of such information to the Noticees, would have required the Noticees to execute specific confidentiality and non-disclosure agreements with Biocon which Biocon would have required (as in the case of the CIMAB Licensing deal where a confidentiality obligation was imposed on the Noticees) (d) the SCN does not even allege let alone establish that the officers of Biocon communicated UPSI to the Noticees in violation of regulation 3. This is a sine-qua-non for the Noticees to be arraigned as "insiders" - on the basis of frequency of communication with officers of Biocon.

5.4 The SCN also stands vitiated by fundamental factual error when it alleges that Noticee No. 1 was given ESOPs by Biocon. In fact, the shares in question were pursuant to a bonus issue.

5.5. The assignment relating to Equillium Inc. was finalized in July, 2017 itself whereas the collaboration between Sandoz and Biocon was finalized in January, 2018. The Noticees submit that there are conditions subsequent to announcement of a deal which need to be completed and Noticee No. 1 was in touch with the

employees of Biocon till December only to ensure that the conditions subsequent were completed and the transaction consummated.

5.6. SEBI has failed to produce any email and /or any written or oral communication which shows that the employees of Biocon communicated the alleged UPSI to the Noticees.

5.7. If it is SEBI's case that it is not required to show how the UPSI (which according to Biocon was not communicated to persons except on a need-to-know basis) reached the Noticees, that stand is directly contrary to the ruling of the Hon'ble Securities Appellate Tribunal (hereinafter referred to as "**SAT**") in *Samir C. Arora vs. SEBI* [Appeal No. 83 of 2004].

5.8. On the other hand, if it is indeed SEBI's case that UPSI was communicated by the officers to the Noticees, at the very least, it ought to have charged the officers of Biocon with communication of UPSI to the Noticees under regulation 3 which it has admittedly not done. Noticees placed reliance on the matter of *Emami Limited* dated May 18, 2018 passed by SEBI.

5.9. SEBI is clearly grasping at straws trying to conclude that the Noticee No. 1 is a connected person by resorting to his independent directorship in a separate entity (M/s Mazumdar Shaw Medical Foundation – Director since 2013).

5.10. Allegro Capital Advisors Pvt. Ltd. is a completely separate entity and the Noticee No. 1's relationship with Allegro Capital Advisors Pvt. Ltd. is independent of the relationship that Mr. Arun Chandavarkar and Ms. Kiran Mazumdar Shaw have with Allegro Capital Advisors Pvt. Ltd.

5.11. Noticees submit that the one-time payment of approx. \$1-3 million made by Biocon to CIMAB (a) is not material in Biocon's business(es) where the market cap of the company is in excess of \$4 billion, (b) should be considered in terms of its business plan for onward licensing of the CIMAB molecule which has no relationship or bearing with the Sandoz transaction and (c) has only been evaluated in context with what Biocon would get by onward sublicensing of the CIMAB molecule. In view

of the same, it can be concluded that the transactions of Biocon with CIMAB and that with Sandoz were completely distinct and independent and were subject to confidentiality which the persons privy to the respective transactions were required to be bound by.

5.12. The assumption made in the SCN that one has to be completely aware or have the knowledge of the finances of the company, immediately or in near future to negotiate a transaction is completely misconceived. Thus, it can be concluded that by merely advising and supporting Biocon in its negotiations with CIMAB, the Noticees could not be reasonably expected to have access to UPSI as alleged in the SCN.

5.13. SEBI has failed to discharge the burden of proof or the standard of proof incumbent upon it in order to prove that the Noticee No. 1 was a connected person and therefore an insider.

5.14. Noticees submit that vide SEBI (PIT) (Amendment) Regulations, 2018 (w.e.f. April, 2019), regulation 2(1)(n)(vi) was specifically omitted. The amendment is evidently a clarificatory amendment to ensure that each and every time there is an announcement under listing requirements, it should not be assumed that the period prior to the announcement constitutes a UPSI period. The SCN was issued to the Noticees on August 3, 2020. The main reason given by the TK Vishwanathan Committee (August 2018) for removal of explicit mention of material event disclosure under the definition of UPSI was that all material events which are required to be disclosed as per the LODR Regulations may not necessarily be UPSI under the PIT Regulations.

5.15. Without prejudice to above, it is submitted that the PIT Regulations intended that information that is not generally available would be UPSI only if it is likely to materially affect the price upon becoming generally available. If the impact on price is unlikely to be material, as a matter of principle, the information cannot be price sensitive even if unpublished. Besides, the listed illustrations are ordinarily in the

nature of UPSI, which also means they need not be UPSI. Merely because a particular type of event is listed it would not follow that it would inevitably constitute UPSI regardless of the materiality of its potential price impact.

5.16. On a bare perusal of the regulation 30(1) of LODR Regulations, it is clear that the Company shall make disclosures of any events or information which, in the opinion of the board of directors of the company, is material. It is further submitted that it is not necessary for the material information disclosed by the Board to be price sensitive all the time.

5.17. It is submitted that the price of the scrip rose more from January 19, 2018 to January 22, 2018 (Rs. 569 to 603) than from 18 to 19, January 2018 (Rs 539 to Rs 569). Thus, it is submitted that the announcement made on January 18, 2018 by Biocon is not UPSI. If this announcement were to be that of UPSI becoming generally available, it would follow that the trading window would open after the announcement. In fact, this piece of information was not UPSI at all and there was no implication therefor.

5.18. The intent of issuing a direction for disgorgement of ill-gotten gains is not punitive but remedial. It is well settled that for issuing a direction in nature of disgorgement, it is essential to form an opinion that the amount directed to be disgorged should be an "ill-gotten gain".

5.19. It is pertinent to note here that both the Noticees have traded regularly in the scrip of Biocon. The above fact is obvious considering that the total holding in Biocon between Noticees amounts to approximately 4% of the total holding in Biocon. It is further pertinent to note that the Noticee No. 1 had also bought a total of 1,47,574 shares on 9 and 14, February 2018 at a much higher price per share being Rs. 607.68/- and Rs. 611.33/- respectively as compared to the share prices on January 18, 2018 which was Rs. 539.44/-. It is submitted that the total trades in Biocon between Noticees during the period January 1, 2016 to December 3, 2017 amounts to 1,47,000 shares i.e., approximate 3 times the trades on the two days i.e.

15 and 18, January 2018. Thus, it is obvious that the Noticees did not trade on the basis of UPSI which in any event was not in their possession. The total turnover of trades of Noticee No. 1 during the period July 1, 2016 to July 30, 2019 is to the tune of Rs. 82.7crore. This would show that the trades being assailed are not trades that have suddenly been executed in a large magnitude but that they were consistent with the trading scale of the Noticee No. 1.

5.20. It is well settled that the reasons for which the trades in the securities took place are at the heart of the determination of whether the trading by an alleged insider is violative in nature. [*Abhijit Rajan vs. SEBI* (Appeal 232 of 2016) and in *Rajiv Gandhi vs. SEBI* (Appeal 50 of 2007)].

6. Considering the facts and circumstances of the case, Noticees were granted an opportunity of hearing in the matter on November 5, 2020. The said hearing notice was sent to the Noticees vide email dated October 22, 2020.
7. At the time of hearing, authorised representatives of the Noticees appeared for the hearing. The authorised representatives reiterated the submissions made in the reply submitted in response to the SCN and *inter alia* submitted as follows:

7.1. Noticee No. 1 is the trading mind of Noticee No. 2.

7.2. The net cast by SEBI that a consultant engaged by a company will be aware of everything that the company is doing or he would be privy to every other contemporaneous price sensitive development in the company and therefore, he can be classified as an insider, is very wide.

7.3. There is no evidence on record to establish either the nature of information that Noticee No. 1 had or how he came into the possession of UPSI. In the name of circumstantial evidence, every disjointed and unconnected circumstance cannot be arbitrarily pressed into service.

7.4. Trades executed by the Noticees are no different from their other trades. Post UPSI period, Noticees have invested twice the money in the shares of Biocon.

7.5. Noticee No. 1 was allotted shares in a bonus issue.

7.6. Noticee No. 1 was not privy to the information regarding Sandoz deal while working on the assignment related to Equillium Inc. Further, the fee involved in the said assignment was not material.

7.7. The list provided by Biocon pertaining to individuals who were in possession of UPSI, does not mention's Noticee No. 1's name.

7.8. Noticees have bought the shares prior to the announcement, so if their behaviour was speculative in nature, they should have sold it after announcement. But the Noticees invested more which demonstrates that Noticees are long term investors.

7.9. Noticees were advised to submit the following information on or before November 20, 2020:

7.9.1. The average value of Noticees purchases in other scrips i.e., Noticees trading pattern in other scrips.

7.9.2. The reasoning for Noticees purchase in the scrip during the UPSI period i.e., to invest almost Rs 5 crore within few trading days?

8. Post hearing, Noticees vide their letter dated November 19, 2020, *inter alia* submitted as follows:

8.1. The definition of "connected persons" under the PIT Regulations is being interpreted arbitrarily without any reasonable nexus by casting net unreasonably wide. If such interpretation is adopted, it would render every *bona fide* and

legitimate trade by anyone however connected to advising any company, vulnerable to being assailed of a charge as heinous as insider trading, by alleging "frequency of communication" disregarding the purpose for the communication.

8.2. It is common ground that there is not a whisper of an allegation that an insider communicated UPSI about the Sandoz transaction to the Noticees. Likewise, not a whisper of an allegation of the need to know principle being violated by any insider within Biocon. The trades of the Noticees, which are commensurate with their financial capacity and pattern of conduct and in fact commensurate with other trades in other scrips have been retrofitted and juxtaposed into an arbitrary presumption that they would only be motivated by access to UPSI about the Sandoz transaction.

8.3. Besides, the very interaction of the Noticees with Biocon was solely in connection with the CIMAB Licensing Deal and there is nothing on record to show that there was any interaction outside the scope of the CIMAB Licensing Deal.

8.4. The term "connected person" need not spell out that the connection would be in relation to the UPSI that is handled by the connected person and not any and every piece of UPSI that may be in the possession of the company when any advisor is advising the company on any facet of the matter.

8.5. The very fact that Biocon did not enter into arrangements with Noticees that contains confidentiality covenants in relation to the Sandoz transaction shows that it did not believe that the Sandoz transaction and the CIMAB Licensing Deal were at all linked or that the Noticee were required to have details of the Sandoz Deal, for them to discharge their role as advisors in the CIMAB Licensing Deal. Ultimately it is for the listed company to determine whether two contemporaneous transactions are interlinked and decide, who should have access to the information, and not for SEBI.

8.6. Noticee No. 1 had bought 14,000 (Rs. 1,114.17/ share) and 28,000 (Rs. 1039.77/ share) shares amounting to Rs. 4,47,12,061 on February 27, 2017 and March 2, 2017 respectively and are comparable to the impugned trades which also aggregate to Rs 4.8 crores. Noticee No. 1 had also bought 20,000 shares (Rs. 904.02/ share) amounting to Rs. 1,80,80,302 on May 24, 2017, bought 25,000 shares (Rs. 353.06/share) and 10,000 shares (Rs. 331.5/share) shares on 8 and 16, August 2017, respectively for Rs. 1,21,41,458. Therefore, the purchases before and after the alleged UPSI period in Biocon shares alone was much higher than the purchases during the alleged UPSI period.

8.7. Noticees had built a portfolio in Biocon of 14 lakhs shares over last 12-15 years. Given the large investment in Biocon, the Noticees actively followed Biocon from long term investment perspective and not from trading perspective or speculative purpose. Further, based on his continuous research of Biocon, the Noticees believed that during January 2018, Biocon was significantly undervalued and represented a good long term buying opportunity and hence decided to invest in the scrip of Biocon.

8.8. Noticees redeemed investments in a liquid fund, for purchase of the shares. This is the basic nature of a liquid mutual fund which are intended for short term investments.

9. Noticees vide their email dated December 21, 2020 had informed SEBI that they are withdrawing their settlement application under regulation 7 of the SEBI (Settlement Proceedings) Regulations, 2018.

Findings and Consideration

10. 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 unpublished price sensitive information, in terms of PIT Regulations?

- ii. *If the information relating to the collaboration between Biocon and Sandoz was unpublished price sensitive information, whether the period of unpublished price sensitive information was from December 4, 2017 to January 18, 2018, as alleged in the SCN?*
- iii. *Whether Noticees are 'insider' in terms of PIT Regulations?*
- iv. *If Noticees are 'insiders' in terms of PIT Regulations, whether the Noticees have violated the applicable provisions of insider trading under PIT Regulations and SEBI Act, 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 Noticees?*

11. Before proceeding to deal with the aforesaid issues, I would like to deal with the preliminary issue raised by the Noticees that SEBI has failed to provide complete inspection of documents. From the records, it is observed that along with SCN, Noticees were provided with all the documents that were relied upon to frame the allegations against the Noticees in the SCN. Subsequently, based on Noticees request they were provided additional documents. Noticees also availed an opportunity of inspection in the matter. However, post inspection, Noticees requested all the annexures to Biocon's letter dated January 14, 2019, all the documents collected by SEBI including statement recorded and digital records and complete copy of investigation report. In this regard, it is observed that the request of the Noticees has not been acceded to as the documents sought by the Noticees were not relied upon to frame the allegations against them in the SCN. The findings of the investigation report pertaining to them has been communicate to them through the SCN. Here, I would like to refer to the finding of Hon'ble SAT in the matter of *Mayrose Capfin Pvt. Ltd. vs. SEBI* decided on March 30, 2012 wherein the Hon'ble SAT held

as follows:

“...The principles of natural justice require that the inquiry officer should make available such document and material to the delinquent on which reliance is being placed in the inquiry. It is not necessary for the inquiry officer to make available all the material that might have been collected during the course of investigation but has not been relied upon for proving charge against the delinquent. No prejudice can, therefore, be said to have been caused to the appellant on this count.”

Further, it would be relevant here to refer to the findings of Hon’ble SAT in the matter of *Anant R. Sathe vs. SEBI* decided on July 17, 2020 wherein the Hon’ble SAT held as follows: “... The authority is required to supply the documents that they rely upon while serving the show cause notice which in the instant case has been done and which is sufficient for the purpose of filing an efficacious reply in his defence.”

12. Based on the above, it is held that the Noticees have been provided with all the documents that have been relied upon to frame the allegations against them.

13. In light of the aforesaid findings of Hon’ble SAT and the findings arrived at in this order that the Noticees have been provided with relied upon documents which they have inspected also, the submission of the Noticees that the principles of natural justice has not been followed, is without any merit.

14. 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 unpublished price sensitive information, in terms of PIT Regulations?*

15. 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.

16. Thus, from the aforesaid definition of unpublished price sensitive information, it is observed that the following three ingredients are essential to qualify an information as an unpublished price sensitive information:

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

16.2. The information must not be generally available;

16.3. 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, material events in accordance with listing agreement are types of matters that ordinarily give rise to unpublished price sensitive information.

17. Noticees by citing the removal of regulation 2 (1)(n)(vi) of PIT Regulations w.e.f. April, 2019 have submitted that all material events which are required to be disclosed as per the LODR Regulations may not necessarily be unpublished price sensitive information under the PIT Regulations. In this regard, it is noted that when the information regarding the collaboration between the two companies was disclosed by Biocon, the aforesaid regulation was part of PIT Regulations. Its subsequent amendment which came into effect from April, 2019, has no effect on its applicability prior to it. Hence, regulation 2(1) (n)(vi) of PIT Regulations has to be considered in the present matter, as the disclosure was made on January 18, 2018. Further, the submission of the Noticees that all material events disclosed as per the LODR Regulations may not necessarily be unpublished price sensitive information, provided it is not proved otherwise based on the facts and circumstances of the case. In the instant matter, it is not in dispute that information pertaining to the collaboration between Biocon and Sandoz was not generally available prior to January 18, 2018. Moreover, as noted from the press release, the collaboration would enable Biocon to lead commercialization in geographies other than North America and EU for next generation biosimilars and it would also enable Biocon to scale up its capabilities in the global biosimilar space. Thus, it can be reasonably held that the collaboration would have a material impact on the finances / operations / performance of Biocon which when made generally available is likely to materially affect the price of the securities. Therefore, in the present matter, it has been established that the information pertaining to the collaboration is a material event and hence, the said information was an unpublished price sensitive information.
18. Noticees have also submitted that the listed illustrations are ordinarily in the nature of UPSI, which also means they need not be unpublished price sensitive information. In this regard, the observations from the report of the High Level Committee to

Review the SEBI (Prohibition of Insider Trading) Regulations, 1992 under the chairmanship of Justice Sodhi on UPSI, is noteworthy. The Committee observed as follows: *“The Committee also felt that some illustrative examples of what would ordinarily constitute UPSI should be set out to clearly understand the concept. It would be important to ensure that regardless of whether the information in question is price-sensitive, no piece of information should mandatorily be regarded as UPSI. Towards this end, examples of events and developments information about which would ordinarily be regarded as UPSI, are listed – such as financial results, dividends, mergers and acquisitions, changes in capital structure etc.”*. Thus, the illustrations are not mandatorily UPSI, if proven otherwise. But as noted in the preceding paragraph, in the present matter, the information relating to the collaboration between Biocon and Sandoz is unpublished price sensitive information irrespective of it being classified under regulation 2(1) (n)(vi) of PIT Regulations.

19. Noticees have contended that if the impact on price is unlikely to be material, the information cannot be price sensitive even if unpublished. The said contention of the Noticee is acceptable. But it will be apt here to clarify that the phrase *“likely to materially affect the price of the securities”*, must be seen as the potential of the said information to affect the price of the scrip and not the actual outcome of the information. Thus, if the potential of the information is unlikely to impact the price, the information cannot be price sensitive even if unpublished. In the instant matter as noted in the preceding paragraphs, that is not the case.
20. Noticees have submitted that it is not necessary for the material information disclosed by the Board to be price sensitive all the time. As noted earlier, the definition of unpublished price sensitive information requires only the likely impact on the price of the security. Therefore, if the material information disclosed by the Board is not likely to impact the price of the security upon becoming generally available, then it may not be classified as unpublished price sensitive information.

However, the matter at hand is not beset with such a circumstance.

21. Further, the Noticees have stated that price of the scrip rose more from January 19, 2018 to January 22, 2018 (Rs. 569 to 603) than from 18 to 19, January 2018 (Rs 539 to Rs 569). Thus, it is submitted that the announcement made on January 18, 2018 by Biocon is not unpublished price sensitive information. In this regard, it is observed that the criteria to determine whether a particular information is unpublished price sensitive information, it has to be seen in light of the definition of unpublished price sensitive information as mentioned under regulation 2(1)(n) of PIT Regulations. As noted in preceding paragraph, actual movement in the price of the scrip subsequent to the disclosure of unpublished price sensitive information, is not one of the criteria used to classify an information as unpublished price sensitive information. Considering the market dynamics, the impact of the price on the immediate next day of disclosure (if the information is disclosed post market hours) would be relevant i.e., more weightage has to be given to the movement in the price of the immediate next day vis-à-vis other days. In view of the aforesaid discussion the submission of the Noticees that as the movement in the price of the shares of Biocon was more between January 19-22, 2018 than between January 18-19, 2018, is not relevant to the determination herein.

22. Noticees have further contended that if the announcement were to be that of unpublished price sensitive information becoming generally available, it would follow that the trading window would open after the announcement. It is observed that in the instant matter the trading window was closed by Biocon from January 1, 2018 to January 26, 2018 as the Board Meeting was scheduled on January 24, 2018 to *inter alia* consider, approve and take on record, the un-audited financial results (both standalone and consolidated) of the company for the quarter ended December 31, 2017. Since the Board Meeting was not over, the trading window was not opened on January 19, 2018. As noted above, the closure of trading window in the instant

case has nothing to do with the unpublished price sensitive information. Thus, the question of opening of trading window, post announcement, does not arise. Moreover, with respect to the existence of unpublished price sensitive information vis-à-vis trading window, it is observed 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 unpublished price sensitive information. The reason being that chronologically, it is the unpublished price sensitive information which comes into existence first and based on that trading window is closed. There are a host of factors that determines the existence of unpublished price sensitive information 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 unpublished price sensitive information. The submission of the Noticee can also be examined from the perspective of a trading plan. There are certain insiders who possess unpublished price sensitive information round the year. However, they are still able to trade if they have an approved trading plan. This highlights a situation where unpublished price sensitive information is in existence, but the trading window may or may not be closed. If the trading window is closed throughout the year i.e., it is perpetually closed, because of the existence of perpetual insiders, then it would make the whole concept of trading window and trading plan redundant. On the other hand, if the trading window is not closed and that is interpreted as “no unpublished price sensitive information is present”, then again perpetual insiders would be free to trade and again the concept of “trading plan” would be rendered redundant. Clearly therefore, the closure of the trading window must be seen from the perspective of prevention of insider trading rather than as a determining factor for the existence

of unpublished price sensitive information. Hence, the contention of the Noticees that if the announcement were to be that of unpublished price sensitive information becoming generally available, it would follow that the trading window would open after the announcement, which in the instant case has not open thereby making the information not unpublished price sensitive information, is untenable.

23. I now proceed to examine whether the information pertaining to the collaboration between Biocon and Sandoz which was disclosed 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*”, falls within the parameters of definition of unpublished price sensitive information under regulation 2(1)(n) of PIT Regulations.

24. 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.

25. 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.

26. 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 website of a stock exchange.

27. 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.

28. 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 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.

29. 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%.

30. 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 unpublished price sensitive information requires only the likely impact on the price of the security.

31. In view of the aforesaid discussions, it has been demonstrated that all the three ingredients of the definition of unpublished price sensitive information have been met by the information related to the collaboration between Biocon and Sandoz and hence, it can be concluded that the information related to the collaboration was an unpublished price sensitive information (hereinafter referred to as “**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.

32. Moreover, it is observed that aforesaid announcement was made under regulation 30 of 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, *per se* under regulation 2(1)(n)(vi) of PIT Regulations, also it can be concluded that the aforesaid announcement was UPSI, prior to January 18, 2018.

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

33. SCN alleges that the UPSI period is from December 4, 2017 to January 18, 2018. The Noticees have not disputed the same. 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.
22/12/2017-05/01/2018	Follow up on the collaboration agreement

Date	Event
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.

34. Based on the chronology of events leading up to aforesaid corporate announcement, it is observed that negotiations in collaboration agreement were under progress since October 7, 2016. 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. 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.

35. 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.

36. 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 but when it can be reasonably inferred that the probability of transaction of going through is high, then the UPSI period begins. 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 an interpretation is taken that the UPSI period will begin only when

there is absolutely no room for the deal / transaction to fail, then such an interpretation, would lead to rampant indulging in insider trading by insiders, using information asymmetry, with complete immunity from action. Clearly, such an interpretation would be at odds with the objective of protection of investors and market integrity and thus, cannot be accepted.

37. 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.

38. 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 Noticees are 'insider' in terms of PIT Regulations?*

39. 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*

Connected person has been defined under regulation 2 (1) (d) (i) of PIT Regulations to mean as follows: *"any person who is or has during the six months prior to the concerned act been associated with a company, directly or indirectly, in any capacity including by reason of frequent communication with its officers or by being in any contractual, fiduciary or employment relationship or by being a director, officer or an employee of the company or holds any position including a professional or business*

relationship between himself and the company whether temporary or permanent, that allows such person, directly or indirectly, access to unpublished price sensitive information or is reasonably expected to allow such access".

40. SCN has alleged that the Noticees are insider in terms of regulation 2 (1) (g) (i) of PIT Regulations. Noticees on the other hand have submitted that the frequent communication with the officers of Biocon was in relation to discussions the Noticees were having in connection with the Equillium transaction and CIMAB Licensing Deal, which is unconnected, separate and independent transaction from the Sandoz deal. With respect to the aforesaid submissions of the Noticees, I note that it is not SEBI's case also that collaboration with Sandoz and CIMAB Licensing deal are connected transactions. Rather, considering Biocon in the month of December, 2017 was concurrently negotiating agreements with CIMAB and Sandoz, has been taken as one of the circumstances which, when seen along with other facts and circumstances of the matter viz., association with key managerial personnel of Biocon, trading behaviour in the scrip of Biocon and other scrips etc., leads to a reasonable conclusion that Noticees had access to the UPSI.

41. Further, Noticees have submitted that Biocon has not identified Noticees as persons to whom the UPSI was communicated in the list of "connected persons" furnished to SEBI. It is observed that the list provided by Biocon is the version of the company. The same does not preclude SEBI to conduct independent examination / investigation in the matter. Based on the evidence collected at the time of examination / investigation, if the connection of an entity who is not on the list as provided by the company, comes up, the same is no bar for SEBI to initiate appropriate proceedings against such an entity. In the instant matter based on the strength of evidence collected at the time of investigation, extant proceedings were initiated against the Noticees. Moreover, in some cases, inspite of company taking precautions, there is no certainty that an information will not reach / access by an

unintended recipient particularly someone who has an ongoing multidimensional connection with senior officials of the company. Thus, the requirement of regulatory intervention arises. Hence, the submission of the Noticees that they have not be named on the list of “connected persons”, is unacceptable.

42. Noticees have contended that any communication by Biocon of information pertaining to collaboration with Sandoz, to the Noticees would have required the Noticees to execute specific confidentiality and non - disclosure agreements with Biocon as in the case of the CIMAB Licensing deal. The aforesaid submission of the Noticees is flawed, as the confidentiality and non - disclosure agreement, is executed with parties who are directly involved in the discussions by virtue of which they will have knowledge of the details of the ongoing transaction. In the instant matter as the Noticees were not directly involved with the ongoing discussion with Sandoz, there was no need for non-disclosure agreement for the Sandoz deal. However, that does not preclude his access to the said information.

43. I now proceed to examine whether Noticees can be termed as insiders as per regulation 2 (1) (g) (i) of PIT Regulations. To come under the ambit of the aforesaid regulation, following two parameters of a “connected person” as mentioned under regulation 2 (1) (d) (i) of PIT Regulations must be satisfied:

- 43.1. The person must be directly or indirectly associated with a company in any capacity.
- 43.2. The person must have direct or indirect access to UPSI or is reasonably expected to have access to UPSI.

44. It is observed from the records that during January, 2017 to July, 2017, Noticee No. 1 was working on the assignment (Advisory Services- Structuring of investment of Biocon in Equillium Inc.) with Biocon. Post, July, 2017, Noticee No. 1 continued working with Biocon on the related CIMAB Licensing deal till December, 2017. Thus,

it can be held that Noticee No. 1 was directly associated with Biocon.

45. Before proceeding to deal with the second parameter of whether it can be held that Noticee No. 1 can be reasonably expected to have access to UPSI, it will be appropriate here to refer to the findings of Hon'ble Supreme Court of India in the matter of *SEBI vs Kishore R Ajmera* decided on February 23, 2016 wherein the Hon'ble Court held as follows:

"... It is a fundamental principle of law that proof of an allegation levelled against a person may be in the form of direct substantive evidence or, as in many cases, such proof may have to be inferred by a logical process of reasoning from the totality of the attending facts and circumstances surrounding the allegations/charges made and levelled. While direct evidence is a more certain basis to come to a conclusion, yet, in the absence thereof the Courts cannot be helpless. It is the judicial duty to take note of the immediate and proximate facts and circumstances surrounding the events on which the charges/allegations are founded and to reach what would appear to the Court to be a reasonable conclusion therefrom. The test would always be that what inferential process that a reasonable/prudent man would adopt to arrive at a conclusion."

46. In light of the aforesaid observation of Hon'ble Apex Court, I note that in matters of insider trading, direct substantive evidence will not always be present. In such situations the immediate and proximate facts and circumstances surrounding the events on which the charges/allegations are founded have to be taken into consideration before arriving at a conclusion. To arrive at a finding whether Noticee No. 1 is reasonably expected to have access to UPSI, the following circumstances have been considered:

46.1 Noticee No. 1's association with key managerial personnel of Biocon.

46.2 Noticee No. 1's work in the advisory capacity with Biocon on the CIMAB

Licensing deal.

46.3 Trading behaviour of the Noticees in the scrip of Biocon and as compared with other scrips.

47. With respect to the first circumstance, Noticee No. 1 has submitted that by resorting to his independent directorship in M/s Mazumdar Shaw Medical Foundation and by making reference to Allegro Capital Advisors Ltd. where Mr. Arun Chandavarkar (the then CEO & Joint MD) and Ms. Kiran Mazumdar Shaw, have their trading accounts, SEBI is clearly grasping at straws trying to conclude that the Noticee No. 1 is a connected person. In this regard, it is observed that reliance on the aforesaid have been placed to show that the association of Noticee No. 1 with senior management of the company is not merely in the capacity of an advisor on specific set of projects, but it goes beyond that where he not only serves on the Board of the charitable foundation of the Promoter of Biocon but also provides broking services to the Promoter and the then CEO & Joint MD. It shows that Noticee No. 1 is in frequent communication with the key managerial personnel of Biocon outside his contractual relationship with Biocon and also shows his proximity to the management of Biocon. The same makes Noticee No. 1 stand on a different footing as compared to other advisors, if any, contracted by Biocon. Therefore, Noticee no. 1 association with M/s Mazumdar Shaw Medical Foundation and Allegro Capital Advisors Ltd., where he is the majority shareholder are relevant factors as it establishes his relationship / connection with Biocon and / or its management. Hence, the submission of the Noticee No. 1, is untenable. The submission of the Noticees that there is a factual error in the SCN wherein it has been alleged that Noticee No. 1 was allotted ESOPs, is accepted. I note that company vide its email dated June 29, 2020 has confirmed that no stock options have been granted to Noticee No. 1. Further, it is observed from the corporate actions disclosed by the company to BSE that Biocon had made a bonus issue, record date for which was June

17, 2017 and the shares were credited to the demat account of Noticee No. 1 on June 22, 2017. Therefore, the submission of Noticee No. 1 that shares allotted to him were pursuant to bonus issue and not due to ESOPs, is acceptable.

48. With respect to the second circumstance, it is noted that the then CEO & Joint MD, Mr Arun Chandavarkar and the then CFO, Mr. Siddharth Mittal who were directly involved in the negotiation on the Sandoz deal were also involved in the CIMAB Licensing deal, wherein Noticee No. 1 was acting in an advisory capacity. The same leads to an inference that Noticee No. 1 was in frequent and regular communication with the senior officials of Biocon who had direct knowledge of the UPSI. The aforesaid has to be seen along with other facts and circumstances of the matter before arriving at a reasonable finding.

49. With respect to the trading behaviour of Noticees, the following submissions have been made by the Noticees:

49.1. Noticees have traded regularly in the scrip of Biocon. The said fact is obvious from the fact that the Noticees have approximately 4 % of total holding in Biocon.

With respect to the aforesaid submission of the Noticees, it is observed that Noticee No. 1 started buying in the scrip of Biocon from July 2016. His trading in Biocon from July 2016 is as follows:

Noticee No. 1- Biocon Trades

Biocon			
Period	Date	Gross Buy Quantity	Gross Sell Quantity
01.1.2016 -03.12.2017	15-Jul-2016	3,000	0
	08-Nov-2016	10,000	0
	22-Nov-2016	3,000	0
	26-Dec-2016	4,500	0
	27-Feb-2017	14,000	0

	02-Mar-2017	28,000	0
	10-May-2017	7,000	0
	12-May-2017	2,000	0
	22-May-2017	2,000	0
	23-May-2017	4,000	0
	24-May-2017	20,000	0
	04-Aug-2017	25,000	0
	16-Aug-2017	10,000	0

Noticee No. 1 was allotted 2,14,000 shares of Biocon on June 22, 2017 in a bonus issue. There was no trading done by Noticee No. 1 in Biocon post August 16, 2017, till he bought shares during UPSI period on January 18, 2018, i.e., a gap of 5 months. Further, the total shareholding of Noticee No. 1 in Biocon must be seen in light of the corporate action of bonus issue made by Biocon which contributed almost half to his shareholding at the end of August 16, 2017. In other words, of his own volition i.e., sans bonus issue, Noticee No. 1 had bought a total of 1,32,500 shares as on August 16, 2017. Noticee No. 2 had started buying in the scrip of Biocon from January 2016. Its trading in Biocon from January 1, 2016 is as follows:

Noticee No. 2 –Biocon Trades

Biocon			
Period	Date	Gross Buy Quantity	Gross Sell Quantity
01.1.2016 -03.12.2017	18-Jan-2016	2,500	0
	19-Jan-2016	10,000	0
	11-Feb-2016	2,000	0
	07-Sep-2016	0	5,000

From the above table, it is observed that Noticee No. 2 had bought 14,500 shares of Biocon out of which it had sold 5,000 shares. 9,500 shares that were remaining with Noticee No. 2 as on September 7, 2016, were transferred in off market by Noticee No. 2 to Noticee No. 1 on January 4, 2017. There was no trading done by Noticee No. 2 in Biocon, post September 7, 2016, till Noticee No. 2 bought shares during UPSI

period on January 15, 2018, i.e., a gap of more than 16 months.

The above data reflects the following:

- Noticee No. 1 had executed only 4 trades in the year 2016 in the scrip of Biocon aggregating 20,500 shares only. However, once he started advising Biocon from January, 2017 on the Equillium project, he started taking active interest in the scrip of Biocon buying an aggregate of 1,12,000 shares upto August 16, 2017.
- Noticee No. 2 had executed only 3 buy trades in the scrip in the months of January - February, 2016 and 1 sell trade in the month of September, 2016 with a net buy of 9,500 shares.
- Looking at the combined data of the Noticees also shows that in the two years leading to UPSI period, Noticees had executed only 8 trades in the entire year of 2016 while in the year 2017, Noticees had executed trades in the scrip in patches (February- March [2 trades], May [6 trades] and August [2 trades]), last of which was 5 months prior to trade in the UPSI period. Thus, the frequency with which the Noticees were executing trades in the scrip of Biocon prior to UPSI period cannot be classified as regular trading in the scrip of Biocon. It was more of an intermittent trading, one which may have been influenced by Noticee No. 1's advisory engagement with Biocon.

49.2 Noticee No. 1 has further submitted that he had also bought a total of 1,47,574 shares on 9 and 14, February 2018 at a much higher price as compared to the share prices on January 18, 2018. Moreover, the total trades in Biocon by the Noticees during the period January 1, 2016 to December 3, 2017 amounts to 1,47,000 shares i.e., approximate 3 times the trades on the two days i.e. 15 and 18, January 2018. Thus, it is obvious that the Noticees did not trade on the basis of UPSI.

The aforesaid submissions of the Noticees of their pre and post UPSI period trading, presumably raises a question whether such trading pre and post publication of UPSI, is a strong enough circumstance to conclude that the trading during the UPSI period was without having possession of UPSI. The determination of this question again depends on the other countervailing circumstances (their concentrated / focused trading in the scrip of Biocon, the timing and particulars of their trades in the scrip of Biocon, their trades in other scrips and the fact that the Noticee No. 1 was during the same period was working on an assignment with Biocon). The combined effect of the aforesaid circumstances must be seen to determine whether the Noticees did / or did not trade on the basis of UPSI. Therefore, the circumstance demonstrated by the Noticees cannot on a standalone basis support a conclusion that their trading during UPSI period is not without being in possession of UPSI or it was not on the basis of UPSI. Moreover, Noticees trading during pre and post UPSI period does not conclusively negate the allegation whether the trading done during UPSI period was done while in possession of UPSI or not and / or on the basis of UPSI. Furthermore, to compare trades which have been executed over a period of 24 months prior to UPSI period with trades executed on 2 days during UPSI period, is incorrect as trades executed during the said two periods stand on a different footing both in terms of period of time and resources. However, in the instant matter, even a comparison between two unequal periods show that total number of shares bought on two days during the UPSI period is 60.54% of the total shares bought by the Noticees over a period of 24 months. The same shows a substantial jump in trading in the scrip of Biocon and an increased interest in the said scrip.

49.3. Noticee further submitted that the total turnover of trades of Noticee No. 1 during the period July 1, 2016 to July 30, 2019 is to the tune of Rs. 82.7crore. This would show that the trades being assailed are not trades that have suddenly been executed in a large magnitude but that they were consistent with the trading scale of

the Noticee No. 1. Further, Noticee No. 1 has submitted that he has bought similar value of shares post UPSI period and the same when seen along with the purchases prior to UPSI period, would show higher purchases than during UPSI period.

With respect to the submission of Noticee No. 1 with respect to the turnover, it is observed that the figures submitted by Noticee No. 1 pertain to a three year period and hence cannot be employed to demonstrate that trades executed during UPSI period, which is a period of one month. It has already been noted in preceding paragraph that the trades executed by Noticees during UPSI period in the Biocon scrip, is 60.54% of their total buy trades executed prior to UPSI period. The same demonstrated that the scale of trading is substantial during the UPSI period compared to prior period. Further, if the yardstick of turnover has to be employed to show a consistent scale, then the same has to be seen along with the fact that the combined buy trade value of Noticees in the Biocon scrip in two days was Rs 4.8 crore, a scrip in which the Noticees had not executed a single trade in the last five months prior to the UPSI period. It is noted from Noticees trading in other scrips that the maximum value of shares that they have bought in a single company on a single day and/or within 2-4 days during the period January 2016 to March 2018, is on November 20, 2017 when the Noticees had bought shares of IDFC Ltd. for Rs. 1.23 crore. Thus, even in terms of buy value, it is noted that the Noticees do not execute trades of significant amount in other scrips within few day (2-4 days). The additional factor of timing also has to be considered which was just prior to the publication of UPSI. Thus, the cumulative effect of the circumstances as mentioned above, in the instant matter, more than outweighs the submission of the Noticee No. 1.

With respect to Noticee No. 1's submission that Noticees have bought similar value of shares post UPSI period, it is observed the same has to be seen along with Noticees activity prior to the UPSI period. It is observed that prior to UPSI period (period of approximately 3.5 months), Noticees have neither bought shares of Biocon in such

big magnitude on two trading days nor have they bought shares of Biocon of such considerable value, as done on the said two trading days during the UPSI period. Further, to have a holistic view of Noticees trading pattern, Noticees trades in other scrips during the UPSI period and prior to it also has to be seen. It is noted that during the UPSI period, Noticees gross buy value in other scrips was only Rs. 21.39 lakh which is a fraction (4.45%) of Noticees gross buy value in the scrip of Biocon. It is also noted that during the UPSI period Noticees have executed buy trades other than in Biocon in Vivimed Labs Ltd. wherein the Noticees have bought 20,000 shares. Thus, not only in terms of buy value but also in terms of quantity bought at one go or within few days, there is a substantial jump in the trading activity of Noticees in the scrip of Biocon during the UPSI period. Moreover, Noticees gross buy value in other scrips, prior to 3.5 months to UPSI period, is Rs. 1.87 crore whereas during said 3.5 months, Noticees have not executed a single trade in the scrip of Biocon. Thus, when Noticee No. 1's trades are seen in all the scrips starting from 3.5 months prior to UPSI period and ending post UPSI period (19.01.2018 - 31.03.2018), it demonstrates that Noticees have a focused and concentrated trading in the scrip of Biocon, post January 14, 2018 which is not backed by their normal trading behaviour / pattern, either in the scrip of Biocon, prior to January 15, 2018 and / or in any other scrips during the period September, 2017 to March, 2018. Moreover, as stated earlier, Noticee No. 1's, post UPSI trading behaviour does not negate the allegation that the trading done during UPSI period was done in possession of UPSI and on the basis of UPSI.

The submission of Noticee No. 1 that the combined value of his purchase in the scrip of Biocon during pre and post UPSI period is more than the value of Biocon shares purchased during the UPSI period, is made to support that his trading behavior was normal during the UPSI period. In this regard, it is observed that in the present matter to establish whether the trading pattern of Noticee No. 1 was normal during UPSI period, relevant parameters to be considered are Noticee's trading behaviour

in scrip of Biocon in terms of value and quantity prior to UPSI period, his trading in other scrips prior to UPSI period, particulars of his trading during the UPSI period in the scrip of Biocon and other scrips and his post UPSI trading activity. Except the last parameter, the other parameters would show whether the Noticee has deviated from his usual pattern of trading. To put it differently, the said parameters would show whether there is a significant jump in Noticee's trading activity. Therefore, to establish a trading pattern, data of each period must be separately examined and due weightage has to be given to each period. In the instant case, the trading data shows that trading activity of Noticee No. 1 during the UPSI period was unusual and post UPSI period trading pattern shows that the sudden spurt / jump in volume that Noticee No. 1 showed in the Biocon scrip during the UPSI period, was maintained post UPSI period also.

49.4. Noticees have submitted that they have built a portfolio in Biocon of 14 lakh shares over last 12-15 years. Further, based on Noticee No. 1's continuous research of Biocon, the Noticees believed that during January 2018, Biocon was significantly undervalued and represented a good long term buying opportunity and hence decided to invest in the scrip of Biocon.

It is observed that in the present matter the relevant consideration is that the Noticees transacting in the Biocon scrip prior to USPSI period was in patches / intermittent and they had bought only 1,47,000 shares on their own accord, in 24 months prior to UPSI period. Whereas during the UPSI period they had bought 89,000 shares i.e., 60.54% of their then existing portfolio in Biocon was bought in just two trading days. Further, as noted in preceding paragraphs, subsequent trades in the scrip does not negate the allegation that the trading done during UPSI period was done in possession of UPSI. The submission of the Noticees that the shares of Biocon were undervalued, is unacceptable as the same is not supported by any documentary evidence. Even, if the said submission of the Noticees is to be accepted,

the same must be considered with other countervailing circumstances (Noticees concentrated / focused trading in the scrip of Biocon, the timing and particulars of their trades in the scrip of Biocon, their trades in other scrips and the fact that the Noticee No. 1 was, during the same period working on an assignment with Biocon and had much wider association with senior officials of the company) to see whether the Noticees did / or did not trade on the basis of UPSI.

49.5. Noticees have submitted that they have bought the shares prior to the announcement, so if their behaviour was speculative in nature, they should have sold it after announcement. But the Noticees invested more which demonstrates that Noticees are long term investors. In this regard, it is observed that the issue at hand is not whether the behaviour of the Noticees is speculative in nature. Rather, whether the Noticees have traded when they were in possession of UPSI and on the basis of UPSI. The answer to the same must be arrived at, after examining various circumstances as mentioned in the preceding paragraphs and their cumulative effect on the facts of the case. Moreover, it will be too naïve to think that every insider in every case would sell the shares promptly on publication of UPSI especially when insiders have a long term association / interest in the company. In the instant matter, as noted in preceding paragraphs, there was a sudden jump in the trading behaviour and interest of the Noticees during the UPSI period which was maintained in post UPSI period also.

50. In view of the aforesaid discussion, the following can be summarised regarding the trading behaviour of the Noticees:

50.1. The quantum of trades and the frequency with which the trades were executed by the Noticees prior to the UPSI period in the scrip of Biocon, does not support the contention of the Noticees that their impugned trades (large volume and substantial value of concentrated trades in 2 trading days) was normal behavior. In the year

2016, Noticees executed 7 buy trades and 1 sell trade in the scrip while trades in the year 2017 was executed on 3 occasions in 3 patches of 2-3 days. Further, the increased interest in the Biocon scrip in the year 2017 coincides with the engagement of the Noticee No 1. in an advisory capacity with Biocon.

50.2. There has been suddenness of large buying (89,000 shares) in the scrip of Biocon during UPSI period in 2 trading days, as there were no trades executed by the Noticees in Biocon during five months prior to UPSI period.

50.3. The combined buy trade value of Rs 4.8 crore of the Noticees was observed in Biocon within four days before the announcement of UPSI as compared to just Rs 21.39 lakh in other scrips during UPSI period.

50.4. The volume and gross buy value of trade executed by Noticees in Biocon during UPSI period is substantial compared to their trading in the Biocon scrip, prior to January 15, 2018. Further, the volume and gross buy value of trade executed by Noticees in Biocon is substantial even when compared to their trading in other scrips, prior to January 15, 2018. Noticees gross buy value in other scrips during 3.5 months prior to UPSI period was Rs 1.87 crore.

51. Here, it will also be appropriate to summarise the trading behavior of the Noticees vis-à-vis UPSI period i.e., pre UPSI period, during UPSI period and post UPSI period in the scrip of Biocon and when compared with other scrips;

51.1 Pre UPSI period

Noticee No. 1	Biocon				Other scrips			
Period	Gross Buy Value in Rs	% Activity to Gross Buy Value	Gross Sell Value	% Activity to Gross Sell Value	Gross Buy Value in Rs	% Activity to Gross Buy Value	Gross Sell Value	% Activity to Gross Sell Value
Prior to UPSI Period (01.09.2017-19.12.2017)	0.00	0.00%	0	0%	12501453.00	100.00%	11664136	100%

Noticee No. 2	Biocon				Other scrips			
Period	Gross Buy Value in Rs	% Activity to Gross Buy Value	Gross Sell Value	% Activity to Gross Sell Value	Gross Buy Value in Rs	% Activity to Gross Buy Value	Gross Sell Value	% Activity to Gross Sell Value
Prior to UPSI Period (01.09.2017- 19.12.2017)	0.00	0.00%	0	0%	6199720.45	100.00%	0	0%

Thus, from the above tables, it is observed that during the pre UPSI period, the Noticees were active in scrips other than Biocon. Their buy value in other scrips was Rs. 1.87 crore which is significantly less than what the Noticees have spent in acquiring the shares of Biocon in two trading days (Rs. 4.8 crore) during the UPSI period. They had not executed a single trade in the scrip of Biocon during pre UPSI period. The last trade executed by the Noticees prior to UPSI period was on August 16, 2017. Further, the maximum number of shares that Noticees have bought prior to UPSI period, over a short period of time i.e. within 2-4 days is 42,000 shares between February 27, 2017 to March 2, 2017. Noticees trades in Biocon has started in the month of January, 2016. However, during the year 2016, Noticees net buy in the Biocon shares was 30,000 shares only. The trading activity of the Noticees in the year 2017 coincided with the Noticee No. 1 being appointed in an advisory capacity on the Equillium project. Thus, from the aforesaid discussion, it is held that prior to UPSI period, Noticees were active in scrips other than Biocon in terms of value and quantity, more so in 5 months prior to UPSI period.

51.2. UPSI period

Noticee No. 1	Biocon				Other scrips			
Period	Gross Buy Value in Rs	% Activity to Gross Buy Value	Gross Sell Value	% Activity to Gross Sell Value	Gross Buy Value in Rs	% Activity to Gross Buy Value	Gross Sell Value	% Activity to Gross Sell Value
During UPSI Period (20.12.2017 -18.01.2018)	21,57,881	50.22%	0	0%	21,39,074	49.78%	1,920,942	100%

Noticee No. 2	Biocon				Other scrips			
Period	Gross Buy Value in Rs	% Activity to Gross Buy Value	Gross Sell Value	% Activity to Gross Sell Value	Gross Buy Value in Rs	% Activity to Gross Buy Value	Gross Sell Value	% Activity to Gross Sell Value
During UPSI Period (20.12.2017 -18.01.2018)	4,60,45,518	100.00%	0	0%	0	0.00%	0	0%

From the above tables, it is observed that Noticees have bought Biocon shares worth Rs. 4.82 crore during the UPSI period. The said 89,000 shares were bought on two trading days, 50,000 shares on January 15, 2018 and 39,000 shares on January 18, 2018. During the same period, Noticees had bought shares worth Rs 21.39 lakh in one other company, Vivimed Labs Ltd. The same demonstrates a focused / concentrated trading activity of Noticees in the scrip of Biocon. Further, prior to UPSI period, Noticees had bought over a period of 24 months, 1,47,000 shares. However, in two trading days, Noticees bought 89,000 shares of Biocon which is approximately 60% of their then existing portfolio. This sudden spurt / jump in volume in the scrip of Biocon, cannot be justified by prior trading activity of Noticees in the scrip of Biocon and / or in other scrips. Moreover, prior to UPSI period, number of shares bought by Noticees in Biocon

within few days was 42,000 shares whereas during UPSI period, in two trading days, Noticees have bought 89,000 shares. Thus, from the aforesaid discussion, based on significant trading activity in Biocon both in terms of value and quantity, lack of substantial activity in other scrips compared to trading activity in Biocon as well as decrease in trading activity (from Rs. 1.87 crore to Rs 21 lakh) in other scrips compared to pre UPSI period and the timing of the trades, it is held that the trading activity of the Noticees in the scrip of Biocon is unusual and is not in the normal / regular course of trading activity.

51.3. Post UPSI period

Noticee No. 1	Biocon				Other scrips			
Period	Gross Buy Value in Rs	% Activity to Gross Buy Value	Gross Sell Value	% Activity to Gross Sell Value	Gross Buy Value in Rs	% Activity to Gross Buy Value	Gross Sell Value	% Activity to Gross Sell Value
Post UPSI Period (19.01.2018 - 31.03.2018)	11,64,74,117	94.19%	0	0%	71,84,877	5.81%	52,00,482	100%

Noticee No. 2	Biocon				Other scrips			
Period	Gross Buy Value in Rs	% Activity to Gross Buy Value	Gross Sell Value	% Activity to Gross Sell Value	Gross Buy Value in Rs	% Activity to Gross Buy Value	Gross Sell Value	% Activity to Gross Sell Value
Post UPSI Period (19.01.2018 - 31.03.2018)	0	0.00%	0	0%	0	0.00%	0	0%

From the aforesaid table, it is observed that the Noticees have carried on their focused trading in the scrip of Biocon which was first noticed during UPSI period. However, the same does not negate that the trading done during UPSI period was not done while in possession of UPSI. It is observed that Noticee No.

2 which had bought 85,000 shares had sold the said shares in the month of September, 2018 (on 3 trading days) and had exited the scrip. As on January, 2020, Noticee No. 2 was not having any shareholding in Biocon. Moreover, the focused trading activity which was shown by Noticee No. 1 post UPSI period, also decreased substantially as during the period April, 2018 to January, 2020, Noticee No. 1 had bought shares only on 3 occasions (once in July, 2018, once in August, 2019 and once in September, 2019) and he has sold shares on 2 occasions (twice in September, 2018) during the said period. Thus, the trading activity of Noticees post UPSI period can at best be held to be an extension of their activity of UPSI period which decreased substantially post March, 2018. In other words, it cannot be held that the Noticees were regular and active trader in the scrip of Biocon.

52. In view of the aforesaid discussions, based on Noticee No. 1's close association with key managerial personnel of Biocon, his advisory activity on the CIMAB Licensing deal wherein he was working on the negotiations with the counter party with the same set of Biocon officers who were concurrently working on the Sandoz deal, Noticees trading behaviour and pattern in the scrip of Biocon and other scrips, both pre and during UPSI period and timing and particulars of their trades in the scrip of Biocon, demonstrates a strong preponderance of probability that when the trades were executed by Noticees, Noticee No.1 was in possession of UPSI and / or had access to UPSI.

53. Noticees have submitted that the term "connected person" need not spell out that the connection would be in relation to the UPSI that is handled by the connected person and not any and every piece of UPSI that may be in the possession of the company. The said submission of the Noticee, is acceptable. In the instant matter, based on the cumulative effect of various circumstances as discussed in preceding paragraphs, a conclusion is being drawn based on preponderance of probability that when the

trades were executed by Noticees, Noticee No.1 was in possession of UPSI and / or had access to UPSI.

54. Noticees have contended that SEBI has failed to produce any email and /or any written or oral communication which shows that the employees of Biocon communicated the alleged UPSI to the Noticees. In this regard, it is observed that there are many ways that an individual can get access to UPSI. In insider trading matters, direct evidence will usually not be available. A reasonable inference must be drawn from the circumstantial evidence and conduct of parties. In the present matter based on the cumulative effect of the circumstance, it has been held that when the trades were executed by Noticees, Noticee No.1 was in possession of UPSI and / or had access to UPSI.

55. Noticees have also submitted that if it is SEBI's case that it is not required to show how the UPSI reached the Noticees, that stand is directly contrary to the ruling of the Hon'ble SAT in *Samir C. Arora's* case. The submission of the Noticees is flawed. The reason being that in *Samir C. Arora's* case there were no circumstances to suspect the source where the information was generated or the channel of transmission of the information to the destination. Moreover, the appellant in the said case was able to demonstrate that there were plausible reasons for the impugned sale trades and it was not on the basis of UPSI, as alleged. In the present matter, considering Noticee No. 1 was working on negotiations on CIMAB Licensing deal along with officials who were also working concurrently on the Sandoz deal, when seen along with Noticees trading pattern in the Biocon scrip and other scrips, leads to a reasonable conclusion that when the trades were executed by Noticees, Noticee No.1 was in possession of UPSI and / or had access to UPSI. The plausible reasons given by Noticees for the impugned trades are that it is their normal trading behaviour and the shares of Biocon were undervalued. The former reason is not supported by Noticees trading data and the latter is unsubstantiated. Therefore, the current case is not on the same plane as

that of *Samir C. Arora's* case.

56. It has also been submitted by the Noticees that if it is indeed SEBI's case that UPSI was communicated by the officers to the Noticees, at the very least, it ought to have charged the officers of Biocon with communication of UPSI to the Noticees. In this regard, it is observed that SEBI's case is based on the sum total effect of various circumstances including his trading behavior in Biocon and other scrips, timings and particulars of the trade in Biocon, concentrated/focus trading in the scrip of Biocon, his multidimensional associations with Biocon in the matter which on a preponderance of probability basis leads to the conclusion that Noticee No1 had access to UPSI. Furthermore, Noticees reliance in the *Emami Ltd.* matter passed by SEBI is misplaced as the said matter held that in view of the specific restriction on communication of UPSI by the insiders contemplated under regulation 3 of PIT Regulations, evidence to show that the same has been communicated by the insider, have to be specifically brought out. The present matter, as noted above, is based on the cumulative effect of various circumstances which shows that when the trades were executed by Noticees, Noticee No.1 was in possession of UPSI as he had access to UPSI. A distinction has to be made between communication of UPSI and being in possession / having access to UPSI. The instant matter belongs to the latter category.

57. Similarly, the submission of the Noticees that there is no allegation of violation of need to know principle by any insider within Biocon, can also not be a basis for negating the allegation of insider trading against the Noticees. Noticees must defend their case on its own merit and independent of allegations, if any levelled against other entities.

58. From the aforesaid discussions, it is seen that both the parameters of connected person as mentioned under regulation 2 (1) (d) (i) of PIT Regulations have been met by Noticee No. 1. Hence, it is held that Noticee No. 1 is an insider in terms of regulation 2 (1)(g)(i) of PIT Regulations. Furthermore, Noticee No. 2 is an artificial person who

had a temporary business relationship with Biocon. Noticee No. 1 is a majority shareholder and Director in Noticee No.2 and has admitted being the trading mind behind Noticee No. 2. It has also been noted in preceding paragraphs that Noticee No. 1 is reasonably expected to have access to UPSI. Therefore, Noticee No. 2 indirectly through Noticee No. 1 is reasonably expected to have access to the UPSI. Therefore, it is held that Noticee No. 2 is a connected person to Biocon in terms of regulation 2(1)(d)(i) of PIT Regulations. It is further held that Noticee No. 2 is an “insider” as per regulation 2(1)(g)(i) of PIT Regulations.

Issue No. 4 - *If Noticees are ‘insiders’ in terms of PIT Regulations, whether the Noticees have violated the applicable provisions of insider trading under PIT Regulations and SEBI Act, as alleged in the SCN?*

59. SCN has alleged that the Noticees have violated the following provisions of law as being insiders, they have traded in the securities of Biocon while in possession of UPSI and on the basis 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;

Penalty for insider trading.

15G.

If any insider who,—

(i) either on his own behalf or on behalf of any other person, deals in securities of a body corporate listed on any stock exchange on the basis of any unpublished price-sensitive information;

...

shall be liable to a penalty which shall not be less than ten lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher.

60. Before proceeding further, it will relevant here to quote the findings of Hon'ble SAT in the matter of *Rajiv B. Gandhi and Ors. vs. SEBI* decided on May 9, 2008 wherein Hon'ble SAT held as follows:

"... We are of the considered opinion that if an insider trades or deals in securities of a

listed company, it would be presumed that he traded on the basis of the unpublished price sensitive information in his possession unless he establishes to the contrary. Facts necessary to establish the contrary being especially within the knowledge of the insider, the burden of proving those facts is upon him. The presumption that arises is rebuttable and the onus would be on the insider to show that he did not trade on the basis of the unpublished price sensitive information and that he traded on some other basis. He shall have to furnish some reasonable or plausible explanation of the basis on which he traded. If he can do that, the onus shall stand discharged or else the charge shall stand established."

61. It has been held in preceding paragraphs that Noticees have not been able to discharge the burden of proof that their trading was not done because Noticee No. 1 had access to UPSI, for the following reasons:

- 61.1. Proximity of their trades in the scrip of Biocon vis-a-vis publication of UPSI.
- 61.2. Absence of any trading in the scrip of Biocon 5 months prior to UPSI period.
- 61.3. Substantial jump in the trading quantity and gross buy value in the scrip of Biocon compared to prior trading in the same scrip.
- 61.4. Lack of any meaningful trading in other scrips during the UPSI period in terms of gross buy value and quantity.
- 61.5. No acceptable explanation as to why Noticees had a sudden spurt / jump in buying substantial quantity of shares in just 2 trading days except for an unsubstantiated submission that the shares of Biocon were undervalued.
- 61.6. Noticee No. 1's close association with the key managerial personnel of Biocon outside his advisory engagements.
- 61.7. Noticee No. 1's working on negotiations in the CIMAB Licensing deal with the same officials of Biocon who were concurrently working on the Sandoz deal.

62. It is noted from the available records that the Noticees have made the following

transactions in the scrip of Biocon during UPSI period:

Noticee	Date	Gross Buy Quantity	Gross Sell Quantity	Buy Price (Rs.)
Kunal Ashok Kashyap	18-01-2018	4,000	0	539.47
Allegro Capital Pvt. Ltd	15-01-2018	50,000	0	541.71
	18-01-2018	35,000	0	

63. I note that for the present matter, the parameters of appreciation of evidence on record has been laid down by Hon'ble SAT in the matter of *Dilip S. Pendse vs. SEBI* decided on November 19, 2009, wherein the Hon'ble SAT has held as follows:

"The charge of insider trading is one of the most serious charges in relation to the securities market and having regard to the gravity of this wrong doing, higher must be the preponderance of probabilities in establishing the same."

The aforesaid observation was also reiterated in the matter of *Mr. Manoj Gaur vs. SEBI* decided on October 3, 2012 wherein it was held as follows: *"having regard to the gravity of charge of insider trading, higher degree of preponderance of probabilities is needed to bring home the charge."*

Furthermore, the Hon'ble Supreme Court of India in the matter of *SEBI vs Kishore R Ajmera* decided on February 23, 2016 laid down the test that has to be adopted to arrive at a conclusion based on circumstantial evidence under securities laws. It held as follows:

"... The test, in our considered view, is one of preponderance of probabilities so far as adjudication of civil liability arising out of violation of the Act or the provisions of the Regulations framed thereunder is concerned. Prosecution under Section 24 of the Act for violation of the provisions of any of the Regulations, of course, has to be on the basis of proof beyond reasonable doubt."

64. In light of the findings of Hon'ble Supreme Court of India and SAT, it can be held that degree of proof required to establish a charge of insider trading is that a

reasonable/prudent man would adopt to arrive at a conclusion based on preponderance of probability.

65. In view of the aforesaid discussions, based on a high degree of preponderance of probability of the circumstantial evidence gathered from the timing of the trades in close proximation to the publication of UPSI, concentration of the trades in scrip of Biocon in terms of gross buy value during the UPSI period, non-material trades in other scrips during UPSI period, deviation in the trading behaviour / pattern in the scrip of Biocon compared to trades in the Biocon scrip, prior to January 15, 2018, close association with the key managerial personnel of Biocon outside Noticee No. 1's advisory engagements and Noticee No. 1's role in the CIMAB Licensing deal, leads to the conclusion that Noticees have traded in the scrip of Biocon while Noticee No. 1's was in possession of UPSI.

66. The next issue that arises for consideration is whether the justification that the Noticees have given, falls within the exceptions as enumerated under proviso to regulation 4 (1) of PIT Regulations. It has been held in the preceding paragraph that Noticees have traded while Noticee No. 1 was in possession of the UPSI. However, the justification given by the Noticees that the trading is as per their normal trading behaviour and the shares of Biocon at the relevant period were undervalued, have been not accepted. The said reasons / justifications must also 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 individual insider taking the trading decision 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, Noticees executed their trades while Noticee No. 1 was in possession of UPSI. However, the counter party to their trades was not in possession of UPSI. Therefore, there was information asymmetry and I find the justifications given as invalid justification. Circumstances justifying Noticees trades should either fall under the statutory exceptions or the circumstances should be in the same class as the statutory exceptions which they are not. Hence, it is held that Noticees have violated regulation 4(1) of PIT Regulations and Section 12A (d) of SEBI Act.

67. Noticees by placing reliance in the matters of *Abhijit Rajan* and *Rajiv Gandhi* have submitted that trades in the securities took place are at the heart of the determination of whether the trading by an alleged insider is violative in nature. The said submission of Noticees is acceptable. However, as held by Hon'ble SAT in the matter of *Rajiv Gandhi* that if an insider trades it would be presumed that he traded on the basis of UPSI, unless contrary is proved by the insider. In the present matter, the Noticees through their submissions have not been able to discharge the burden of proof as in the peculiar facts and circumstances of the case, there exist countervailing circumstances, as mentioned above, which, on a preponderance of probability basis, outweigh the submissions of the Noticees. Therefore, it is further held that the Noticees have dealt in the scrip of Biocon on the basis of UPSI and hence have violated Section 15G(i) of SEBI Act. Looking from a different perspective, it is noted that the information pertaining to collaboration between Biocon and Sandoz was a positive news and was likely to materially affect the price of the scrip. An insider who has

access to or is in possession of UPSI, will buy shares of Biocon as the UPSI is positive in nature. Thus, the trades were executed on the basis of UPSI. The Noticees trading behavior prior to UPSI period does not justify their trading during the UPSI period when the following parameters are employed:

- Gross buy value in the scrip of Biocon during pre UPSI period.
- Quantity of Biocon shares bought at one go or within 2-4 days.
- Trading activity (quantity and buy value) in other scrips during pre UPSI period and UPSI period.
- The focused trading activity shown by Noticees during post UPSI period decreased substantially over the next 22 months.

Even if, the Noticees were bullish with respect to Biocon's scrip in the long term, the sudden spurt / jump in volume shown by them during UPSI period has not been justified by them. To put it differently, Noticees may have been bullish about Biocon but because of the UPSI, their purchases in the scrip of Biocon was advanced as they wanted to buy it before the price starts to increase after the publication of the announcement. Thus, the trigger for buying irrespective of the long term bullish view was on the basis of UPSI. Therefore, it is held that the Noticees have dealt in the scrip of Biocon on the basis of UPSI and hence have violated Section 15G(i) of SEBI Act.

68. Furthermore, 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 Noticees by dealing in securities of Biocon while in possession of material and non-public information, have also violated Section 12A(e) of SEBI Act.

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 Noticees?*

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

70. 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 alone can inspire the confidence of investors. Factors on which this confidence depends include, among others, the assurance the market can afford to all investors that they are placed on an equal footing and will be protected against improper use of inside information. In-equitable and unfair trade practice such as insider trading affects the integrity and fairness of the securities market and impairs the confidence of the investors. Therefore, in view of the violations committed by the Noticees, it becomes necessary for SEBI to issue appropriate directions against the Noticees.

71. Further, I note that the Noticees have made the wrongful gains (notional) on account of insider trading, details of which are mentioned in the following table. The corporate announcement pertaining to collaboration with Sandoz was made post market hours on January 18, 2018. Accordingly closing price of Biocon for next trading day (January 19, 2018) is used for calculation of wrongful gains (notional).

BUY		SELL			Wrongful Gains made (in Rs) F=E-B
Buy Quantity (A)	Buy Value (B) (in Rs.)	Notional Sell Quantity (C)	Closing price on 19.01.2018 (D) (in Rs.)	Notional Sell Value (E=C*D) (in Rs.)	
Noticee No. 1					
4,000	21,57,881	4,000	569.35	22,77,400	1,19,519
Noticee No. 2					
85,000	4,60,45,518	85,000	569.35	483,94,750	23,49,232
Total Wrongful Gain					24,68,751

72. It is noted from the submissions of the Noticees that they have not disputed the calculation of wrongful notional gains, as alleged in the SCN. Further, it has been admitted by Noticee No. 1 that he is the trading mind behind Noticee No. 2. As the Noticees have violated regulation 4 (1) of PIT Regulations and Sections 12A (d) and 12A(e) of SEBI Act and have made wrongful notional gains by violating provisions of securities laws, I find that Noticees are liable for disgorging the wrongful notional gains of Rs. 24,68,751/-, jointly and severally, made by them, as alleged in the SCN.

73. 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*".

74. Thus, in view of above Hon'ble Supreme Court order and the findings arrived at preceding paragraphs, I am of the view that Noticees is liable for a monetary penalty under Section 15G (i) of SEBI Act for dealing in the scrip of Biocon on the basis of

UPSI. The text of the penalty provisions has been reproduced in the preceding paragraphs.

75. While adjudging the quantum of penalty I 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..."*

76. 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.*

77. 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...”

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

- 78.1. From the material on record, it is observed that Noticees have made wrongful notional gains of Rs. 24,68,751/-. The same is being directed to be disgorged by this order.
- 78.2. There is no material on record to show the quantum of loss caused to any specific investor or group of investors as a result of Noticees default.
- 78.3. There is no material on record to show that the default by the Noticees is repetitive in nature.

ORDER

79. 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. Kunal Ashok Kashyap and M/s Allegro Capital Private Limited 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 one year 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. Kunal Ashok Kashyap and M/s Allegro Capital Private Limited shall remain frozen. It is made clear that if, Mr. Kunal Ashok Kashyap and M/s Allegro Capital Private Limited have any open positions in any exchange traded derivative contracts, he can close out / square off such open positions within three months from the date of order or at the expiry of such contracts, whichever is earlier. It is also clarified that Mr. Kunal Ashok Kashyap and M/s Allegro Capital Private Limited 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 July 8, 2021.

- c) Mr. Kunal Ashok Kashyap and M/s Allegro Capital Private Limited are directed to jointly and severally disgorge an amount of Rs 24,68,751/- along with an interest at the rate of 12% per annum from January 19, 2018 till the date of actual payment. The said disgorgement amount along with the interest amount shall be paid within a period of forty-five (45) days, from the date of service of this order. 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".
- d) I hereby also impose the following penalty on Mr. Kunal Ashok Kashyap and M/s Allegro Capital Private Limited:

Sl. No.	Noticee	Provisions under which penalty imposed	Violation	Penalty
1.	Mr. Kunal Ashok Kashyap	Section 15G(i) of SEBI Act	Section 15G(i) of SEBI Act	Rs. 10,00,000/- (Rupees Ten Lakh).
2.	M/s Allegro Capital Private Limited	Section 15G(i) of SEBI Act	Section 15G(i) of SEBI Act	Rs. 10,00,000/- (Rupees Ten Lakh).

- e) Mr. Kunal Ashok Kashyap and M/s Allegro Capital Private Limited are directed to pay the penalty 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

** Noticee who is 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 09, 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:	

- f) 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 penalty, Noticees 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 the table above at paragraph 79 (e).

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

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

82. A copy of this order shall be served upon Mr. Kunal Ashok Kashyap, M/s Allegro Capital Private Limited, Stock Exchanges, Depositories and Registrar to Transfer Agents for necessary action and compliance with the above directions.

-Sd-

DATE: July 8, 2021

PLACE: Mumbai

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