

SECURITIES AND EXCHANGE BOARD OF INDIA

CONFIRMATORY ORDER

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

In respect of:

Sr. No.	Name of the Entity	PAN
1	Abhay Bhutada	AMIPB8540L
2	Saumil Shah	AAGPS6395E
3	Surabhi Kishore Shah	APQPS7611L
4	Amit Agrawal	AEZPA0831J
5	Murlidhar Bajaranglal Agrawal	AAYPA2130K
6	Rakesh Rajendra Bhojgadhiya	AKRPB5208J
7	Rakesh Rajendra Bhojgadhiya HUF	AARHR3479R
8	Abhijit Pawar	AFPPP7465L

(The aforesaid entities are hereinafter individually referred to by their respective names/Entity nos. and collectively as "Entities", unless the context specifies otherwise)

In the matter of Insider Trading in the scrip of Magma Fincorp Limited (now known as Poonawalla Fincorp Limited)

Background

1. **Magma Fincorp Limited (now known as Poonawalla Fincorp Limited)** (hereinafter referred to as '*Magma*' / '*Company*') is a company listed on the National Stock Exchange of India Limited (hereinafter referred to as '*NSE*') and the BSE India

Limited (hereinafter referred to as 'BSE') and the above mentioned two stock exchanges are hereinafter collectively referred to as '**the exchanges**'.

2. In the backdrop of a corporate announcement made by the *Company* on February 10, 2021 regarding acquisition of controlling stake in *Magma* by Rising Sun Holding Private Limited (hereinafter referred to as "*RSHPL*") and raising of fresh capital of ₹3,456 crores through a preferential allotment (hereinafter referred as "*Acquisition Deal*"), it was noticed that certain *Entities* enjoying connection through phone calls and fund transactions have traded in the scrip of the *Company*. The aforesaid corporate announcement of *Acquisition Deal* was *prima-facie* observed to be satisfying the characteristics of Unpublished Price Sensitive Information (hereinafter referred to as '**UPSI**') in terms of provisions of Regulation 2 (1) (n) of Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as '*PIT Regulations, 2015*'). In terms of the information furnished by the *Company*, the discussion and negotiation for the *Acquisition Deal* commenced on January 11, 2021 and finally came to be disclosed on February 10, 2021. Consequently, the above period commencing from January 11, 2021 to February 10, 2021 has been viewed as an Unpublished Price Sensitive Information Period (hereinafter referred to as '**UPSI Period**'), the period during which the price sensitive information (PSI) remained as unpublished insider information of the *Company* and was not generally available to public.

3. Based on the information gathered and examination thereof by the Securities and Exchange Board of India (hereinafter referred to as '**SEBI**') in respect of trading activities of certain entities, it has been observed *prima facie* that certain entities enjoying connection with the person having access to the UPSI have traded in the scrip of the *Company* during the UPSI period. The abnormal and unusual trading pattern exhibited by certain entities coupled with the connections enjoyed by them as seen through their phone calls and funds transfers have led to the *prima facie* observations that the trades in the scrip of *Magma* were executed by them while in

possession of the UPSI. In this regard, it was noticed during SEBI's examination that Mrs. Surabhi Kishore Shah (hereinafter referred to as "**Surabhi / Entity no. 3**"), Mr. Amit Agrawal (hereinafter referred to as "**Amit / Entity no. 4**"), Mr. Murlidhar Bajranglal Agrawal (hereinafter referred to as "**Murli / Entity no. 5**"), Mr. Rakesh Rajendra Bhojgadhiya (hereinafter referred to as "**Rakesh / Entity no. 6**") and Rakesh Rajendra Bhojgadhiya HUF (hereinafter referred to as "**Rakesh HUF / Entity no. 7**") have executed trades in the scrip of the *Company* during the period of UPSI and around the time when corporate announcement about the *Acquisition Deal* was made by the *Company*.

4. It was observed during the course of examination that Mr. Abhay Bhutada (hereinafter referred to as "**Abhay / Entity no. 1**") working as Managing Director and CEO of Poonawalla Finance Pvt Ltd (hereinafter referred to as "**PFPL**"), a subsidiary company of *RSHPL*, was part of the discussions on the proposed *Acquisition Deal* from the very beginning and was involved in the matter throughout the UPSI Period. By virtue of being involved in the discussion of the *Acquisition Deal*, Abhay was reasonably expected to have an access to and be in possession of the UPSI, thereby rendering him to be called as an insider in terms of regulation 2(1) (g) of the *PIT Regulations, 2015*.

5. It was further noticed during examination that Mr. Saumil Shah (hereinafter referred to as "**Saumil / Entity no. 2**"), Rakesh and Mr. Abhijit Pawar (hereinafter referred to as "**Abhijit / Entity no. 8**") were in contact with Abhay through telephonic communication during the UPSI period and were also having financial dealings with him (Abhay), which gave rise to a strong preponderance of probability of receipt of UPSI or reasonable access to the UPSI through Abhay, hence, were *prima facie* observed to be insiders as well, as far as the UPSI is concerned.

6. It was further noticed during examination that the *Entities* were connected to each other through blood relationship, financial transactions, etc., as illustrated below: -

- a) Saumil (*Entity no. 2*) is the son of Surabhi (*Entity no. 3*). Further, *Entity no. 2* is a nominee in the trading account (Kotak Securities) of *Entity no. 3* from where the trading in the scrip of *Magma* during the UPSI period was executed. Similarly, the savings bank account 801XXXX966 (Kotak Mahindra Bank) which was linked to aforementioned trading account is a joint bank account in the names of the *Entities no. 2, 3* and wife of the *Entity no. 2*.
- b) Rakesh (*Entity no. 6*) was Additional Director of BAT Digital Media Private Limited (hereinafter referred to as “*BAT*”) during the period from March 23, 2018 to November 14, 2019 in which Abhay (*Entity no. 1*) was earlier having a stake of 99.99%. From the report MGT-7 available on MCA portal, the email ID of the *BAT* for the year 2017-18 was found to be bhojgXXXXXX@gmail.com which belonged to Rakesh as well. The examination further revealed that one M/s Newgen Fintech Advisors (hereinafter referred to as “*Newgen*”), of which *Entity no. 6* is a proprietor, received ₹4.97 crore on 12-Oct-2020 from PFPL (where *Entity no. 1* is MD & CEO). Further, *Entity no. 6* is Karta in *Entity no. 7* (Rakesh HUF)
- c) Preliminary examination has also revealed that a company, namely Neo Star Infra Projects Pvt Ltd, wherein the Abhijeet (*Entity no. 8*) is the significant beneficial owner (SBO) and one of the Directors, had transferred a sum of ₹55 crores to the bank account of *Entity no. 1* on April 03, 2021, out of which an amount of ₹6.95 crores was transferred by *Entity no. 1* to his another personal account in IDBI Bank. Additionally, a sum of ₹15 crores were transferred by *Entity no. 8* and his family members to Newgen (proprietorship firm of *Entity no. 6*) and such funds were subsequently transferred onward by Newgen to the personal accounts of *Entities no. 6 and 7* and utilised those funds in executing trades in the scrip of *Magma* during the UPSI Period.

d) Amit (*Entity no. 4*) is son of Murli (*Entity no. 5*). It was observed during the examination that *Entities no. 4 and 5*, while trading in the scrip of *Magma* has utilised the funds received from the *Entity no. 6* and subsequent to the sale of shares (which were purchased during the UPSI Period), they have returned the sale proceeds to *Entity no. 6*.

7. It was observed from the trade data that **Surabhi / Entity no. 3, Amit / Entity no. 4, Murli / Entity no. 5, Rakesh / Entity no. 6** and **Rakesh HUF / Entity no. 7** had purchased the scrip of *Magma* during the UPSI Period i.e. prior to the corporate announcement of *Acquisition Deal* and soon after the said corporate announcement, they have subsequently sold the shares of *Magma* in the market and have earned profits from such trades. It was *prima facie* observed that the trades in the scrip of *Magma* executed from the trading accounts of *Entities no. 3 to 7* were not executed in the normal course of dealing in securities.

8. Having considered the information unearthed during the course of initial examination into the trading activity of the *Entities* in the scrip of *Magma*, an *ex-parte ad Interim Order* dated September 15, 2021 (hereinafter referred to as '**Interim Order**') was passed in respect of the aforementioned *Entities* wherein it was observed that said *Entities* have *prima-facie* acted in violation of the provisions of *SEBI Act, 1992* and *PIT Regulations, 2015*.

9. In the light of the aforesaid *prima-facie* observations and for the reasons recorded in the *Interim Order*, the *Entities* were *inter alia* directed to deposit jointly and severally, the unlawful gains made by them through their engagement in the trading in the scrip of *Magma* during the UPSI period and were further restrained from buying, selling or dealing in securities, either directly or indirectly, in any manner whatsoever until further orders. The *inter-se* connections amongst *Entities no. 1 to 8* with each other on the basis of call records, commercial relations, financial relations, blood relations, etc. have been elaborately illustrated in details in the *Interim Order* with the help of diagrams (Figure 1 and 2) and through factual

narrations in paragraphs no. 57-60 on pages no. 32-38 therein. Therefore, for the sake of brevity, the same are not being reproduced in this Order.

10. As the above *Interim Order* was passed ex parte, the *Entities* were asked to submit their respective replies/objections, if any, with respect to various observations and directions made in the *Interim Order*.

Servicing of *Interim Order*, replies of *Entities* and hearing

11. It is noted that the *Interim Order* was served upon all the *Entities*, and the directions issued therein with regard to the opening of the escrow accounts and depositing the alleged wrongful gains therein have been duly complied with by the *Entities*. Accordingly, SEBI has also issued the directions to the banks to de-freeze the accounts (other than the escrow accounts) of the *Entities*. I further note that the *Entities* / their Authorized Representatives (AR) had sought inspection of the documents and the same have been provided to the *Entities* / AR as indicated in the table below:

Entity	Date of completion of Inspection
<i>Entity no. 1</i>	October 14, 2021
<i>Entities no. 2 and 3</i>	October 11, 2021
<i>Entities no. 4, 5, 6 and 7</i>	October 08, 2021
<i>Entity no. 8</i>	October 08, 2021

12. I note that the *Entities* have submitted written replies to the *Interim Order*, pursuant to which an opportunity of personal hearing was granted to all the *Entities* on December 23, 2021 during which, *Entity no. 1 and 8* were represented by their separate AR's, *Entities no. 2 and 3* appeared through a common AR, while *Entity no. 4* argued on behalf of himself and *Entity no. 5*. Similarly, *Entity no. 6* represented

himself and the *Entity no. 7*. During the course of personal hearing, wherein *Entities* have been heard together, the ARs and the *Entities* reiterated their contentions made in the written submissions filed with SEBI, I note that all the *Entities* have reiterated their prayers for withdrawal of the directions issued in the *Interim Order*. Pursuant to the above hearing, vide email dated January 07, 2022, certain additional details were sought from *Entities* and *Entities* were asked to make their post-hearing *submissions*, if they wished. In this regard, *Entities* have submitted replies to the queries asked from them and also have made their post-hearing written submissions. The explanations offered and arguments advanced by *Entities* in their written and oral submissions are highlighted in the following paragraphs of this Order.

Submissions of Entities

Entity no. 1

13. *Entity no. 1*/Abhay in his replies dated October 06, 2021, December 23, 2021 and January 17, 2022 to the *Interim Order* and through oral arguments during the personal hearing has made the following assertions: -

13.1. At the time of discussions of *Acquisition Deal*, *Entity no. 1* was acting as MD and CEO in PFPL and had participated in some meetings along with various other senior officers of PFPL and had kept the details of the negotiations confidential from everyone. He has submitted that the discussions regarding the *Acquisition Deal* were initiated by Mr. Atul Tibrewal, the treasury head of Magma and the finding in the *Interim Order* that the discussions regarding the *Acquisition Deal* were initiated on January 11, 2021, with a call between the *Entity no. 1* and Mr. Kailash Baheti, is not correct. He has further submitted that his role in the *Acquisition Deal* was minor and peripheral as he was the MD and CEO of the subsidiary (PFPL) and not the Acquirer entity, i.e. RSHPL and it was Mr. Amar Deshpande (for short “**Mr. Deshpande**”), the chief operating officer of PFPL (currently director in Poonawalla Fincorp Limited and Poonawalla Housing Finance Limited), and Mr. Saurabh Prabhudesai (for short “**Mr. Prabhudesai**”) a director of RSHPL (and also director of PFPL and

a few other Poonawalla Group companies) who were the key officials involved in the negotiations and the execution of the *Acquisition Deal*.

13.2. The information regarding the *Acquisition Deal* was published at various stages and was in public domain and therefore cannot be considered as unpublished information. It is an uncontroverted fact that the information concerning raising of capital by *Magma* was shared with the stock exchanges on February 05, 2021. He has further submitted that from January 19, 2021 to January 29, 2021 (i.e. 8 trading sessions), the price of the scrip of *Magma* merely moved from ₹44 to ₹44.7 and the daily average volume (on NSE) was around 7 lakh shares. However, in the 8 trading sessions after that, i.e. from February 01, 2021 to February 10, 2021 (immediately prior to the stock exchange disclosure about the *Acquisition Deal*), the price of the scrip of *Magma* jumped around 80% and the daily average volume (on NSE) also increased to around 38.5 lakh shares. With no other price sensitive announcement made around that time, the reason for such a huge increase in volume and price can only be explained by the fact that many traders were aware of the impending acquisition.

13.3. Regarding the allegation that *Entity no. 1* had spoken to other *Entities* for thousands of minute, he has argued that a tipper would not speak for such long periods to simply communicate information which was otherwise widely available with the *Entities* or widely available in the media and would require just a few seconds to pass that information.

13.4. Regarding the allegation that *Entity no. 1* has communicated the UPSI to *Entity no. 2*, he has submitted that *Entity no. 2* was integrally involved in the discussions and actions pertaining to the *Acquisition Deal* and *Entity no. 2* was privy to the same UPSI as *Entity no. 1*. He has also stated that *Entity no. 2*, on behalf of Economic Law Practice (ELP), was acting as an advisor to the *Acquisition Deal* and therefore *Entity no. 2* was closely working with the *RSHPL* team and the senior management of the Poonawalla Group, such as Mr. Deshpande and Mr. Prabhudesai, who were leading the entire execution of

the transaction and *Entity no. 2* was also present in meeting dated February 05, 2021.

- 13.5. Since, *Entity no. 8* had attended meeting in person and also part of various zoom meetings including meeting dated January 20, 2021 (with *Entity no. 8* and Mr. Sanjay Chamria- VP and MD of *Company*), zoom meetings dated January 21, 2021, January 26, 2021 and January 28, 2021 and meeting dated February 05, 2021, the observation of communication of UPSI does not arise.
- 13.6. Though he has admitted that he shares a professional relationship with *Entity no. 6*, he has denied the allegation of communication of UPSI to *Entity no. 6*. He has further submitted that that *Entity no. 6* was also independently connected to the group entities of the Poonawalla group, i.e. the entities of the Acquirer in respect of various transactions. For instance, *Entity no. 6* on behalf of ABP & Co., a CA firm, had issued a letter to ICICI Bank about the utilization of the term loan by PFPL in August 2020. Similarly, in January 2021, i.e. during the UPSI Period, Bhojgadhiya and Associates, *Entity no. 6's* firm, had issued a letter to Kotak Mahindra Investments Pvt. Ltd. certifying that the outstanding number of PTCs in the books of PFPL was around ₹218.25 crores. While vehemently denying the observation of communication of UPSI to the *Entity no. 6*, the *Entity no.1* has emphasized upon that the *Entity no. 6* had several other sources to independently acquire the UPSI, being an entity closely connected to the Poonawalla group and its officials.
- 13.7. The *Interim Order* has failed to appreciate that the UPSI could have flown to the *Entities* who have traded during the period from any of the multiple persons involved in the deal, including the senior management of the *Magma* or *RSHPL* or Poonawalla Group or PFPL, Axis Capital, Deloitte, Khaitan & Co., Wadia Ghandy, ELP, Vinod Kothari and co. or any other employee / advisors involved in the execution of the deal. To further support his argument, the *Entity no. 1* has referred to SEBI Adjudication Order ("AO") (Order no. WTM/SR/SEBI/EFD/26/05/2016) in the matter of **A. Vellayan and Ors** dated May 12, 2016. He has further submitted that the *Interim Order* has not considered that *Entities no. 6 and 8* also shared a business relationship

with *Entity no. 2*, who was himself privy to the UPSI, at the time of discussions pertaining to 'Sakal Money' and 'Udchalo', which were ongoing even during and after the UPSI Period. Therefore, there is a possibility that *Entity no. 2* who also had direct knowledge of the UPSI and was also in touch with *Entities no. 6 and 8*, had communicated the UPSI to *Entities no. 6 and 8* or vice versa, the communication of the UPSI might have gone from the *Entity no. 8*, when the facts show that he had participated in several meetings since January 20, 2021, hence the said possibility of communication of UPSI from other sources may not be ruled out.

13.8. Regarding various calls with *Entity no. 2, 6 and 8*, *Entity no. 1* has submitted that that *Entity no. 2* was serving as an advisor to the Poonawalla Group at the time of negotiations pertaining to transaction between PFPL and TAB Capital, which was owned by *Entity no. 1* till March 2019 and later on was controlled by the Poonawalla Group. He has further stated that from February 2019 onwards, *Entities no. 1 and 2* were also involved in discussions pertaining to various ventures, including that of *Entity no. 8*, such as 'Sakal Money' and 'Udchalo', etc. and *Entity no. 2* had also acted in an advisory capacity in respect of a transaction between *Entities no. 6 and 8* in relation to the 'Sakal Money' venture, wherein *Entity no. 2* was acting in a guiding role in such discussions. In furtherance of this, *Entities no. 1, 2, 6 and 8* had also attended a joint physical meeting with Ebix Group on December 16, 2020 in relation to the 'Sakal Money' and 'Udchalo' ventures. He has therefore contended that in light of the various ventures mentioned above, it is obvious for such *Entities* to be in frequent communication with each other in furtherance of legitimate business purposes and therefore, in the absence of any cogent evidence, it may not be apposite to draw adverse observation of serious in nature like communication of UPSI.

13.9. Regarding his connection with *Entity no. 6*, it is submitted that *Entity no. 1* established TAB Corporate Advisors Private Limited (hereinafter referred to as "**TAB Corporate**") in F.Y. 2012-13, with a specialized focus on the areas of management advisory and loan consultancy. In the year 2018, with an intent

to further his focus on the business of TAB Capital, he sold TAB Corporate to *Entity no. 6*, who then renamed TAB Corporate as BAT Digital Media Private Limited (hereinafter referred to as “**BAT**”).

13.10. He has submitted that in F.Y. 2015-16, he acquired TAB Capital Private Limited (hereinafter referred to as “**TAB Capital**”), a non-banking financial company working in the retail loan sector offering products such as business loans, machinery loans, two-wheeler loan, and personal loans. He met *Entity no. 8* for the first time at Sakal school Olympic event and had a discussion on the NBFC sector, fintech and start-ups. Later, in February 2019, *Entity no. 8* arranged a meeting between *Entity no. 1* and Mr. Adar Poonawalla to explore the possibility of business sale of TAB Capital to the Poonawalla group, and in furtherance of which, it was decided to continue the lending activity in the name of PFPL, a subsidiary of RSHPL. Accordingly, from April 2019, the technology, employees, and majority of the loan book of TAB Capital were transferred to PFPL from TAB Capital (and from that TAB capital was technically fully controlled by Poonawalla group). Pursuant to this transaction, *Entity no.1* was appointed as a director of PFPL on March 19, 2019, and was promoted to be the MD of PFPL on December 09, 2019.

13.11. *Entity no. 1* has also stated that while alleging communication of UPSI, it is imperative that SEBI should provide cogent evidence to support that there was communication of UPSI. He has further referred to and relied upon the judicial decisions in the following matters:

- Hon’ble Securities Appellate Tribunal (“SAT”) in the matter of *Manoj Gaur v. SEBI* (Appeal No. 64 of 2012, DoD: October 03, 2012);
- *Securities and Exchange Commission v. Ladislav Larry Schvacho* (991 F. Supp. 2d 1284, N.D. Ga. 2014);
- SEBI Order in the matter of *Sanjay D. Gala & Ors* (Order no. NP/SJ/AO/10/2016 dated December 02, 2016);
- SEBI Order in the matter of *Emami Limited* (Order no. EAD/BJD/VS/21-27/2018 dated May 18, 2018);

- SEBI Order in the matter of *Reliance Securities* (WTM/MB/ISD/ISD_ISD/12408/2021-22, dated June 30, 2021)
- Hon'ble Supreme Court the matter of *SEBI v. Kishore R. Ajmera* (2016) 6 SCC 368);

13.12. *Entity no. 1* has contended that the *Interim Order* has failed to appreciate that the ₹54 lakhs paid to TAB Capital was made by *Entity no. 6* on behalf of Newgen in furtherance of the Service Agreement dated March 01, 2021 for the purchase of data and were not proceeds of illegal gains. He has further contended that in terms of the aforesaid Service Agreement, Newgen was to purchase data enrichment services for a total consideration of ₹75 lakhs. In this regard, an advance payment of ₹54 lacs was made by *Entity no. 6*, the proprietor of Newgen, on behalf of Newgen, to TAB Capital on March 16, 2021. However, as the said transaction could not be completed due to technical reasons, the Service Agreement was cancelled, consequently, an amount of ₹57.47 lacs was refunded to *Entity no. 6* in June 2021 which was inclusive of the advance amount earlier paid by *Entity no. 6* and a penalty amount of ₹3.47 lakhs in terms of the Service Agreement for non-fulfilment of obligation. The *Interim Order* did not consider the above facts and also failed to appreciate that the said amount was returned with penalty as per the terms of the Service Agreement, in June 2021, much before the passing of the *Interim Order* and therefore drawing any adverse observation on such transaction is unjustified.

13.13. With respect to the allegation of amount of ₹55 Crore received by *Entity no. 1* from Neo Star (a company controlled by the *Entity no. 8*), he has submitted that the said transaction was pursuant to a loan provided by Neo Star to him and had no connection with the alleged trades referred to in the *Interim Order*. He has further submitted the following bifurcation of the utilization of the said loan.:

- Repayment of an existing share pledge loan of ₹42.37 Crore to Serum Institute of India Private Limited which was availed by *Entity no. 1* in September 2019.

- Repayment of an existing loan of ₹5.5 Crore which was availed by *Entity no. 1* from *Entity no. 8* in September 2020.
- Balance amount of ₹6.95 Crore was kept in *Entity no. 1's* bank account towards payment of interest for the first year towards the loan availed from Neo Star, as per the terms of the loan agreement.

13.14. He has also argued that the *Interim Order* has failed to appreciate that the loan received from Neo Star could not have been viewed as a part of unlawful profits as that loan amount was received by *Entity no. 1* from Neo Star (*Entity No. 8*) on 3rd April 2021, whereas the majority of the alleged illegal profits were transferred to *Entity no. 8* by *Entity no. 6* only on May 12, 2021.

13.15. He has submitted the *Interim Order* has wrongly observed that he has acted in violation of regulation 4(1) of the *PIT Regulations, 2015* even though no trades were executed by him in the scrip of *Magma* during the UPSI Period. In this regard he has referred to the observations in the SEBI Order in the matter of *Biocon Ltd (WTM/MB/IVD/ID3/12407/2021-22, dated June 30, 2021)*.

13.16. *Entity no. 1* has taken a plea that the *Interim Order* has failed to satisfy the test of preponderance of probability against him in the matter. In this regard, he has relied upon the observations in the following matters:

- Hon'ble SAT in the matter of *VK Kaul v. SEBI* (Appeal No. 55 of 2012, decided on October 08, 2012);
- SEBI Order in the matter of *Palred Technologies* (Order no. WTM/GM/EFD/29/2019-20 dated August 13, 2019)
- SEBI Order in the matter of *Sanjay D. Gala & Ors* (*supra*)

Entities no. 2 and 3

14. I note that the *Entities no. 2 and 3* have submitted common replies dated November 09, 2021, January 17, 2022 and March 14, 2022. Their written as well as oral submissions are summarized as below: -

- 14.1. *Entity no. 3* is a housewife and mother of *Entity no. 2*. She has been an investor in the market from past 30 years and her portfolio is being managed by her son i.e. *Entity no. 2*.
- 14.2. They have submitted that an order of disgorgement can only be passed during the pendency of the proceedings and it cannot be passed at the time of initiation of proceedings. He has further contended that in the instant matter, SEBI has provided no evidence to show and justify the directions in the *Interim Order*. AR of the *Entities no. 2 and 3* has further referred to “*Order 38 Rule 5 to 13 of the Civil Procedure, 1908*” while stating the laid down parameters for attachment before judgement. He has further referred to judicial observations of the Hon’ble SAT in the matter of *Dr. Udayant Malhoutra vs. SEBI (Appeal no. 145 of 2020, decided on June 27, 2020)*.
- 14.3. AR of the *Entities no. 2 and 3* has vehemently argued that there was no UPSI when the *Entity no. 3* traded in the scrip of *Magma*. In this regard, he has stated that as per regulation 3(5) of the *PIT Regulations, 2015*, a listed entity is required to maintain structural digital database containing the nature of unpublished price sensitive information and names of such persons who have access to such information. He has contended that despite the availability of such a detailed and reliable source of evidence, SEBI has not used the same and has merely relied upon the sequence of events provided by the *Company* to levy allegations against the *Entities* in the instant matter. Such approach of SEBI reveals that incomplete facts have been presented before the learned Whole Time Member while passing the *Interim Order* in the matter.
- 14.4. AR has further argued that as the discussions that took place between *Magma* and *PFPL* on January 11, 2021 were at very nascent stage and no further discussions took place between the necessary parties till January 20, 2021, which too was a meeting between certain representatives of the *Company*. The preliminary discussions regarding the *Acquisition Deal* started between the parties only after January 25, 2021 and merely on the basis of the existence of some preliminary discussions, the said UPSI cannot have started from

January 25, 2021. He has further submitted that the UPSI period must be ascertained from the time when the deal becomes concrete and not from the preliminary discussions and in the instant matter, the initial and preliminary discussions were finally crystallized on an evening zoom call dated February 03, 2021. Therefore, before February 03, 2021, the entire *Acquisition Deal* was in its initial and preliminary discussion stage, which cannot be included in the UPSI Period. He has further submitted that the UPSI Period should start from February 03, 2021 (after the market hours). *Entity no. 2* got the information of the *Acquisition Deal* on February 03, 2021 and by that time; he had already executed trades in the scrip of *Magma* from the account of *Entity no. 3*.

14.5. The AR has further referred to various corporate announcements (January 28, 2020, November 12, 2020, December 01, 2020, January 29, 2021) of the *Company* stating that *Magma* was looking for potential investors to the tune of ₹3000 crores and during the said period of one year, multiple talks with various investors were held. Therefore, *Entity no. 2* was never an insider when the trades in the scrip of *Magma* were executed by the *Entity no. 3*. Therefore, the trades executed by *Entity no. 2* from the account of *Entity no. 3* were not motivated by any insider information or the purported UPSI, but on the basis of an independent assessment of the market movement. They have referred to press release dated November 07, 2020 issued by *Company*, news article dated December 10, 2020 regarding improvement of financial profile of the *Company*, news article dated January 06, 2021 regarding scrip of *Magma* trading below its 5 -year Price-to-earnings (P/E) ratio, corporate announcement of *Magma* dated January 29, 2021 regarding its meeting dated February 06, 2021 to discuss the issue of raising of funds, news article dated January 29, 2021, etc. to strengthen their argument of independent research and publicly available information about the *Company*.

14.6. Regarding connection of *Entity no. 2* with *Entity no. 1*, he has submitted that he was acting as an Advisor to the *Acquisition Deal* on behalf of ELP. He has further submitted that out of the 53 calls between *Entity no. 2* and *Entity no. 1*

during the UPSI Period, only one call (on January 28, 2021) was there before February 03, 2021 (the day on which *Entity no. 2* got the information about the *Acquisition Deal*). Further, the said call on January 28, 2021 with *Entity no. 1* was also for less than one-minute duration for scheduling an appointment to meet in the afternoon on February 03, 2021. He has also furnished an affidavit by one of his colleague Mr. Mitesh stating that *Entity no. 2* was travelling with Mitesh for a meeting with *Entity no. 1* on February 03, 2021.

14.7. *Entities no. 2 and 3* have submitted that the allegation of insider trading requires a high level of proof and establishment of *mens rea*, however, SEBI has not provided any proof against them for wrongdoings in the *Interim order*. *Entities* have relied upon the judicial observations in the following matters:

- Hon'ble Supreme Court in the matter *Union of India vs. Chaturbhai M. Patel* (AIR 1976 SC 712);
- Hon'ble SAT in the of *Sterlite Industries vs. SEBI* (Appeal no. 20 of 2001, decided October 22, 2001);
- Hon'ble SAT in the of *Dilip S. Pendse vs. SEBI* (Appeal no. 80 of 2009, decided November 19, 2009);
- Hon'ble SAT in the matter of *VK Kaul v. SEBI* (supra);
- Hon'ble Supreme Court in the matter *Union of India vs. H.C. Goel* (AIR 1964 SC 364);
- Hon'ble Supreme Court in the matter *Seth Gulabchand vs. Seth Kudilal* (AIR 1966 SC 1734)

14.8. Vide additional submission dated March 14, 2022, AR has referred to the observations of Hon'ble SAT in the matter of the *Bijal Shah vs. SEBI* (Appeal no. 651 of 2021) and decision of the Hon'ble Supreme Court in the matter of *Bijal Shah vs. SEBI* (Civil Appeal no. 1488-1490 of 2022) and has submitted that as the *Entities* have deposited the alleged ill-gotten gains as calculated in the *Interim Order*, restraint on the *Entities* may be lifted as the *Entity no. 2* has no other

source of income presently and the restriction on trading is hampering his livelihood.

14.9. Additionally, *Entities no. 2 and 3* have referred to the judicial decisions of the Hon'ble SAT in the matter of *Ms. Chandrakala vs. SEBI (Appeal no. 209 of 2011, decided January 31, 2021)*.

15. I note that *Entity no. 4* has submitted joint replies on his as well as on behalf of his father (*Entity no. 5*) vide replies dated October 19, 2021 and January 28, 2022. Their oral as well as written arguments are summarized below:

15.1. They have submitted that the trades in the scrip of *Magma* executed by them were in usual course of business based on generally available information.

15.2. *Entity no. 4* has submitted that *Entity no. 6* is his brother-in-law and they both are partners in a Limited Liability Partnership, however he has denied the receipt of UPSI from *Entity no. 6*. Regarding calls between *Entities no. 4 and 6*, it has been submitted that the same were for business and personal work.

15.3. They have requested that their demat accounts and mutual funds accounts may be unfrozen as the same is causing financial difficulties to them in survival and to meet day to day need.

16. Vide Letter dated October 20, 2021, *Entity no. 6* has filed joint submissions for himself and for his HUF (*Entity no. 7*). Details of written and oral submissions of *Entities no. 6 and 7* are summarized below:

16.1. He is a regular trader in the securities market since 2007-2008. He invested in the scrip of *Magma* on the basis of: - (a) positive corporate announcements made by the *Company* since January 29, 2021; (b) the constant rise in the price and traded volumes of the shares of the *Company*; (c) positive declarations in the financial results for quarter ended December 31, 2020 released by *Company* on February 06, 2021; (d) relaxations granted to NBFCs vide Union Budget announced on February 07, 2021; and (e) newspaper articles, etc. Since all the aforesaid information were available in public domain, there is no

wrongdoing in the trades executed by him. He has further denied receipt or communication of UPSI.

- 16.2. He had also purchased the shares of *Magma* even after February 10, 2021, (after UPSI Period) and has continued doing the same till March 2021. Even if it is assumed that he was in possession of UPSI, he could have purchased the shares of the *Company* much earlier, when the price of the scrip was much lower and could have garnered more profits. However, no trades were executed by him in the scrip till February 09, 2021.
- 16.3. *Entity no. 6* shares a commercial relationship with *Entity no. 1* from many years and they have entered into few commercial transactions. He has argued that even before UPSI Period, there are various phone calls between them; however, SEBI has arbitrarily chosen the telephone calls of UPSI Period. Since, the two know each other over a sufficient period of time and used to talk frequently, hence, calls during the UPSI period are not unique and solitary ones to be viewed as source and mode of communication of UPSI.
- 16.4. He has submitted that he knows *Entity no. 8* since 2019. While referring to the allegations of receipt of funds from *Entity no. 8* to trade in the scrip of *Magma*, *Entity no. 6* has submitted that the amount of ₹15 crores received from *Entity no. 8* were short term hand loans availed from *Entity no. 8* and his family member. He has further submitted that the said loans were repaid to *Entity no. 8* and his family member on May 11, 2021 and March 16, 2021 respectively. Further, he has submitted that the payment of ₹8.6 crores to DCF BFR Consulting Pvt. Ltd. (hereinafter referred to as “DCF”) was an investment for purchase of preference shares in DCF.
- 16.5. Regarding transactions of Newgen (proprietorship concern of *Entity no. 6*) with PFPL and TAB Capital, *Entity no. 6* has submitted that it was a legitimate commercial transaction. Newgen has further paid ₹4,86,20,000 to TAB Capital on October 12, 2020 for data transaction, which was enriched and then sold to PFPL for which PFPL had paid ₹4,97,25,000 to Newgen on October 12, 2020 for data and data enrichment services. He has given similar explanation that

has been submitted by *Entity no. 1*, with regard to fund transactions of ₹54 lakhs between Newgen and *Entity no. 1*.

16.6. Regarding the allegation of funds transferred by *Entity no. 6* to *Entity no. 4*, it has been submitted that the said funds transferred by him pertained to a property buy-sell transaction, wherein he intended to purchase a property of *Entity no. 4*. However, as the said transaction could not be fructified, the said funds were returned in March 2021. *Entity no. 6* has also submitted that even if it is assumed that he was in possession of UPSI and same was communicated to *Entity no. 4*, it is irrational for him to purchase shares of *Magma* from February 09, 2021 at higher prices as compared to *Entity no. 4* who started purchasing the shares of *Magma* much before him i.e. from February 03, 2021.

17. I note that *Entity no. 8* vide letters dated October 19, 2021 and March 11, 2022 has, *inter alia*, submitted his reply to the allegations in the *Interim Order*. I note that some of his arguments are similar to what have been submitted by other *Entities* and have already been highlighted in the preceding paragraphs which for the sake of brevity, need not be repeated, however, those arguments shall be dealt with in this Order. The rest of the explanations offered and the arguments advanced by the *Entity no. 8* that are unique are summarized as below:

17.1. *Entity no. 8* has contended that the direction to freeze the bank account is illegal and without jurisdiction. Section 11(4) (e) of the *SEBI Act, 1992* permits SEBI to attach the bank account(s) only after securing the permission of Judicial Magistrate, however, in the instant matter no such permission has been taken by SEBI and therefore, such a draconian order is wholly arbitrary and unwarranted.

17.2. He has submitted that he knows *Entity no. 1*, 2 and 6 and had interacted with them for business transactions over the period. Therefore, there are various telephonic conversations between them.

17.3. *Entity no. 8* has also contended that reliance of SEBI on call data records without providing the details of the content discussed on such calls is in defiance of the settled principles established by Supreme Court of India in the case of *SEBI vs. Pricewaterhouse* and Hon'ble SAT in the matter of *Smitaben Shah vs. SEBI* (DoD: July 30, 2010), wherein it has been held that all documents and evidence relied upon in the proceedings are required to be shared with the noticee.

18. *Entities* have also argued that there was no urgency for issuance of the *Interim Order* and while passing an *ex-parte Interim Order*, an authority must apply its judicial mind and satisfy itself that the balance of convenience lies in favour of the party on whose instance the *ad interim* directions / relief are to be granted. The *Interim Order* fails to record specific averments as to how the actions of the *Entities* will cause an impending danger to the investors for which urgent directions were issued. To further buttress their arguments, they have relied upon the observations in the following judicial decisions:

- Hon'ble Supreme Court in the matter of *SEBI vs. Udayant Malhoutra* (Civil Appeal Nos. 2981-2982 of 2020, decided on November 18, 2020);
- Hon'ble SAT in the matter of *North End Foods Marketing Pvt. Ltd. vs. SEBI* (Appeal No. 80 of 2019, decided on March 12, 2019);
- Hon'ble SAT in the matter of *Zenith Infotech Limited vs. Securities and Exchange Board of India* (Appeal No. 59 of 2013, decided on July 23, 2013)
- Hon'ble SAT in the matter of *Pancard Clubs Limited vs. Securities and Exchange Board of India* (Appeal No. 254 of 2014 with M.A. No. 104 of 2014);
- Hon'ble SAT in the matter of *Tree House Education vs. SEBI* (Appeal No. 78 of 2019, decided on November 07, 2019)
- Hon'ble SAT in the matter of *Bhoruka Financial Services Ltd. vs. SEBI* (Appeal No. 18 of 2006, decided on May 10, 2010);

- Hon'ble SAT in the matter of *Cameo Corporate Services Limited vs. SEBI* (Appeal No. 566 of 2019, decided on November 26, 2019);
- Hon'ble Supreme Court in the matter of *Punit Mercantile Pvt. Ltd. Ors. vs. Union of India & Ors.* (2010 SCC Online Raj 3814)

Consideration of Issues

19. In the light of the preliminary observations made in the *Interim Order*, various submissions made by the *Entities* and materials available on record, it is relevant here to first set the facts and context straight by observing that the present proceedings are in the nature of confirmatory or revocation proceeding. Accordingly, my remit in the instant proceedings will be limited to the extent of assessing as to whether the *Entities* are successful in conclusively refuting the *prima-facie* findings about the insider trading as recorded in the *Interim Order* or whether the *Entities* are successful in carving out a case for them warranting modification, if any, to the directions so issued against them in the *Interim Order*. Before dwelling upon the submissions made by the *Entities* to rebut the *prima facie* observations made against them in the *Interim Order*, I would like to remind myself that the main premise which became the basis for passing the *Interim Order* comes from the backdrop of the *Acquisition Deal*, wherein *RSHPL* (a Poonawalla group company) was acquiring a majority stake in *Magma*. Based on the information furnished by the *Company* to NSE, detailing therein the chronology of events and persons who participated/attended the meetings relating to the said *Acquisition Deal* and who were having access to the UPSI relating to the said Deal, it was observed that *Entity no. 1* being a connected person / insider in terms of the *PIT regulations, 2015*, was having frequent phone calls with some of the other *Entities* (*Entities no. 2, 6 and 8*) and these *Entities* were observed to have engaged in the alleged insider trading in the scrip of *Magma* either directly or indirectly through their connected *Entities* (*Entities no. 3, 4, 5 and 7*) during the UPSI

period and have made ill-gotten gains in this process. In addition to the above, there were also fund transactions noticed amongst these *Entities* which provided further strength to the said *prima facie* observations about their indulgence in insider trading activities in the scrip of *Magma*.

20. The aforesaid preliminary facts have been observed to have demonstrated *prima facie* that the trades executed by the *Entities* in the scrip of *Magma* were executed while in possession of UPSI received by the respective *Entities*. Before I proceed to examine as to whether or not, the *Entities* have been successful in demolishing the above stated *prima facie* observations and have made out a clinching case in their favour warranting their exoneration from the observations so recorded in the *Interim Order* or have been successful in dispelling the said observations so as to deserve any relief from the directions already issued to them the *Interim Order* , I find it relevant to record certain admitted facts that emerge from the submissions made by the *Entities*:

- 20.1. I find that none of the *Entities* has disputed the *inter se* connections shared with each other, as alluded to in the *Interim Order*. Rather, all the *Entities* have admitted to the existence of their respective connections with other *Entities* for a long period of time. For instance, *Entity no. 1* has admitted that he has known *Entities no. 2, 6 and 8* for more than 2 years and shares professional / business relationship with them. Similarly, *Entity no. 4 and 6* have submitted that they are brothers-in law and also share business relationship. Additionally, it has been noticed that *Entities no. 2, 6 and 8* are also known to each other for a sufficient period of time and were connected through phone calls or other modes as they share commercial relationship with each other.
- 20.2. There is no dispute with regard to the various phone calls exchanged between various *Entities* as recorded in the *Interim Order*. Further, none of the *Entities* has denied the fund transfers effected by him/it as narrated in the *Interim Order*. In fact, some of the *Entities* have brought to my attention additional fund transactions to demonstrate that the funds transfer amongst them as

highlighted in the *Interim Order* were not unique and selective one but part of their normal business transactions hence, ought not to be viewed with suspicion. Nonetheless, from the above, it clearly emerges that the *Entities* are by no means strangers and were closely knowing each other. Therefore, the *prima facie* observations made in the *Interim Order* related to *inter se* connections amongst the *Entities* are not found to be in dispute at all.

20.3. Additionally, it is noted from the submissions of *Entities* that apart from the *Entity no. 1* who has been held to be actively participating in the *Acquisition Deal* as per the *Interim Order*, it is now brought on record that *Entity nos. 2 and 8* were also involved in the discussions pertaining to the *Acquisition Deal*. It is further demonstrated that *Entity no. 6*, apart from having close connections with *Entities no. 1, 2 and 8*, was also having close connection with other top management officials of the Poonawalla group who were involved in the discussions pertaining to the *Acquisition Deal*.

21. In the above background, now I proceed to deliberate and determine in the subsequent paragraphs of this Order, as to whether on the basis of the submissions made by the *Entities* before me during the present proceedings and other materials available on record, the *Entities* have been successful in dispelling the *prima facie* observations made in the *Interim Order* conclusively or whether the facts and circumstances of the matter now call for interfering with the directions already issued in the *Interim Order*.

22. With regard to the *prima facie* observations pertaining to *Entity no. 1*, I note that the *Interim Order* has stated that the *Entity no. 1* was a connected person and was aware about the *Acquisition Deal* (UPSI), and had telephonic conversations with *Entities no. 2, 6 and 8* during the UPSI period, out of whom *Entities no. 2 and 6* were noticed to have traded directly and indirectly through their connected *Entities*, in the scrip of *Magma* during the said UPSI period. It was also noticed that *Entity no. 1* was having fund transactions with *Entities no. 6 and 8*. The above facts have commutatively become a strong basis to observe *prima facie* that the *Entity no. 1* had

communicated the UPSI to *Entities no. 2, 6 and 8* and after having received the UPSI, these *Entities* (viz. *Entities no. 2 and 6*) have traded in the scrips of *Magma*, in violation of *PIT Regulations, 2015*. In this regard, while denying the aforesaid observations recorded in the *Interim Order*, *Entity no. 1* has advanced various arguments to controvert the said *prima facie* observations which can be broadly split into 4 categories viz. (a) That he was not the sole decision making authority for the *Acquisition Deal* and was not even the key official for the said deal; (b) That *Entities no. 2 and 8* were independently having access to the said UPSI and *Entity no. 6* was also having separate sources to have access to the UPSI independently on account of his association with Poonawalla Group of Companies as well as with the *Entities no. 2 and 8*; (c) That the observation relating to communication of UPSI by *Entity no. 1* to other *Entities* is not based on cogent evidence but on surmises and conjecture; (d) That his fund transactions with other *Entities* were *bonafide* and were made for legitimate purposes having no relation with the alleged unlawful gains.

23. The *Entity no. 1* has not denied his involvement in the discussions and participation in the meetings pertaining to the *Acquisition Deal*, thereby *prima facie* accepting the fact that he was a connected person and was having access to the UPSI. He has however submitted that as he had joined PFPL in the 2019 and was the MD and CEO of a subsidiary company and not of the Acquirer entity (*RSHPL*) itself. Further he was a minor and peripheral entity as far as decision pertaining to the *Acquisition Deal* was concerned. He has further submitted that it was Mr. Amar Deshpande and Mr. Saurabh Prabhudesai, who were the key officials and involved in the negotiation and execution of the *Acquisition Deal*. In support of the above, he has submitted certain emails exchanged between Mr. Deshpande and Mr. Prabhudesai with law firms and the merchant banker in pursuance of the said *Acquisition Deal*. However, it is to be noted that the issue at hand is whether the *Entity no. 1* was a connected person and insider of the *Company* and not whether he played a central or peripheral role in the *Acquisition Deal*. In view of the above admitted

position, I see no reason to deviate from the observation made in the *Interim Order* that the *Entity no. 1* was a connected person and was an insider and was having access to the UPSI relating to the *Acquisition Deal*.

24. As regards the submission that the *Entities no. 2 and 8* were independently having access to UPSI and *Entity no. 6* was also having sources other than the *Entity no. 1* to have access to the UPSI independently on account of his association with Poonawalla Group of Companies as well as with the *Entities no. 2 and 8*, I note that the *Entity no. 1* has made a vehement plea that there was no reason and occasion for him to communicate the UPSI to any of the above named *Entities*. To augment his claim, he submits that the *Entities no. 2 and 8* were part of the *Acquisition Deal* and had access to the UPSI by themselves, before it was disclosed on February 10, 2021. According to him, *Entity no. 8* was instrumental in materializing the *Acquisition Deal* as he was also part of various discussions and meetings in this regard. Similarly, *Entity no. 2*, was an advisor in the *Acquisition Deal* and was also connected with *Entity no. 8*. With respect to his connection and phone calls with the *Entity no. 6*, without denying the same, *Entity no. 1* has submitted that they were professionally connected to each other and the phone calls that were exchanged between them were in the course of their business relationship. While denying the fact relating to communication of UPSI to the *Entity no. 6*, *Entity no. 1* has submitted that the *Entity no. 6* was also independently connected to certain persons of the Poonawalla Group and was otherwise capable of having an access to UPSI, if he wanted. To provide support to his submissions, he has relied upon the reply of Mr. Deshpande dated December 07, 2021 addressed to SEBI wherein it was stated by Mr. Deshpande that *Entity no. 6* has issued letters to ICICI Bank Limited and other financial institutions on the end use of term loan given to the PFPL. The aforesaid reply also states that *Entity no. 6* was involved in a few securitization transactions with PFPL during the period between January 2020 to February 2021.

25. *Entity no. 1* has also submitted that *Entity no. 6* was enjoying association with *Entities no. 2 and 8* (who were associated with the *Acquisition Deal*) as well and was involved in various business ventures together with them viz: Sakal Money and Udchalo etc. and had several rounds of discussions with them in connection with these ventures. He has also submitted that *Entity no. 6* is the CEO of Sakal Money Advisory Pvt. Ltd, wherein *Entity no. 8* is a director as evident from the visiting card of the *Entity no. 6* that was placed on record by him. Under the circumstances, merely on the ground of having association and based on phone calls with these *Entities*, recording a serious observation of transmission of UPSI *qua* him is unjustified and uncalled for and the same has caused irreparable loss, injury and harm to his reputation, profession and future career.

26. Having gone through the aforesaid submissions and materials brought on record, I note that the *Entity no. 1* has asserted certain facts before me, which cannot be denied at threshold. He has submitted copies of emails and other records that indicate that besides him, *Entity no. 8* was also present in various meetings wherein the matter relating to the *Acquisition Deal* was discussed. As stated earlier, in this case, the *Entities* have not denied their associations with each other that have already been underlined in the *Interim Order*. The contention of *Entity no. 1* that the *Entity no. 2* had acted as an advisor in the *Acquisition Deal* has further been confirmed by *Entity no. 2* in his reply as well. Similarly, with respect to his association with *Entity no. 6*, without denying his relations, the *Entity no. 1* has rather emphasized on the connection which the *Entity no. 6* was independently enjoying with the other *Entities* and also on the separate business ties that the *Entity no. 6* was having with the other insiders of Poonawalla Group. In support of his submission that the *Entity no. 6* is closely related to *Entity no. 8* and has old business relation with him, *Entity no. 1* has submitted a visiting card of the *Entity no. 6* to demonstrate his connection with *Entity no. 8*. Further, the facts that *Entities no. 6 and 8* are closely associated and had phone calls and fund transactions between them have not been disputed by these two *Entities*

(Entities no. 6 and 8) either in their respective replies or even in their post hearing submissions, despite the fact that all the Entities were heard together during which the relationship between them was exposed by Entity no. 1. In view of the above undisputed facts, from which the Entity no. 8 is observed to have attended meetings relating to the Acquisition Deal and the Entity no. 2 is seen to have acted as an advisor to the said Acquisition Deal and the fact that Entities no. 2, 6 and 8 are known to each other and had exchanged phone calls amongst them during the UPSI period, I can appreciate the point that the Entity no. 1 wants to make that the above noted three Entities were their having independent access to the UPSI and were not dependent upon Entity no. 1 to receive the UPSI. However, at this stage it cannot be stated with same impunity that the Entity no. 1, being an insider and having close nexus with the above noted entities with whom he also had exchanged phone calls during the UPSI period was not at all the source of communication of UPSI to them.

27. To deny the *prima facie* observation pertaining to the communication of UPSI by him, the Entity no. 1 has submitted that even the Interim Order records that he had phone calls with Entities no. 2, 6 and 8 prior to as well as subsequent to the UPSI period and his phone calls were not confined to the relevant period only. Since, he has been known to the above Entities for a sufficient period of time and has been enjoying professional/commercial relations with them, in the absence of any cogent evidence, merely on the basis of phone calls, it would not be appropriate to draw any adverse inference with respect to indulgence in insider trading. He has further argued that even from a common business prudence perspective, it is not based on plausible evidence as to why a tipper intending to communicate information like UPSI, would speak for such long periods as the same would require just a few seconds to pass on that information. Further, under the present scenario, it is highly improbable to even conceive of communicating an UPSI (being serious in nature, character and consequences) through a normal audio call, when the technology provides number of such other options that ensures secrecy and anonymity. Under

the circumstances, making calls on a frequent basis to connected and known persons ought not be taken as sole basis to come to a finding, which have serious repercussion and consequences, as in the instant matter, to show and prove his innocence, he had to offer resignation from the *Company* immediately after the *Interim Order*, resulting not only in monetary but also reputational loss, more so when balance of convenience was favoring him.

28. In this regard, I find that the submission of the *Entity no. 1* has proceeded on a mistaken and misconceived assumption about the implication of the phone calls that have been attributed to him in the *Interim Order*. There is no quarrel that in today's age of communication technology and emergence of sophisticated encrypted medium of communication through social media channels like *WhatsApp*, *Telegram*, *Instagram*, etc., which ensure secrecy and anonymity, transmission of UPSI does not have to depend on regular phone calls. However, that should not be a deterrent factor nor the law expects it to be so, to allege transmission of UPSI and the test is the appreciation of cogent facts and material events that are good enough to give rise to a preponderance of possibility of transmission of UPSI so as to justify the urgency of issuance of interim directions. In this regard, I note that the *Interim Order* has not identified any specific phone call as the call through which the UPSI was transferred nor is it possible to do so from call data records. What the *Interim Order* has sought to bring to the fore is that the afore-noted strong factors including his close connections and the phone calls exchanged by him with other *Entities*, provided an overwhelming basis to *prima facie* suggest that *Entity no. 1* has passed on the UPSI to other *Entities* who have, apparently based on the possession of the said UPSI, traded in the scrip of *Magma* during the UPSI period.

29. The *Entity no. 1* has also submitted that probably the above suspicion arose out of the incomplete and incorrect information furnished by the *Company* (*Magma*) during the course of preliminary examination. In this regard, I find that while responding to the information sought by NSE including a chronology of events and

details of persons, who were aware of the transaction (*Acquisition Deal*) prior to the public disclosure of the said transaction on February 10, 2021, the *Company* has submitted various details to NSE vide letter dated April 06, 2021. The aforesaid letter however, did not contain the information that *Entities no. 2 and 8* along with Mr. Amar Deshpande were also present in person in the meetings held on February 05, 2021, when the *Acquisition Deal* was discussed. The aforesaid letter also did not disclose that *Entity no. 2* participated as an advisor to the *Acquisition Deal*. During the proceedings, another significant event which was brought to my attention was pertaining to the meeting held on January 20, 2021, which was attended by *Entity no. 1*, Mr. Sanjay Chamria (then VP and MD of *Magma*) and the *Entity no. 8*. This is evident from a letter dated December 07, 2021 addressed by Mr. Deshpande to SEBI wherein Mr. Deshpande has acknowledged the presence of *Entities no. 2 and 8* in the meeting held on February 05, 2021. Certain other emails of Mr. Deshpande have also been furnished to exhibit the Zoom call invitees, to show that Zoom calls made on January 22, 2021, January 26, 2021 and January 28, 2021 by Mr. Chamria to discuss the *Acquisition Deal*, were also marked to and attended by *Entity no. 8*. Citing the aforesaid information, it has been canvassed by *Entity no. 1* that perhaps the non-inclusion of the above names in the earlier letter submitted to SEBI by the *Company* during the stage of preliminary examination and absence of the above facts in SEBI's records have tilted the needle of suspicion towards *Entity no. 1* as the only source of communication of UPSI to several persons.

30. In the light of the above submissions, *Entity no. 1* has argued that the *Interim Order* had no occasion to appreciate that he was not the only person to have access to UPSI and the said UPSI could have flown to the *Entities*, who have traded in the scrip of *Magma* during the relevant period, from any of the multiple persons involved and associated with the *Acquisition Deal* in various capacities, including the senior management of the *Magma* or *RSHPL* or Poonawalla Group or PFPL or any other employee / advisors and law firms involved in the execution of the *Acquisition Deal*.

It is the absence of above facts that have become the genesis of generating the suspicion fastening *Entity no. 1* as the sole source for the communication of UPSI. Keeping in view the aforesaid and to contend that the directions issued under the *Interim Order* were not having adequate support of evidences and rather were based more on surmises and conjectures, reference and reliance has been placed on SEBI's Order in the matter of *A. Vellayan and Ors.* in the scrip of *Sabero Organics (supra)*. Additionally, *Entity no. 1* has also placed reliance on judicial decisions in matters viz; *Manoj Gaur vs. SEBI (supra)*, *Sanjay D. Gala & Ors. (supra)*, *Emami Limited (supra)*, etc. to argue that while alleging communication of UPSI, it is imperative for SEBI to provide cogent evidence to support that there was communication of UPSI.

31. With regard to the contentions of the *Entity no. 1* that the *prima facie* findings in the *Interim Order* relating to communication of UPSI are not based on cogent evidence but on surmises and conjecture, as pointed out in the preceding paragraph, the *Interim Order* was passed based on the combination of various unassailable facts and materials viz; *Entity no. 1* was a connected person and was having access to UPSI, his phone calls exchanges amongst different *Entities* during the UPSI period, fund transactions noticed among *Entities* coupled with abnormal and unusual trading in the shares of *Magma* by different *Entities*, etc. which strongly indicated that it was pursuant to receipt of the communication of UPSI from the *Entity no. 1*, that the other *Entities* have executed trades in the scrip of *Magma* during the UPSI period. In my view, considering the facts and materials available at the time of passing of the *Interim Order*, I find that the *Entities* have not brought evidence to assail the appreciation of facts and *prima facie* findings made in the *Interim Order* and I find that the directions issued therein still hold their fort on their own merit even till date, when no evidence has been presented before me either to dispute the existence of UPSI, or access to UPSI, or the status of connected persons, or their inter-se relationships, phone calls, funds transactions noticed amongst different *Entities* that have been demonstrated so clearly in the *Interim Order* before issuing such directions.

It is only by way of furnishing certain additional facts and evidences that the *Entities* are now trying to build a defense to give another perspective to those *prima facie* observations made in the *Interim Order* which otherwise remain undisputed till date. Nevertheless, so far as the contentions of the *Entity no. 1* are concerned, I cannot close my eyes to certain specific facts now brought on record by him with evidence to demonstrate that it was not only he (*Entity no. 1*) who had access to the UPSI but also the other three *Entities* (*Entity no. 2, 6 and 8*) had their independent access to the same UPSI of the *Company*. Under the circumstances, when evidences have now been brought on record to suggest that *Entities no. 2 and 8* had also participated in the meeting held on February 05, 2021 and *Entity no. 8* was also involved in the discussions pertaining to the *Acquisition Deal* since beginning (January 20, 2021 at least), I find some force in the submissions of *Entity no. 1* that, had these additional information been made available at the time of preliminary examination, the *Interim Order* would not have held the *Entity no. 1* as the sole source of communication of UPSI. Further, considering the additional undisputed facts that *Entity no. 6* enjoys close business connection with *Entities no. 2 and 8* as demonstrated with illustrations by *Entity no. 1* during this proceedings, I can't ignore the submissions advanced by him that had these additional facts been available on record, the possibility of communication of UPSI to *Entity no. 6* from other sources including the *Entities no. 2 and 8* would not have been ruled out and the *Interim Order* might not have observed that the *Entity no. 1* was the sole source of communication of UPSI to other *Entities*.

32. With regard to the fund transactions noticed with other *Entities*, the *Entity no. 1* has fervently denied that the same has any relation with the alleged unlawful gains made by certain other entities by trading in the shares of *Magma* during the UPSI period. As regards to the fund transfer of ₹55 Crore from the Neo Star (an entity controlled by *Entity no. 8*) to him, it has been submitted that in the *Interim Order*, adverse inferences about this transaction were drawn based on wrong assumption due to limited information available with SEBI pertaining to the same. It has been

stated that the he used to hold 75 lakhs shares in PFPL, which he decided to sell after the *Acquisition Deal*, but since the above shares were pledged with Serum Instituted of India Pvt. Ltd (hereinafter referred to as SII) against a loan, before effecting the sale, he was required to clear the dues and the above loan was obtained on April 03, 2021 from *Entity no. 8* to repay the outstanding loan to SII to the extent of ₹42.37 Crores. To give credence to the above submission, he has submitted his Bank Statement to show the utilization of funds of ₹55 crores towards repayment of the above stated outstanding loan. He has also submitted that subsequently, the pledged shares were sold to RSHPL for a consideration of ₹150 Crore and to support the same, a copy of Bank Statement has been annexed as an evidence. After paying the outstanding amount to SII to de-pledge the shares, balance amount was credited in another account of his to service the loan availed from Neo Star and the same was done in adherence to the terms as agreed between the parties. Thus, there is no reason to see the above transaction with suspicion or as not being *bonafide*, since the same was undertaken with a specific purpose and it has no connection in any manner with the trades executed by the *Entities* in the scrip of *Magma* during the relevant period.

33. Similarly, in respect of fund transaction of ₹4.86 Crore, it has been submitted that same was related to a commercial transaction pertaining to data transfer by Tab Capital to PFPL, where Newgen has acted as an intermediary. Further, in respect of receipt of ₹54 lakhs from the *Entity no. 6*, it has been submitted that the same is related to a data service agreement for a total consideration of ₹75 lakh and in terms of the agreement, 75% of total consideration was required to be paid in advance. However, since, the same did not work out, the amount was returned with penalty in June, 2021 itself i.e. much before the passing of the *Interim Order*. *Entity no. 1* has submitted ITRs for the assessment years 2019-20, 2020-21 and 2021-22 to contend that the above noted transactions have been executed between the parties as per agreement (oral as well as written, since parties are known) and have no connection with the alleged unlawful gains made out of trades in the scrip of *Magma* during the relevant period.

It has been submitted that some of the transactions were carried out prior to the observed acts and the amounts involved are disproportionate to the alleged unlawful gains as arrived at in the *Interim Order* and therefore, the same should not be seen as a profit arising out the share trades made by certain persons during the UPSI period.

34. It has also been submitted that the inferences drawn in the *Interim Order* were more on conjectures and not based on evidences, consequently have caused immense reputational loss to the *Entity no. 1*. He has submitted that he is a reputed chartered accountant and has led an impeccable professional career. Even by considering the facts as narrated in the *Interim Order*, it is improbable to draw an adverse inference that ₹6.95 Crores credited in another account of him was deposited from the profit made out of the unlawful gains, when the *Interim Order* records that the total amount gained unlawfully by the *Entities no. 1, 6, 7 and 8* were ₹8.30 Crore, more so when in comparison to his annual emoluments, the alleged unlawful profit does not stand to be a reason for him to put in stake his rising career. However, on account of *Interim Order*, having suffered a grave loss of reputation, he tendered his resignation from the post of MD of the *Company* resulting a loss of approximately ₹5.00 Crore remuneration per annum, apart other stock options and share in annual profit.

35. After carefully considering the arguments advanced by the *Entity no. 1*, I note that in respect of fund transactions, none of the other *Entities* have made any adversarial or contradictory submission to what the *Entity no. 1* has explained in his defense. At the outset, the fact remains that the *Entities* have admitted that there were fund transactions between/amongst them as pointed out in the *Interim Order*. Before I advert to the specific contentions of *Entity no. 1* about his funds transactions, I must clarify that under the instant proceedings, it would not be appropriate to make observation which could have impact on the investigation, however at the same time, I must observe that it is not a pre-condition/ requirement under the *PIT Regulations, 2015* to bring evidence of fund transactions as a matter of financing the insider trading or sharing of unlawful gains earned out of insider trading, so as to prove

existence of insider trading or transmission of UPSI under *PIT Regulations, 2015*. The factum of transmission of UPSI and execution of insider trades would stand on the basis of its own supporting evidence and need not be further corroborated by funds transactions. Therefore, even if it is revealed that the fund transactions indulged in by *Entity no. 1* were entered into for *bonafide* business transactions, that would not be sufficient to seek an exoneration from the allegation of insider trading per se; when the other compelling factors viz; being an insider, having access to UPSI, having connections with persons/entities who have traded in the scrip and the trades themselves *prima facie* demonstrate to have been influenced by an information that was not generally available to public, etc. have not been disputed or dispelled conclusively. Similarly, in the instant matter, the undisputed facts of *Entity no. 1* being an insider, having access to UPSI, his phone call with the persons some of whom are observed to have traded in the scrip of *Magma* directly and some of them indirectly through their relative's account, can't be overlooked merely for the reason that the connected persons were having frequent phone calls and supposedly genuine fund transactions amongst themselves. In view of the above, I reiterate that no error has crept into while passing of the *Interim Order*, based on the forceful strength of the materials available on record at that point in time, pending further investigation. Therefore, I find no merit in the submission that materials on record were not sufficient or there were no cogent evidences to justify the passing of the *Interim Order*. It would be altogether a different consideration as to whether having brought any additional material facts with supportive evidences now in the present proceedings by any *Entity*, the directions issued under the *Interim Order* require any modification or not.

36. Moving ahead to the specific contentions made by the *Entity no. 1* about his funds transactions, in my view, his submission that some of the transactions were done prior to the UPSI period, and in one case, the amount received was returned to the *Entity no. 6* even before the passing of the *Interim Order* etc. are worthy of

consideration. While vehemently contesting the allegation of receipt of funds as a part of his alleged share of unlawful gains, *Entity no. 1* has submitted that the amount alleged to be unlawfully gained and the total amounts involved in his fund transactions are apparently disproportionate to each other and that the fund transactions undertaken by him with *Entities no. 6 and 8* for *bonafide* business purposes are explained by him with justification and supporting evidences. I find that the *Entity no. 1* has submitted copy of the agreement and Bank Statement to justify that the said transactions were for *bonafide* and legitimate purposes. Having gone through the evidences submitted by him in support of his explanations, I find that the same cannot be ignored and deserves consideration. However, considering the fact that the detailed investigation in the matter is in progress, during which the veracity and authenticity of such transactions can be tested, making any conclusive remarks on such evidences would not be appropriate at this stage.

37. Having observed that there are no disputes to the facts already recorded in the *Interim Order*, one cannot turn a blind eye to some of the submissions made by *Entity no. 1* to refute certain *prima facie* observations made in the *Interim Order* qua him. The additional information with supporting facts provided by him about *Entities no. 2, 6 and 8* to demonstrate that he can't be held as the sole person to have access to or communicated the UPSI and that there were several other possibilities of their independent access to UPSI by virtue of their respective business association with the *Company* and his explanation about the *bonafide* nature of his funds transactions with other *Entities* deserve to be accorded due cognizance in the present proceedings. The *Entity no. 1* has submitted evidences to demonstrate how *Entity no. 8* was having direct access to UPSI and that the *Entity no. 2* also participated in the meeting held on February 05, 2021 before the UPSI got disclosed on February 10, 2021. He has also endeavored to show as to how *Entities no 2, 6 and 8* were not only enjoying *inter se* connections amongst themselves but also were connected to the Poonawalla group in their individual capacities, so as to rebut the *prima facie* observations made in the

Interim Order about communication of UPSI allegedly made by him to these 3 *Entities*. Under the circumstances, the observation made in the *Interim Order* stating that the UPSI was communicated only through him, in my view gets diluted substantially. Having perused the records and his submissions, there is no dispute as on date, that *Entity no. 1* was an insider and was having access to the UPSI pertaining to the *Acquisition Deal*. It is also not in dispute that he knows *Entities no. 2, 6 and 8* very well and had phone calls and funds transactions with them as have been already recorded in the *Interim Order*. However, at the same time, considering the aforesaid additional facts so brought forth before me with sufficient *prima facie* evidences, authenticity of which cannot be discarded on its face, it appears that *Entity no. 1* has put up certain cogent and concrete arguments against the restrictions imposed *qua* him vide the *Interim Order*.

38. With regard to the *prima facie* findings pertaining to the *Entities no. 2 and 3*, I note that the *Interim Order* has recorded that the trades executed from the trading account of *Entity no. 3* were based on the possession of UPSI by *Entity no. 2*. In this regard, *Entity no. 2* has admitted that he has executed trades in the scrip of *Magma* from the account of his mother i.e. *Entity no. 3*. With regard to the communication of UPSI to *Entity no. 2*, I have noted above that *Entity no. 1* has denied the same and has submitted that *Entity no. 2* was himself involved in the *Acquisition Deal* on behalf of ELP and was independently having access to UPSI. Similarly, *Entity no. 2* has also denied receipt of UPSI in any form from *Entity no. 1*. In this regard, from the submissions of *Entity no. 2*, I note that though he has not denied that he was having the information regarding the *Acquisition Deal* before the public disclosure of the same on February 05, 2021, he however has claimed that he was not in possession of UPSI at the time of execution of trades in the scrip of *Magma*. It has been submitted that he was formally engaged as an advisor to the *Acquisition Deal* on February 05, 2021, however, he came to know about the possible deal on February 03, 2021 (evening) and by that time, he had already executed trades in the scrip of *Magma*

from the account of *Entity no. 3*. He has further submitted that the impugned trades executed by him in the scrip of *Magma* were based on the information available in the public domain and were not under the influence of any specific information pertaining to the *Acquisition Deal* received from *Entity no. 1*. It has also been submitted that the only call between him and *Entity no. 1* before February 03, 2021 was on January 28, 2021, which was pertaining to the scheduling of an appointment for a meeting proposed to be held on February 03, 2021 afternoon to discuss a potential transaction.

39. From a conjoint reading of the submissions made by the *Entity no. 1 and 2*, there appears to be no dispute that the *Entity no. 2* was also involved as an advisor in the discussions pertaining to the *Acquisition Deal* during the UPSI period. *Entity no. 2* has claimed that he became aware about the *Acquisition Deal* only on February 03, 2021 and before that the date trades in the scrip of *Magma* were already executed by him. As per his own submission, his discussions with *Entity no. 1* held on January 28, 2021 was for less than a minute, during which, it was only decided to arrange a meeting on February 03, 2021 afternoon to discuss a potential transaction and it was probably in this background, the *Interim Order prima facie* proceeded to observe the possibility of communication of UPSI by *Entity no. 1* to *Entity no. 2*. The CDRs also show that there were various phone calls between *Entities no. 2 and 8* between February 01-03, 2021 (period when the impugned insider trades were executed by *Entity no. 2* from the account of *Entity no. 3*). Considering the unusual and abnormal trading in the scrip of *Magma* indulged in by him and the admitted position of his close ties not only with *Entities no. 1 and 8* but also with the *Entity no. 6*, I find it difficult to be persuaded that the trades in the scrip of *Magma* executed by *Entity no. 2* from the account of *Entity no. 3* were conducted in the normal course of dealing in securities so as to absolve him conclusively from the *prima facie* observations made in the *Interim Order*. Since, there is no dispute that trades in the account of *Entity no. 3* were executed by the *Entity no. 2*, after having considered the materials on record

alongwith the submissions by the *Entities* before me during the present proceedings, I do not find that the *Entities no. 2 and 3* have brought before me any fresh evidence or material which can call for dispelling those *prima facie* observations made in the *Interim Order*. Under the circumstances, I am of the view that the *prima facie* observations made in the *Interim Order* stating that the trades of *Entity no. 3* were apparently influenced by the possession of UPSI remains intact un-refuted by the *Entity no. 2 or 3*. Therefore, when a detailed fact finding exercise (investigation) is ongoing, during which it will get unraveled as to whether or not, the trades executed by the *Entity no. 2* from the account of his mother (*Entity no. 3*) were transacted in normal course of trading without any influence of possession of UPSI or otherwise, it will be premature for me to fit in judgement over the *bonafide* of the trades executed by the *Entity no. 2* in the absence of any tangible fact or evidence produced by him to controvert the facts and *prima facie* evidences already recorded in the *Interim Order*.

40. Moving further, it is noted that the *Interim Order* records that the *Entity no. 6* was having phone calls with *Entity no. 1* and had executed trades from his trading account as well as from the trading account of his HUF i.e. *Entity no. 7*. Hence the *Interim Order* has recorded a *prima facie* finding about communication of UPSI from *Entity no. 1* to *Entity no. 6*. In this respect, from the oral as well as the written submissions made before me, it is noted that *Entity no. 6* has not disputed the aforesaid trades executed by him in the shares of *Magma*, nor has he disputed his phone calls and fund transfers with other *Entities*. In this regard as noted earlier, the *Entity no. 1* in his submissions has vehemently denied having communicated the UPSI to *Entity no. 6* and has submitted that various phone calls between him and *Entity no. 6* were exchanged in normal course of business. I find that similar explanations have been offered by *Entity no. 6* as well. I have also noted above that *Entity no. 1* has submitted that *Entity no. 6* was also independently and professionally connected to the group entities of the Acquirer i.e. Poonawalla group and had business connections with *Entities no. 2 and 8* as well. I note from the submissions of

Entity no. 6 that he has also not disputed his connections with *Entities no. 2 and 8* or the Acquirer group. He has however, vehemently argued that his trades in the scrip of *Magma* were based on the incentives to NBFCs announced in the Union Budget 2021-22 and other information available in public domain and not influenced by the UPSI.

41. Having considered the afore-stated submissions made before me and other materials on record, in my view the claim put forth by *Entity no. 6* that his trades in the scrip of *Magma* during the UPSI period were largely inspired by the incentives announced in the Union Budget for the FY 2021-22, does not inspire confidence. The *Entity* has not been successful in demonstrating with any supporting facts & relevant statistics to suggest as to how exactly the said budget announcement cast a positive influence on the scrip of NBFCs in general and on the scrip of *Magma* in particular. Although, he claims that his trades were inspired by the announcement made in the Union Budget, however, curiously enough his trades were confined to only a single NBFC scrip (*Magma*) wherein, he enjoyed professional connection with the group entities of the Acquirer or also undisputedly enjoyed connections with other entities who were *prima facie* found to be in possession of UPSI. I also note that the *Entity no. 6* did not find any other listed NBFC scrip attractive enough to invest so as to even remotely suggest, that his trades were indeed influenced by the Union Budget announcement. I also note that the *Entity no. 6* had no recent history of trading in the Indian securities market and as the *Interim Order* has rightly recorded, *Entity no. 6* got his trading account opened only on February 08, 2021, i.e. just one day prior to the day he started trading in the scrip of *Magma*.

42. The *Interim Order* also records that *Entity no. 6* had received funds from *Entity no. 8* and his relatives and has used those funds for trading in the scrip of *Magma*. In this respect also, no evidence has been furnished to show that he (*Entity no. 6*) was otherwise financially capable of purchasing those shares of *Magma* or that he has also traded in such volume in other scrips as well during/around the same period so as

to refute the observations made in the *Interim Order*. Under the circumstances when records available before me sufficiently suggest that the *Entity no. 6* was enjoying close connections with persons who were *prima facie* having access to the UPSI, it is well-nigh impossible to accept the contention of *Entity no. 6* that the trades executed in the scrip of *Magma* from his as well as from the trading account of *Entity no. 7* were based on the generally available information or were inspired by an announcement made in the Union Budget.

43. While seeking the immunity from the observations made in the *Interim Order*, the *Entity no. 6* has also contended that his trades were executed subsequent to the trades executed by the *Entities no. 4 and 5* and therefore the observation in the *Interim Order* that he communicated the UPSI to *Entities no. 4 and 5*, is without any supporting evidence for the reason that, had he been in possession of UPSI, he would have traded prior to the trades executed by the *Entities nos. 4 and 5*. I find that the above contention is untenable and does not deserve any further consideration for the reason already explained above, where it has been observed that he got his trading account opened only on February 08, 2021 and thereafter started trading in the scrip of *Magma* hence, obviously could not have traded earlier to the date of opening of trading account.

44. Regarding *Entities no. 4 and 5*, the *Interim Order* has recorded that both of these *Entities* have traded in the scrip of *Magma* during UPSI period and there were frequent phone calls between *Entities no. 4 and 6*. *Interim Order* has further recorded that fund transfers were observed from *Entity no. 6* to *Entity no. 4* and such funds were used by *Entity no. 4* to trade in the scrip of *Magma* from his account as well as from the account of his father i.e. *Entity no. 5*. I note that none of the above noted *Entities* has denied the said phone calls, fund transfers and trading in the scrip of *Magma*. Further, from the material available on record, it has now emerged that *Entities no. 4 and 6* are relatives and were connected to each other through business relationships as well. Therefore, the *prima facie* observations regarding the *Entities no. 4 and 5* as recorded in the *Interim Order* do not in any way get impacted at this stage.

45. With regard to the observations made in the *Interim Order* pertaining to the *Entity no. 8*, the *Interim Order* has recorded that he was having telephonic conversations and funds transfers with *Entities no. 1 and 6*. Based on the call records between the *Entities no. 1 and 8*, the *Interim Order* has recorded that *Entity no. 8* was having access to UPSI from *Entity no. 1* and the fund transferred by him and his family members were used by *Entities no. 6 and 7* for purchasing shares of *Magma* during the UPSI period. In this regard, the *Entity no. 8* has not disputed his phone calls and fund transactions with other *Entities*. He has also admitted that he knows *Entities no. 1, 2 and 6* for a long time. Regarding the phone calls, he has submitted that these calls were made in regular course of business and the fund transfers were made against the loans provided to such *Entities*, which were neither abnormal nor were confined to the relevant period only, but there were series of fund transactions which he and his related entities have had with the *Entities no. 1, 3 (mother of the Entity no. 2) and 6* over the period. In this regard, I can observe that there is no denial by *Entity no. 8* to the *prima facie* findings made in the *Interim Order* about his connections and telephone calls with *Entities no. 1, and 6*, as well as his fund transactions with other *Entities* including the funds transfers made to the *Entities no. 6* which were *prima facie* used for purchasing shares of *Magma* by *Entities no. 6 and 7* during the UPSI period. Additionally, I also note that during the personal hearing, when *Entity no. 1* made submissions about the direct involvement of *Entity no. 8* in the *Acquisition Deal* and his connection with *Entity no. 2*, no contentions were raised by the AR of the *Entity no. 8*. It has been canvassed that no trades were executed from his account and therefore, the funds transferred by him to *Entity no. 6*, which were observed in the *Interim Order* to have been used by *Entities no. 6 and 7* for trading in the shares of *Magma*, should not be adversely viewed to attribute those trades to him, when the fund transactions were normal and frequent in nature between them.

46. I have noted above while dealing with the submissions of the *Entity no. 1* that the *Entity no. 8* was independently having access to the UPSI as he had participated

in various meeting related to the *Acquisition Deal*. Under the circumstances, his contention that he and his connected entities have been extending loans to *Entities no. 1 and 6* on a regular basis in due course of business dealings, does not diminish conclusively the *prima facie* adverse inference drawn against him in the *Interim Order* pertaining to his observed role in the insider trading in the scrip of *Magma*. While the phone calls and the funds transfer have been demonstrated in the *Interim Order* to ascribe a close connection between him and the afore-noted *Entities*, it was the usage of the funds by *Entities no. 6 and 7* for purchase of shares of *Magma* immediately upon receipt of such funds from the *Entity no. 8* which had provided a strong basis to draw adverse inferences in the *Interim Order* recording that the trades by *Entities no. 6*, do not appear to be the trades executed in the normal course of trading, more so when the materials now on record show that *Entity no. 8* was himself also involved in the discussions of the *Acquisition Deal* at various stages. Keeping in view the aforesaid formidable factual position, the submission by the *Entity no. 8* that his funds transactions with the other *Entities* have been entered into in due course of business or loans advanced to them etc., do not require any further consideration at this stage, when a holistic and detailed investigation into the matter is underway.

47. I also note that the *Entities* have argued that since they were in constant telephonic contact with each other in normal course of their association with each other, such phone calls between them during the UPSI period ought not to be considered as abnormal. Additionally, contention has been raised by *Entity no. 8* that reliance on call data records without providing the details of the contents of such phone calls, is in defiance of the settled principles established by the Supreme Court of India in the case of *Pricewaterhouse (supra)* and Hon'ble SAT in the matter of *Smitaben Shah (supra)*, wherein it has been held that all documents and evidence relied upon in the proceedings is required to be shared with them (*Entities*).

48. With respect to the argument of the *Entities* regarding their phone calls, I have already discussed at length earlier at earlier paragraphs of this Order about the

implication of such phone calls to demonstrate and establish the evident connection amongst the *Entities* and not to pin-point as to which specific phone call was made to communicate the UPSI. The *Interim Order* also nowhere mentions in specific terms or makes any reference to any phone call made on a specific date or time to attribute that by making the said particular phone call, the UPSI was communicated by one *Entity* to another *Entity*. The *Interim Order* rather proceeds on the basis of various material available on record including the evidence available about the phone calls especially the phone calls exchanged during the UPSI period, a holistic appreciation of which lead to the preponderance of a strong *prima facie* possibility of exchange/sharing of UPSI amongst different *Entities* and the said possibility further gets reinforced from the peculiar trading pattern followed by the *Entities* during the relevant period. After perusing the submissions-both oral and written- made by the *Entities* during the present proceedings, I can now state with full satisfaction that the facts and materials based on which the *Interim Order* was passed, continue to hold their ground as materials sufficient enough to warrant an interim intervention by the Regulator and the *Entities* have not been able to repudiate those facts & materials by producing any clinching evidence to counter those facts and materials, which could shake the foundation of those *prima facie* observations made against them in the *Interim Order*, so as to disregard those observations irrefutably. The argument of the *Entities* that such frequent calls exchanged between them only show that they were regularly talking to each other hence, the inference pertaining to the possibility of communication of the UPSI (through phone calls) is not based on concrete evidence, is not a tenable defense so as to absolve them from the *prima facie* observations made in the *Interim Order*. As stated above, the *Interim Order* was issued based on various *prima facie* observations about the *Acquisition Deal* (UPSI), access to UPSI by certain *Entities*, connections between different *Entities* that are further corroborated by phone calls & funds transfers, unusual trading in the scrip of *Magma* by certain *Entities* during UPSI period who were suspected to have received UPSI when they traded in the shares of *Magma*, etc. In my view the test for the justification of issuing *interim*

directions against the *Entities* lie in the answer to the question as to whether or not, the facts and materials available on record lead to an inescapable *prima facie* inference with a reasonable application of mind about the possible indulgence by the entities in a serious offense like insider trading. In my considered view, the rationale for passing the *Interim Order* can't be explained through a straitjacket formula as it all depends on the facts and material of a specific case that are available on records which could be *suo moto* forceful enough to attract urgent regulatory intervention to protect the interest of the securities market. Having considered those facts and materials, a call is taken as to whether the facts and circumstances of the matter requires intervention or not, which in the present matter were quite compelling at the time of passing of *Interim Order*. I have already noted the premises that became the basis of passing of the *Interim Order* and also find that the none of those premises or factors has been refuted even partially in the instant proceedings, be it *inter se* phone connection, or their *inter se* fund transaction. Under the circumstances, the telephonic conversations between *Entities* as evidenced from the CDRs, more so with one person (*Entity no. 1*) who was *prima facie* observed to an insider having access to USPI, coupled with fund transactions followed by trading in scrip of *Magma* during the UPSI period, sufficiently tilt the balance of preponderance of probabilities in favour of communication of any UPSI and therefore, the materials on records and the aforementioned attending circumstances justifiably warranted passing of an *Interim Order*.

49. Regarding the reliance placed by the *Entity no. 8* on judicial decision in the matter of *Pricewaterhouse (supra)* and *Smitaben Shah (supra)*, I note that all the documents including the CDRs that were relied upon by SEBI have already been provided to the *Entity no. 8* / its AR during the inspection conducted on his behalf on October 08, 2021, during which no such objection was raised by AR of the *Entity no. 8*. Further, the arguments of the *Entity no. 8* does not specify as to non-supply of which specific document has caused a prejudice to him and what prejudice exactly

has been caused which can be said to have impeded his ability to explain his case better. In the absence of any such explanation, such general arguments taken by the *Entity no. 8* do not require any further consideration at this stage.

50. I also note that some of the *Entities* have vehemently argued that there was no urgency on part of SEBI to pass an ex-parte *Interim Order* against them and that power to pass ex-parte orders should be used sparingly and not in a casual way. Such *Entities* have further stated that SEBI has not followed the procedures laid down under *Order 38 Rule 5 to 13 of the Civil Procedure Code, 1908*, while issuing directions under the *Interim Order*. In this regard, *Entities* have further relied upon the judicial observations made by the Hon'ble SAT in the various matters including *North End Foods Marketing Pvt. Ltd. (supra)*, *Cameo Corporate Services Limited (supra)*, *Zenith Infotech Limited (supra)*, *Bhoruka Financial Services Ltd. (supra)*, *Pancard Clubs Limited (supra)*, *Tree House Education (supra)*, *Dr. Udayant Malhoutra* to further buttress their contention.

51. In this regard, it is pertinent to note that the *SEBI Act, 1992* confers various powers on SEBI which can be exercised pending an investigation into a matter, including power to impose restraint, power for impounding etc., to protect the interests of the investors and the integrity of securities market. For instance, Section 11 (4) (d) of *SEBI Act, 1992* specifically permits that proceeds of a transaction can be impounded pending investigation. In the present matter I note that after considering the *prima facie* acts of the *Entities* which strongly indicated probable contraventions of securities law, especially that alleged acts of insider trading in violation of the *PIT Regulations, 2015* by certain entities, there was an urgent necessity of regulatory intervention by way of taking preventive steps not only to prevent the *Entities* from causing any further harm to the market / loss to investors/gain to themselves but also to deter them from continuing with such acts. Hence, interim orders are necessitated under the securities laws for taking appropriate measures as and when warranted by the suspected foul plays and misconduct by market participants. I have

already explained above that in the instant case for attending factors were sufficient to justify the urgency of passing of the *Interim Order*. Consequently, having considered the submissions of the *Entities*, I do not find any reason to hold that there was no urgency for passing of the *Interim Order*. After perusing the case laws cited by the *Entities* to support their contention regarding power of SEBI to pass the *ex-parte Interim Order*, I find that none of the afore-stated cited cases, has facts and circumstances similar to the facts & circumstances of the instant matter. Further, except for the matter pertaining to *Dr. Udayant Malhoutra (supra)*, all other afore-stated case laws deal with matters pertaining to fraud and manipulation involving violation of SEBI (Prohibition of Fraudulent and Unfair Trade Practices) Regulations, 2003. However, even though the decision in the case of *Dr. Udayant Malhoutra* pertains to violations of provisions of insider trading regulations, on a perusal of the decision of the Hon'ble SAT in the said matter, I find that the facts and circumstances of the present matter are clearly distinguishable from the facts of *Dr. Udayant Malhoutra (supra)*. Therefore, the aforesaid decision in the case of *Dr. Udayant Malhoutra (supra)* would not help the *Entities*, wherein the Hon'ble Tribunal has set aside the order of SEBI, *inter alia*, on the ground that the alleged insider trades were pertaining to year 2016, while information from the appellant were called for the first time on November 28, 2019 hence, the facts of the matter did not call for an *ex-parte* order after three years of the alleged trades. In contrast to the aforesaid facts of *Dr. Udayant Malhoutra (supra)*, I find that in the instant matter, the impugned insider trades pertain to the period of January, 2021 – March, 2021 and after a preliminary examination of the activities of the *Entities*, it was considered urgent and apt to pass *interim* directions against the *Entities* vide *Interim Order* dated September 15, 2021, which was within six months from the observed acts of insider trading in the scrip of *Magma* indulged in by the *Entities*. Therefore, the observations of Hon'ble SAT in the matter of *Dr. Udayant Malhoutra (supra)* are not squarely applicable to the instant matter.

52. As regards the power of passing interim orders by SEBI, I can only remind the *Entities* that the same has been recognized and upheld by the Hon'ble SAT time and again. As an example, it can be seen that the Hon'ble Tribunal has held the following in the matter of *North End Foods Marketing Pvt. Ltd. vs. SEBI*:

"Having heard the learned senior counsel at length, we find that it is no more res integra that SEBI has power to pass ex-parte interim orders, pending investigation, which power flows from Section 11 and 11B of the SEBI Act. A plain reading of Section 11 and 11B shows that SEBI has to protect the interests of the investors in securities and to regulate the securities market by such measures as it thinks fit and such measures may be for any or all of the matters provided in sub-section 2 of Section 11 of the Act. SEBI has power to pass interim orders and such interim orders can also be passed ex-parte. Interim orders are passed in order to prevent further possible mischief of tampering with the securities market. If during a preliminary enquiry, it is found prima-facie, that the person is indulging in manipulation of the securities market, it would be obligatory for SEBI to pass an interim order or for that matter an ex- 17 parte interim order in order to safeguard the interests of the investors and to maintain the integrity of the market. Normally, while passing an interim order, the principles of natural justice has to be adhered to, namely, that an opportunity of hearing is required to be given. Procedural fairness embodying natural justice is to be applied whenever action is taken affecting the rights of the parties. At times, an opportunity of hearing may not be pre-decisional and may necessarily have to be post-decisional especially where the act to be prevented is imminent or where action to be taken brooks no delay. Thus, pre-decisional hearing is not always necessary when ex-parte ad-interim orders are made pending investigation or enquiry unless provided by the statute. In such cases, rules of natural justice would be satisfied, if the affected party is given a post-decisional hearing".

53. The aforesaid findings have been reiterated in the decision of *Dr. Udayant Malhoutra* as well hence, the contention of *Entities* questioning the power of SEBI to pass an interim order is not sustainable. Moreover, I note that in *Dr. Udayant Malhoutra*, the order of SEBI was issued in the form of show cause notice after

completion of investigation, whereas in the instant matter, the investigation is in progress and it was only on the basis of preliminary examination and various *prima facie* observations, the afore-stated interim directions in the nature of restraining and impounding were issued as a preventive measure without intending to hold any person/entity conclusively guilty. Under these specific facts & circumstances, the aforesaid contention of *Entities* is found to be devoid of any substance and not tenable.

54. The submissions of the *Entities* pertaining to the *interim* direction asking them to deposit the unlawful gains in an escrow account is also not tenable since the findings of the Hon'ble Tribunal in the matter of *Dr. Udayant Malhoutra* was specific to the facts of that matter only. Moreover, with respect to the findings of the Tribunal relating to impounding of the unlawful gains in the aforesaid case of *Dr. Udayant Malhoutra*, it is brought to my notice that SEBI, being aggrieved by the above findings of the Hon'ble SAT, had preferred appeal before the Hon'ble Supreme Court of India and the said appeal was disposed of by the Hon'ble Apex court vide order dated November 18, 2020 in Civil Appeal no. 2981-2982 of 2020, *inter alia*, recording following findings "*Since we have come to the conclusion that the Tribunal was on the facts of the case correct in setting aside the ex-parte order of the Whole Time Member on the ground that no urgency has been made out to sustain such an order, **it is necessary for this Court to clarify that the interpretation which has been placed by the Tribunal on the powers of SEBI, particularly in paragraph 9 of the impugned order, which has been extracted above, shall not be cited as a precedent in any other case. The order passed by the SEBI must necessarily be in accord with Section 11(4) of the SEBI Act.***" *(emphasis supplied)*

55. In view of the above cited observations of the Hon'ble Supreme Court of India and considering that the facts and circumstances involved in the present matter are distinguishable vis-a-vis the facts of the matter of *Dr. Udayant Malhoutra* (*supra*), I find no substance in such contentions of the *Entities* objecting to the direction of

impounding of unlawful gains and hence, such contention of the *Entities* deserves no further deliberation at this stage of the proceedings.

56. I note that the some of the *Entities* have argued that the information regarding the *Acquisition Deal* was publicly available. To further reinforce such a contention, they have referred to various press release / corporate announcements (January 28, 2020, November 12, 2020, December 01, 2020, January 29, 2021) of the *Company* stating that *Magma* was looking for potential investors to the tune of ₹3000 crores and during the said period of one year, multiple talks with various investors had taken place. I have perused the corporate announcements of the *Company* as referred to above and find that all of the above noted 4 corporate announcements by the *Company*, were pertaining to raising funds through issuance of Non-Convertible Debt Securities by the *Company*. In fact, none of the above referred corporate announcements talks about any proposed or potential acquisition of the *Company* by any other entity or about issuance of preferential allotment of shares by the *Company* to any entity with a view to transfer its controlling stake, which actually happened in the *Acquisition Deal* (UPSI) made by the *Company* in the instant matter.

57. Similarly, some *Entities* have referred to press release of the *Company* dated November 07, 2020 & news article dated December 10, 2020 regarding improvement of financial profile of the *Company*, news article dated January 06, 2021 & corporate announcement of *Magma* dated January 29, 2021 regarding its meeting dated February 06, 2021 to discuss the issue of raising of funds, and also news article dated January 29, 2021 etc., so as to strengthen their argument that their trades in the scrip were a result of independent research and based on publicly available information about the *Company*. After a careful perusal of the above referred news articles and press releases, I find that first of all, such news reports and press releases primarily dealt with the performance and financials of the *Company*, and are nowhere related to the *Acquisition Deal*. Secondly, none of the *Entities* has demonstrated satisfactorily to me that it has indeed traded in the scrip of *Magma* during declaration of such

financial results and performance of the *Company* under influence of any such press release or newspaper article. For instance, press release dated November 07, 2020 had disclosed the Quarter 2 (FY 2020-2021) Profit after Tax of the *Company* amongst other performance indicators. Further, news article dated December 10, 2020 was about improvement in the rating of the *Company* by rating agencies and news article dated January 06, 2021 mentions about scrip of *Magma* trading below its 5-year Price-to-earnings (P/E) ratio.

58. Nonetheless, none of the *Entities* seems to have traded in the scrip of *Magma* after the publication of aforesaid information were disclosed by the *Company* or after newspaper articles reported about them in public domain. It is very unlikely on the part of a prudent investor to invest in a *Company* 1-3 months after the publication of aforesaid positive news about the *Company* (*Magma*). On the one hand, the *Entities* are claiming that the information about the proposed *Acquisition Deal* was already anticipated and discounted by the market participants while on the other hand, these *Entities* claim that they have carried out their trading in the scrip of *Magma* on the basis of certain positive news that were published 1-3 months ago, which exhibit a glaring contradictions in their arguments making it difficult to accept such a contention on its face value under the instant proceedings for granting exoneration, more particularly when the issues surrounding the UPSI and the UPSI period have been analyzed before making *prima facie* observations in the *Interim Order* based on the information furnished by the *Company* itself and thereafter a detailed investigation into the matter is already underway pursuant to passing of the *Interim Order*. It is equally difficult to accept it as a mere coincidence that such *Entities* have purchased the scrip of *Magma* during the UPSI Period on the basis of certain positive news that were circulated in the public domain 1-3 months ago without being influenced by the UPSI. Under the circumstances, in my view the veracity of such claims pressed by the *Entities* before me to justify their trading in the shares of *Magma*

during the UPSI period cannot be verified at this stage when the detailed investigation into their conduct is in progress.

59. Moving on to the determination of UPSI period, as already mentioned in the *Interim Order*, the discussions on the proposed *Acquisition Deal* started on January 11, 2021 which was finally disseminated to the public on February 10, 2021. Presently, there is no material available on record which shows otherwise i.e. *prima facie* there is no contrary material on record to suggest that the information regarding the acquisition of controlling stake in *Magma* by *RSHPL* and/or the funds raising done by *Magma* through preferential allotment of shares were generally available to the public prior to February 10, 2021. In my opinion, *Entities* have not been able to exhibit any logical explanations regarding the UPSI period and hence I find no reason to deviate from the findings pertaining to start and end point of the UPSI period as mentioned in the *Interim Order*. Therefore, the submissions of the *Entities* contesting the determination of UPSI period require no further consideration.

60. *Entity no. 2* has stated that as per the regulation 3(5) of the *PIT Regulations, 2015*, a listed entity is required to maintain Structural Digital Database (hereinafter referred to as “SDD”) however despite the availability of such a detailed and reliable source of evidence, SEBI has not used the same and has merely relied upon the sequence of events provided by the *Company* to make adverse observations against the *Entities* in the instant matter. In this regard, it is important to note that under the *PIT Regulations, 2015*, a listed entity is required to maintain SDD containing the nature of unpublished price sensitive information and names of such persons who have access to such information. I find that the said database is required to contain the list of all the persons who have handled the UPSI in any manner in the course of their duties in the listed company. However, I find from the framework of the SDD that it captures details of only those Designated Persons who have had direct access to the UPSI and such SDD would not be of any help to disclose the names of those persons who might have indirect access to the UPSI. Infact, such indirect access to UPSI is a greater

menace to the market integrity, as it makes the task difficult both for the listed companies as well as for SEBI as a regulator, to capture the information and track down such persons who have had indirect or informal access to the UPSI. Nonetheless, it is also important to mention here that the *PIT Regulations, 2015* nowhere binds SEBI to mandatorily use the aforesaid SDD and look for violation of *PIT Regulations, 2015* only from the said SDD while examining / investigating into matters pertaining to insider trading. In the instant matter, there is no dispute that *Entity no. 2* has traded in the scrip of *Magma* during the UPSI Period from the trading account of *Entity no. 3*. *Entity no. 2* has further admitted that he was part of the discussions pertaining to the *Acquisition Deal*. Therefore, in my opinion, pending investigation, the aforesaid argument is of no substance since, by not calling for SDD or by placing reliance on other available material to ascertain possible insider trading, would not *ipso facto* prove that trades in the account of *Entity no. 3* executed by *Entity no. 2* in the scrip of *Magma* were executed in the normal course of trading and not based on the UPSI.

61. I have observed in earlier paragraphs that some of the *Entities* have attempted to justify their trading in the scrip of the *Company* attributing to certain incentives announced for the NBFCs in the Union Budget on February 07, 2021. However, as pointed out by me, none of the *Entities* who has traded in the scrip of *Magma* during the UPSI period, has demonstrated that he has followed similar trading pattern in the scrips of some other listed NBFCs as well. Such unusual trading activities in only one specific NBFC scrip during the UPSI period rather expose the true intent of the *Entities* behind their trades in the shares of *Magma* which deserve further investigation to bring all the facts to the table before one can conclude with finality if the trades of the *Entities* in the shares of *Magma* were indeed influenced by the positive outlook about the NBFC Sector as claimed by them or were based on possession of the UPSI.

62. Some of the *Entities* including *Entities no. 2 and 3* have submitted that the allegation of insider trading requires a high level of proof and SEBI has not provided any proof in the *Interim Order* regarding their involvement in the alleged insider trading. *Entities* have relied upon the decisions of the Hon'ble Supreme Court of India and of the Hon'ble SAT in matters such as *Union of India vs. Chaturbhai M. Patel (supra)*, *Dilip S. Pendse (supra)*, *VK Kaul (supra)*, *Seth Gulabchand (supra)*, etc. With respect to the aforesaid submission of the *Entities* that insider trading allegations can be levelled against them only based on strong proof, it is important to note that as the very name suggests, in the '*insider trading*' cases particularly which involves communication of UPSI by an insider to other entities, it is extremely difficult for an investigator to lay his hands on any direct evidence of communication of UPSI which often takes place in utmost privacy and secrecy. However, the absence of direct evidence should not be considered as a handicap in proceedings against the suspected entities, more so in such cases where the attending circumstances and corroborating evidences are strongly indicating on the preponderance of probability of execution of trades under the influence of possession of UPSI. Thus, even in the absence of any direct evidence, such matters are to be tested on the basis of circumstantial evidences including the conduct of the parties and the abnormality of their trading practices which defy normal business prudence. What is needed in such cases, is to appreciate in a factual matrix, the preponderance of probabilities of happening of such an event which in the present matter, have been recorded in detail in the *Interim Order* to hold that *prima facie* the *Entities* had / were in possession of UPSI when they traded in the shares of *Magma* during the UPSI period.

63. Notwithstanding the above, I can observe that the above noted case laws cited by the *Entities* relate to those cases where adjudication proceedings were initiated after completion of the fact finding exercise (investigation), and based on the facts and evidences collected during the investigation, the entities were asked to show cause as to why suitable direction including imposition of monetary penalty be not

issued, in case the allegations are found established. The instant matter before me is however a confirmation/revocation proceedings pertaining to an *Interim Order* in which *interim* directions were issued against the *Entities* based on various *prima facie* factual observations which are subject to the outcome of an ongoing investigation into the matter. As stated in the foregoing paragraph, the *Interim Order* was passed after appreciating the facts and evidences available on record, appreciation of which strongly indicated the possibility of indulgence in activities of insider trading by certain entities and accordingly to prevent further misuse, it was thought proper to issue directions on an urgent basis by passing an *Interim Order*. The above *Interim Order* nowhere intends to conclusively hold any person guilty of violation of various provisions of law as mentioned in the said order. *Entities* shall have opportunities and rights to furnish sufficient evidence and justifications to rebut those observations *prima facie* made against them in the *Interim Order* and adduce evidences to prove their innocence before the fact finding authority during the investigation. Therefore, the attempt made by the *Entities* to take shelter under the garb of requirement of higher degree of evidence can be stated to be a premature plea taken by the *Entities* when detailed investigation into their alleged misconduct is in progress. Keeping the aforesaid in view, the contentions of the *Entities* regarding requirement of high level of proof does not warrant any further consideration at this juncture.

64. I also note that the reliance placed by the *Entities* on the decision of *Tree House* (*supra*) is not valid as the said case is factually distinguishable and will not be of help to them in the instant proceedings, as in the said case (*Tree House*), the observations of the Hon'ble SAT were related to fudging of books and misrepresentation about the manipulation in books of the company. The Hon'ble SAT, having considered the entire facts in that case has held that:

"In view of the aforesaid, we find that in the instant case no case of urgency was made out in the first instance for grant of an ex parte interim order. There was no prima facie finding of manipulation of the books of account or misrepresentation of financials or

diversion / siphoning off the funds of the Company. The inference drawn was purely based on presumption and not on the basis of any evidence. Till date no report has been submitted by the independent auditor / audit firm. Thus continuation of an ex parte interim order restraining the appellants cannot be sustained."

In view of the aforesaid, the findings of the Hon'ble Tribunal in the above referred matter is not applicable to the present matter.

65. The *Entities* have also contended that based on the evidence available, the restrictions imposed on them vide the *Interim Order* do not deserve continuation. In support of such a contention, the *Entities* have relied on various judicial decisions including the findings of SEBI in the matter of *Sabero Organics, Manoj Gaur, Sanjay D. Gala & Ors, Emami Limited (supra)*. Citing the matter of *Sabero Organics* it has been canvassed that SEBI has held that where it is not certain as to who amongst the several insiders had communicated the UPSI, it is not proper to proceed and hold a person guilty merely on the premise that he, besides being an insider had financial dealing with a person who had traded in the scrip during the UPSI period. It has further been argued that in the above matter (*Sabero*), considering the fact that several persons including the advisors, merchant bankers, law firms and Key Managerial Persons (KMPs) of the *Company* including Vice Chairman, Managing Director, Directors, Senior Vice President, etc., were also aware of the deal/ UPSI, coupled with the fact that several persons have also traded during the relevant time in higher quantity and on a larger scale and such trading patterns indicated the possibility of communication of UPSI by others as well, SEBI vide its order dated May 12, 2016 directed for re-investigation into the said matter. While directing reinvestigation in that matter, it was observed that:

"on the basis of the findings of the investigation it is difficult to arrive at a conclusion as to who exactly passed the information to Murugappan and thereby to Gopalakrishnan and Karuppiiah. As many as sixty-nine persons/entities had access to the UPSI during the Investigation Period. In this backdrop, a pertinent question arises

as to the channel of communication which resulted in passing the UPSI to the said entities..... In this maze of facts, it is not possible to conclusively determine from where the information has flowed to the persons/entities who had traded and benefited."

66. Having gone through the afore-cited cases, I find that all such cases pertained to proceedings which were initiated after the completion of investigation making specific allegation asking as to why suitable direction/penalty be not issued. Thus, the above noted observations recorded by the competent authority of SEBI related to the quality of evidence that was brought out during an investigation so as to hold certain persons/entities guilty of insider trading charges. However, such observations would not be applicable in the instant matter, where the investigation is still ongoing and is yet to be completed and the *interim* directions have been issued based on the *prima facie* observations made in the *Interim Order*.

67. As regards the fund transactions noticed amongst the *Entities* in the *Interim Order*, the *Entities* have, without disputing the said funds transactions amongst them, offered various justifications behind such fund transactions. They have primarily submitted that they are known to each other and are professionally connected, hence, in the absence of any evidence to the contrary, the fund transactions should not be viewed as abnormal and obnoxious but should be viewed as transactions entered in the normal course of business. At this juncture, I find that when investigation is in progress, it would not be fair and proper to make observation on the explanation or justification offered by the *Entities* on their funds transactions, the authenticity of which would be in any case tested during the investigation. Therefore, in my view it would be proper to leave the veracity of the funds transactions to be properly ascertained in the course of investigation that may necessitate taking into consideration various other information such as net worth, business details of entities, locating the original source of such funding, genuineness of such

transactions, disclosure of such transactions before the tax authorities, etc. which cannot be determined and ascertained under the instant proceedings.

68. I have considered the allegations made in the *Interim Order* against the *Entities*, replies filed by the *Entities*, submissions made by them during the post decisional hearing granted to them, and written submissions filed by the *Entities* after the hearing. The case that was made out in the *Interim Order* is that the *Entity no. 1* is an insider of the *Company* by virtue of being a connected person as well as being a person who had access to UPSI and *Entity no. 1* was *prima facie* observed to have communicated the UPSI to *Entities no. 2, 6 and 8* and the said UPSI in turn got shared with *Entity no. 4* by the *Entity no. 6*, and thereafter, certain persons/entities have traded in the scrip of the *Company* while in possession of the UPSI. Accordingly, all the *Entities* have been observed to have acted *prima facie* against the provisions of the *PIT Regulations, 2015* by trading in the scrip of the *Company (Magma)*. As can be understood from the *Interim Order*, communication of UPSI by *Entity no. 1* to other *Entities* and possession of UPSI by other *Entities*, have been inferred on the basis of the close connections and frequent telephonic conversations noticed between *Entity no. 1* and other *Entities*, as extracted from the CDRs of these *Entities*. Therefore, the whole case of the insider trading against the *Entities* has been analysed around the communication of UPSI directly or indirectly by *Entity no. 1* to other set of *Entities* based on which other *Entities* have indulged into trading in the shares of *Magma* during the UPSI period.

69. *Entity no. 1* in his submissions has contended that he was not the sole person to have an access to the UPSI at the time when the impugned insider trades were undertaken by some of the *Entities* and therefore, the observation about him having communicated any UPSI to the other *Entities* is not based on sound evidence. In order to dispel the *prima facie* observations, he has brought on record documents to show that *Entities nos. 2 and 8* were also in possession of the UPSI and therefore, based on the materials, it would not be right to continue with the restraint imposed on him

vide the *Interim Order*, as the aforesaid *prima facie* observation about his involvement in communication of UPSI to *Entities no. 2 and 8* would not sustain any more. Similarly, considering the admitted proximity of *Entity no. 6* with *Entities no. 2 and 8* and his (*Entity no. 6's*) own access to the persons involved with the *Acquisition Deal* including the persons associated with the Acquirer group, the *prima facie* observation about he being responsible for communication of UPSI to *Entity no. 6* would also get refuted. Under such changed facts, it has been vehemently submitted by the *Entity no. 1* that relief may be granted to him from the restraints that were imposed vide the *Interim Order*. Keeping in view the aforesaid, it has been submitted by the *Entity no. 1* that it is incorrect to continue with the aforesaid *prima facie* observation *qua* him, as these *Entities* who have executed the impugned trades were either trading in their individual capacities while in possession of UPSI or were capable to acquire the same through other multiple sources as brought on record by him.

70. I find that certain credible facts have been submitted to suggest that apart from him (*Entity no. 1*), *Entities no. 2 and 8* were also having independently direct access to the UPSI being part of the discussions pertaining to the *Acquisition Deal*, and that the *Entity no. 6* was also closely connected with *Entities no. 2 and 8* as well as with other group entities of *Magma*. *Entity no. 2* from his end has submitted that the trades from the trading account of *Entity no. 3* were executed by him before he formally got engaged as an advisor to the *Acquisition Deal*, hence, and in the absence of cogent and specific evidence, it would not be fair to continue with the restraint imposed on him vide the *Interim Order*, more particularly, when the alleged unlawful gain has already been deposited in the escrow account. *Entities no. 6 and 7* have tried to dispel the *prima facie* observation made against them in the *Interim Order* by submitting that their trades in the shares of *Magma* were not confined to the UPSI period only, but also continued for a considerable period even beyond the UPSI period and in the process, they have purchased shares of *Magma* at price higher than price at which shares were purchased during UPSI period. Therefore, it may not be right to observe that their

trades were executed under the influence of UPSI only and it is also not rightful to continue with the restraints in respect of the securities purchased by them even after the UPSI period. *Entity no. 8* has opposed to the imposition and continuation of the restraint order merely on the ground of fund transfer, when on the usage of such funds transferred by him, he had no control and the funds were extended by him on several occasions under normal course of dealing with different entities. Therefore, when no trades were executed from his account, continuation of any restraint even after 5 months of passing of the *Interim Order* is not warranted. In support of the submissions of modifying the restraints imposed vide the *Interim Order*, reliance has also been placed on the order dated November 09, 2021 passed by the Hon'ble Tribunal in the matter of *Bijal Shah vs SEBI*. In my considered view, at this stage when the investigation into the entire matter is going on, it would not be appropriate to conclusively make any comments upon the aforesaid contentions of the *Entities*, which may affect either the investigation or the *Entities*, or may even adversely affect the final outcome of the case. The scope of the present proceedings before me is to find out whether in the light of the replies of the *Entities*, the *prima facie* case made out against them in the *Interim Order* continues/sustains or not and whether the directions issued in the *Interim Order* require any interference by way of revocation or modification at this stage.

71. From the submissions of *Entity no. 1*, it is noted that there is no denial to the existence of frequent calls between him and others however, he has contended that these calls were not made in relation to communication of UPSI and were made in the ordinary course of his interactions with them as these *Entities* were his acquaintances and he has been professionally associated with them over a long period. In this regard, it can be appreciated that in the *Interim Order*, CDRs of *Entities* have been relied upon to demonstrate frequent communication between the *Entity no. 1* and other *Entities* and to highlight preponderance of probabilities of communication of UPSI by him. The fact remains that there had been frequent

communications between *Entities no. 1, 2, 6, and 8* at the time when those impugned trades were being executed during the UPSI period, however at the same time the submissions made by the *Entity no. 1* with supporting evidences about certain other *Entities* having independent access to UPSI cannot be ignored completely. Having considered the same, I find at this stage that *Entity no. 1* has succeeded to an extent in dispelling the *prima facie* findings that he was alone having access to the UPSI by demonstrating that besides him, *Entities no. 2 and 8* were also having direct access to the same UPSI (along with him). As regards the allegations of communication of UPSI by him to *Entity no. 6*, *Entity no. 1* has advanced a notable argument in his submission albeit unsupported by any evidence, to indicate that *Entity no. 6* was himself closely connected with various other entities of *Magma* group and through them he was capable of having access to UPSI independently without depending upon any communication from him.

72. It is also noted that all the *Entities* have deposited the amount directed to be impounded by the *Interim Order* into an escrow account, pursuant to which their respective bank accounts were unfrozen. At present, *Entities* are under restraint from dealing in securities, imposed vide the *Interim Order* and have so far remained under the said restraint for more than 06 months. Further, I note that the UPSI, on the basis of which the impugned insider trades were allegedly undertaken by the *Entities* had already become generally available and the said UPSI has since ceased to exist. *Entity no. 5* has made a request that he is an old man aged 68 years and is not keeping good health. He has also submitted that he himself is a doctor (MBBS) and at this age is engaged in rendering medical services in the rural areas of Maharashtra. He has also submitted that majority of his life time savings are invested in securities market and on account of the ongoing restriction through the *Interim Order*, he is facing severe hardship hence, has requested for lifting of the said restraint imposed on him. Similar requests have also been made by some other *Entities* as noted above. Having regard to all the facts and circumstances of the case and considering the aforesaid revelations

made by the *Entity no. 1* about the existence of multiple *Entities* having access to the same UPSI during the relevant UPSI period thereby raising the possibilities of multiple sources of communication of UPSI to other *Entities*, and taking into account the fact that the *Entities* have already suffered restraint from the securities market for more than 06 months and the observation of the Hon'ble Tribunal in *Bijal Shah (Supra)*, it would be in the fitness of things that pending completion of investigation, the restriction imposed in the *Interim Order* thereby prohibiting the *Entities* to deal in securities be modified and the said restraint be continued only with respect to dealing in the scrip of Poonawalla Fincorp Limited (*Magma*).

73. In view of the foregoing discussions and my observations on various aspects of the matter, pending conclusion of investigation, I, in exercise of the powers conferred upon me in terms of Section 19 of the SEBI Act, 1992, read with Sections 11, 11(4) and 11B(1) thereof and after taking into account the specific facts and circumstance of the present matter, hereby modify the directions issued vide ex-parte ad-*Interim Order* dated September 15, 2021, as follows:

- a) *Entities no. 1 to 8* are restrained from buying, selling or dealing in securities of PFL (*Magma*), either directly or indirectly, in any manner whatsoever until further orders. Accordingly, the directions issued vide paragraph 67 (a) of the *Interim Order* stand modified to the extent of allowing credit and debit of securities in the accounts of above *Entities* except the securities of *Magma*.
- b) It is clarified that restraint related to buying, selling or otherwise dealing in securities in respect of PFL (*Magma*) would not prohibit the credit of shares to be received on account of stock option, bonus etc. issued by the *Company*.

74. It is clarified here that the funds deposited by *Entities* in an interest bearing escrow account will remain in the said account with lien in favour of SEBI until further orders.

75. It is further clarified that the observations made in the present order are tentative in nature. The investigation shall be carried out without being influenced by any of the directions passed or any observation made either in the *Interim Order* or in the present order. Based on the outcome of the same, appropriate proceeding will be initiated in accordance with law.

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

77. This Order is without prejudice to any other action that SEBI may initiate under the securities laws, as deemed appropriate, against the above-mentioned *Entities*.

78. A copy of this Order shall be forwarded to the *Entities*, Stock Exchanges, Depositories, Registrar and Share Transfer Agents and Banks to ensure necessary compliance.

-Sd-

Date: March 28, 2022

S. K. Mohanty

Place: Mumbai

Whole Time Member