

SECURITIES AND EXCHANGE BOARD OF INDIA

CONFIRMATORY ORDER

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

In respect of:

Sl. No.	Name of the Entity	PAN
1.	Udit Todi	AGIPT6750E
2.	Avani Todi	BLGPB7106N
3.	Sanjeev Bubna	AECPB9459C
4.	Indi Stock Private Limited	AAACI6554J
5.	Akshay Kapoor	BGHPK6431R
6.	Arun Kapoor	AAAPK1476C
7.	Dinero Finance and Investments Private Limited	AAACD0209R
8.	Mohd Mujtaba Ali Khan	BHTPK2898B
9.	Shubham Somani	CMMPS0818L
10.	Anju Somani	ADCPS6485Q
11.	SS Corporate Securities Limited	AABCS3726M
12.	Sunder Somani	AAWPS1022L
13.	Suyash Somani	FZGPS1053B
14.	Evermore Stock Brokers Private Limited	AAACP1788K

(The above-mentioned entities are individually referred to by their corresponding names/ numbers and collectively referred to as “**Entities**”)

In the matter of insider trading in the scrip of Lux Industries Limited

BACKGROUND

- 1) Lux Industries Limited (hereinafter referred to as “**Lux/ Company**”) is a company listed on the BSE Limited (hereinafter referred to as “**BSE**”) and the National Stock Exchange of India Limited (hereinafter referred to as “**NSE**”) and the aforesaid two stock exchanges are hereinafter collectively referred to as “**the exchanges**”).
- 2) In the backdrop of a corporate announcement made by the *Company* on May 25, 2021 regarding its audited financial results for the Quarter and Financial year ending March 31, 2021 (hereinafter referred as “**Financial Results**”), it was noticed that certain *Entities* enjoying connection through blood relations, phone calls, fund transactions etc., have traded in the scrip

Confirmatory Order in the matter of insider trading in the shares of Lux Industries Ltd.

of the *Company*. The aforesaid corporate announcement of *Financial Results* was *prima-facie* observed to be satiating the ingredients of Unpublished Price Sensitive Information (hereinafter referred to as '**UPSI**') in terms of provisions of Regulation 2 (1) (n) of Securities and Exchange Board of India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 information furnished by the *Company*, the drafting of the *Financials Results* started on April 20, 2021 and that finally came to be disclosed on May 25, 2021, thereby the above period commencing from April 20, 2021 to May 25, 2021 has been viewed as an UPSI Period (hereinafter referred to as '**UPSI Period**') i.e., the period during which the price sensitive information (PSI) remained unpublished and such non-public information was not generally available to the 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 was *prima facie* observed that the entities enjoying connection with the person who was reasonably expected to have access to the UPSI, have traded in the scrip of the *Company*. The abnormal and unusual trading pattern coupled with the connection through phone calls, blood relations and funds transferred also led to the *prima facie* observations that the trades executed in the scrip of *Lux* were executed while in possession of the UPSI. In this regard, it has been noticed that Mr. Sanjeev Bubna (hereinafter referred to as "**Sanjeev/ Entity no. 3**") through Indi Stock Private Limited (hereinafter referred to as "**Indi Stock/ Entity no. 4**"), Mr. Akshay Kapoor (hereinafter referred to as "**Akshay/ Entity no. 5**"), Mr. Arun Kapoor (hereinafter referred to as "**Arun/ Entity no. 6**") through Dinero Finance and Investments Private Limited (hereinafter referred to as "**Dinero/ Entity no. 7**"), Mr. Shubham Somani (hereinafter referred to as "**Subham/ Entity no. 9**") through the trading accounts of Mrs. Anju Somani (hereinafter referred to as "**Anju/ Entity no. 10**") and SS Corporate Securities Limited (hereinafter referred to as "**SS Corporate/ Entity no. 11**"), Mr. Sundar Somani (hereinafter referred to as "**Sundar/ Entity no. 12**"), Mr. Suyash Somani (hereinafter referred to as "**Suyash/ Entity no. 13**") and Evermore Stock Brokers Private Limited (hereinafter referred to as "**Evermore/ Entity no. 14**") have executed trades in the scrip of the *Company* during the period hovering around the corporate announcement of the *Financial Results* made by the *Company*.
- 4) It was observed during the course of examination that Mr. Udit Todi (hereinafter referred to as "**Udit/ Entity no. 1**") working as President of Strategy in the *Company* and as an Additional Executive Non – Independent Director of the *Company* who is the son of Mr. Pradip Kumar Todi, the Managing Director of the *Company* and is also a part of the list of 'Designated Persons' of the *Company*, was *prima facie* observed to be a 'connected person' in terms of regulation 2(1)(d) of the PIT Regulations 2015 and consequently was *prima facie* viewed as an 'insider' in terms of regulation 2(1)(g) of the said Regulations.

- 5) It was further noticed during examination that Ms. Avani Todi (hereinafter referred to as “**Avani/ Entity no. 2**”), Sanjeev (*Entity no. 3*), Mohd Mujtaba Ali Khan (hereinafter referred to as “**Mujtaba/ Entity no. 8**”) were having close connections and were in contact with Udit through telephonic communication during the UPSI period which gave rise to a strong preponderance of probability of receipt of UPSI or reasonable access to the UPSI by them through Udit, hence, these *Entities* were *prima facie* observed to be insiders as well, as far as the UPSI is concerned. Additionally, Ms. Avani being the wife of *Entity no. 1* and daughter in law of the MD of the *Company* was also observed *prima facie* to be having access to the UPSI. Similarly, *Entity no. 3* is the father of *Entity no. 2* which has strongly given rise to a belief that he was having access to the UPSI through *Entity nos. 1* and *2* as well. Further, Akshay (*Entity no. 5*), who share a close relationship with Mujtaba (*Entity no. 8*) and Udit, is found to have business links with the Somani family (*Entity nos. 9, 10, 12 and 13*) with whom he has apparently shared the UPSI and thus rendered the Somani family to the category of insiders as well. Also, two trading members (Stock Brokers) in the market i.e SS Corporate (*Entity no. 11*) and Evermore (*Entity no. 14*) through their links with the Somani family, are seen to have indulged in insider trading in their proprietary accounts *prima facie* on the basis of possession of UPSI by Shubham (*Entity no. 9*) who was seen to have received the UPSI from Akshay.
- 6) As stated earlier, it was noticed during examination that the *Entities* were connected to each other on the basis of blood relationship, social media profiles, financial transactions, etc. Therefore, it is relevant here to refer to the details of such connections that exist between the *Entities*. The same are indicated as under:
- a) Udit (*Entity no. 1*) is husband of Avani (*Entity no. 2*) and son-in-law of Sanjeev (*Entity no. 3*) as *Entity no. 2* is daughter of Sanjeev (*Entity no. 3*). Further, Indi Stock (*Entity no. 4*) is under absolute control of Sanjeev (*Entity no. 3*) who places orders in the trading account of *Entity no. 4*.
 - b) Mujtaba (*Entity no. 8*) is a close friend of *Entity no. 1*. Further, Akshay (*Entity no. 5*) is a Facebook friend of *Entity no. 1* and both of them had education in a college at Delhi. Also, *Entity no. 5* is the son of *Entity no. 6* and Dinero (*Entity no. 7*) is a family controlled company of *Entity nos. 5* and *6*, where *Entity no. 6* places orders in the trading account of *Entity no. 7*. Shubham (*Entity no. 9*) and Akshay (*Entity no. 5*) are common directors in Kleazy Hygiene Ventures LLP who are also seen to have been frequently communicating with each other over phone calls. Anju (*Entity no. 10*) is mother of *Entity no. 9* in whose trading account, *Entity no. 9* places order. Further, *Entity nos. 5* and *10* also enjoy business interest and were seen to be having financial relationships as, the funds provided by *Entity no. 10* to *Entity no. 5* were seen to be transferred by *Entity no. 5* to his trading member i.e., S S Corporate (*Entity no. 11*) and *Entity no. 5* is seen to

have executed buy transaction in the scrip of *Lux* in his trading account on the very same day. *Entity no. 10* has also been frequently communicating over phone with the *Entity no. 5*.

- c) *Entity no. 9* is a director and major shareholder of S S Corporate (*Entity no 11*) who executed trades in the proprietary account of *Entity no. 11*. *Entity nos. 9* and *12* are also connected through family thread and enjoy the relationship of nephew and uncle. Similarly, Suyash (*Entity no. 13*) is the son and cousin of *Entity nos. 12* and *9*, respectively and is seen to have been talking over phone with the *Entity no. 12* during the UPSI period. Also, *Entity no. 9* who was a former director of *Entity no. 14* is currently the Director of Business Development at Evermore (*Entity no. 14*).
- 7) It was observed from the trading details that **Indi Stock/Entity no. 4** (through *Entity no. 3*), **Akshay/Entity no. 5**, **Dinero/Entity no. 7** (through *Entity no. 6*), **Anju/Entity no. 10** (through *Entity no. 9*), **S S Corpportae/Entity no. 11**(through *Entity no. 9*), **Sundar/Entity no. 12**, **Suyash/Entity no. 13** and **Evermore/Entity no. 14** had traded in the scrip of *Lux* during the UPSI Period i.e. prior to the corporate announcement of *Financial Results* and subsequently soon after the announcement, have offloaded the shares that were bought during UPSI period. As a result of these buy and sell trades, *Entity nos. 4, 5, 7, 10 to 14* have earned profits from such trades. It was *prima facie* held that the trades in the scrip of *Lux* executed from the trading accounts of *Entity nos. 4, 5, 7, 10 to 14* appeared to be trades not executed in the normal course of dealing in securities.
- 8) Having considered the information unearthed during the course of initial examination of the trading in the scrip of *Lux* an *ex-parte ad Interim* Order dated January 24, 2022 (hereinafter referred to as '**Interim Order**') was passed in respect of the aforementioned 14 *Entities* wherein it was observed that said 14 *Entities* have *prima-facie* acted in violation of the provisions of the SEBI Act, 1992 and the 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 engaging in trading in the scrip of *Lux* 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 the *Entity nos. 1 to 14* on the basis of call records, commercial & financial relations, blood relations, etc. have been elaborately illustrated in details, in the respective part of the *Interim Order* with the help of diagrams. 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* have been 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*. It is also noted that directions with regard to the opening of escrow accounts and depositing the alleged wrongful gains have been duly complied with by the *Entities* and SEBI has 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 on different dates as mentioned in the table below:

Entity	Date of completion of Inspection
<i>Entity nos. 3 and 4</i>	March 23, 2022
<i>Entity nos. 9 and 10</i>	March 16, 2022
<i>Entity no. 14</i>	March 22, 2022

- 12) Pursuant to the receipt of the afore-stated written submissions made by *Entities*, an opportunity of personal hearing was granted to them on April 21, 2022. During the course of hearing held on April 21, 2022 all *Entities* (except *Entity nos. 3 and 4*) appeared through their respective Authorised Representatives and made submissions on the lines of their respective replies filed by them. Further, *Entity nos. 3 and 4* appeared through their AR on May 05, 2022 and made submissions in line with their replies filed in this regard. During the course of personal hearings held on April 21, 2022 and May 05, 2022, the *Entities* have also reiterated their prayers for withdrawal of the directions in the *Interim Order*. The ARs of *Entity nos. 9 to 13* and *Entity no. 14* have now filed their post hearing submissions vide letter dated May 09, 2022(received on May 11, 2022) and April 28, 2022, respectively. The details of their written & oral submissions and post hearing submissions of the *Entities* are placed in the subsequent paragraphs of this Order.

Replies of Entities

Entity nos. 1 and 2

- 13) I note that *Entity no. 1* (Udit) and his wife i.e., *Entity no. 2* (Avani) in their combined replies dated February 01, 2022 and February 14, 2022 to the *Interim Order* and also in the oral arguments advanced during the personal hearing, have made the following submissions: -

- 13.1 There was no urgency in passing the *ex-parte Interim Order* qua the *Entities* considering SEBI had almost a year to investigate, and yet no concrete findings have been arrived at. The *Interim Order* contains no cogent findings to justify the urgency in issuing the directions, disregarding the severe prejudice caused to the *Entities*. Reliance is placed on Orders passed by Hon'ble Securities Appellate Tribunal (hereinafter referred to as

“SAT/Tribunal”) in *Zenith Infotech Limited vs. SEBI* (Order dated July 23, 2013), *Pancard Clubs Limited vs. SEBI* (Order dated September 17, 2014).

- 13.2 The *Interim Order* cannot be passed merely on the basis of presumption and without any evidence. Reliance is placed on the orders of Hon’ble Tribunal in the matters like *North End Foods Marketing Pvt. Ltd. vs. SEBI* (order dated March 12, 2019), *Udayant Malhountra vs. SEBI* (affirmed by Hon’ble Supreme Court of India).
- 13.3 The *Interim Order* defies the principles of natural justice since SEBI has failed to afford a single opportunity of hearing to them before levelling serious charges of violation of the PIT Regulations upon the *Entities*.
- 13.4 The role of *Entity no. 1* in the *Company* was limited to setting up new facilities for growth plans, participating in business expansion, marketing and brand management of specific segment. He looks after the women's wear segment of Lux. Therefore, there was no scope for him to be aware of the contents of the alleged UPSI i.e., the financial results of the *Company*.
- 13.5 Without prejudice, even if *Entity no. 1* had access to the alleged UPSI before its publication, he never shared any inside information of the *Company* to any person.
- 13.6 The alleged communications with the *Entity nos. 3* and *8* were in the ordinary course of family affairs / friendly conversations. *Entity no. 3* is the father of his wife, (i.e., *Entity no. 2*) and *Entity no. 8* is his college friend since 2008. Therefore, there was nothing out of the ordinary as regards the said communications, and the same were not for communicating any UPSI whatsoever.
- 13.7 The *Interim Order* is entirely silent on any motivation for them to pass on the alleged UPSI. There is no finding on any benefit gained by them for passing on the alleged UPSI.
- 13.8 There was ample positive information circulating in the public domain during and before the alleged UPSI period. There was no reason for the trading *Entities* to rely on any alleged UPSI. The positive nature of the financial results for the Quarter Ending March 2021 was well anticipated, and therefore ceased to remain ‘unpublished’.
- 13.9 The *Interim Order* fails the test of showing ‘preponderance of probabilities’ for imputing a serious charge of insider trading. The entire *Interim Order* is based on conjectures, surmises, and unfounded assumptions.
- 13.10 There is also no finding on actual passing of UPSI, as merely demonstrating Call Data Records (**CDRs**) or connections, is not sufficient to prove a charge of insider trading.

- 13.11 Though *Entity no. 1* is categorised as a ‘Designated Employee’ under the insider trading policy of the *Company* due to his senior position, admittedly, he had no role whatsoever in preparing or even overlooking the preparation of the financial statements of the *Company*. Therefore, *Entity no. 1* denies that any UPSI regarding the financials of the *Company*, even if existed during the alleged period, were known to him.
- 13.12 *Entity no. 2* has no involvement in the affairs of the *Company* and was never even holding any shareholding in the *Company*. There is absolutely no reason to arraign her in the present proceedings.
- 13.13 It is appalling to note that SEBI has derived CDRs to show conversations between a father and his daughter and son-in-law. We are close relatives and there cannot be anything unusual about conversations between family members. Even during the alleged UPSI period, they have interacted with *Entity no. 3* in the ordinary course of family affairs.
- 13.14 Even the *Interim Order* does not allege any benefit incurred to *Entity nos. 1* or *2* from the alleged insider trading of the other *Entities*. Based on such paltry evidence, SEBI has writ large erred in arriving at strong conclusions, and moreover, issuing grievous *ex-parte* directions basis such false and inaccurate conclusions.
- 13.15 On no occasion was any UPSI passed on by *Entity no. 1* to *Entity no. 8* and neither do they discuss the stock markets. In fact, *Entity no. 8* never even participates in the stock market and does not even hold a demat account. As regards the phone-call on May 14, 2021, *Entity no. 1* had called up *Entity no. 8* to wish him on the occasion of ‘Eid’ considering that he is a Muslim.
- 13.16 Even assuming that *Entity no. 1* communicated the alleged UPSI to *Entity no. 8*, there is no finding in the *Interim Order* that *Entity no. 8* utilised such information for trading or at least that *Entity no. 8* benefitted from the trades conducted by the other trading *Entities*
- 13.17 No connection is shown between him and the ultimate trading *Entities* in the *Interim Order*, without which, SEBI’s assumption that *Entity no. 1* intended to help his friends /relatives /acquaintances falls apart.
- 13.18 *Entity nos. 1* and *2* categorically state and affirm that they have never indulged in transmitting any UPSI whatsoever. In any event, knowledge of merger of various companies with *Lux* and consequential benefits and impact on financials was already in public knowledge.
- 13.19 *Entity no. 1* has also stated that while alleging communication of UPSI, it is imperative that SEBI provides cogent evidence to support the allegation that there was

communication of UPSI. He has further referred to and relied upon the judicial decisions in the following matters:

- *Securities and Exchange Commission v. Ladislav Larry Schwabo* (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);
- The Hon'ble Supreme Court the matter of *SEBI v. Kishore R. Ajmera* (2016) 6 SCC 368)

- 13.20 Same standards even apply to the findings of communication between *Entity nos. 5* and *8*. While CDRs are shown between *Entity nos. 5* and *8*, there is no evidence to show why calls of such long duration were made merely for passing on UPSI.
- 13.21 As regards the reliance in the *Interim Order* on Facebook connections, reference is made to the order of the learned WTM in the matter of *Palred Technologies Ltd.* (Order dated August 13, 2019), wherein it was observed that “*Although Facebook connection backed by trading pattern raises a cloud of suspicion, this by itself, is not sufficient to hold someone guilty of a serious violation like Insider Trading.*”
- 13.22 The *Interim Order* is entirely silent on whether *Entity nos. 1* and *2* gained in any manner from the alleged transmission of UPSI. It is merely stated that they enabled their relatives’ /Facebook friends to earn profits. There is not even a finding that such profits or a portion thereof was sourced back to *Entity nos. 1* and *2*, or atleast that there were any financial dealings between them and any other trading *Entities*.
- 13.23 *Entity no. 1* had neither motive nor any benefit in enriching people with such meagre profits. None of the remaining trading *Entities* were deemed connected to him, and therefore, the burden of proof is on SEBI to show that *Entity no. 1* passed information to others without any motive or benefit, simply to ruin his entire reputation and career.
- 13.24 A brief perusal of the insignificant connections that SEBI has sought to establish between the *Entities* shows that it has proceeded under the presumption that the only reason for trading by any person in the *Company* would be based on inside information. SEBI ignored the fact that the public domain during and even before the alleged UPSI Period contained overwhelming information on why one must buy the share of *Lux*.
- 13.25 It was well-known to the public that the *Company* has been on a growth trajectory since the 3rd quarter of FY 20-21. In fact, since February 2021 the price of the scrip of *Lux* was on a constant rise.

- 13.26 In light of the above submissions, the restraint imposed on *Entity nos. 1* and *2* ought to be vacated/revoked forthwith without any further adverse observations or directions.

Entity nos. 3 and 4

14) I note that *Entity no. 4* (Indi Stock) vide letters dated February 12, 2022 & February 22, 2022 and *Entity nos. 3* (Sanjeev) and *4* (Indi Stock) vide their common letter dated March 10, 2022 and April 04, 2022 have filed their replies. Their written submissions as well as oral submissions made during the hearing are summarised as under:

- 14.1 *Entity no. 3* (Sanjeev), works as a registered mutual fund distributor. Due to the operation of the *interim* directions, his AMFI Registration Number (77166) is currently disabled, effectively stopping his distribution business. *Entity no. 3* is also precluded from participating in the stock markets which is causing him undue hardships. To illustrate, *Entity no. 3* holds about 40 shares in Tata Consultancy Services and is precluded from tendering his shares in the ongoing buy-back whereby shares are being bought back by the company at INR 4500 which is about INR 1000 above the market rate.
- 14.2 Similarly, *Entity no. 4* is a Non-Banking Financial Company (**NBFC**), and its primary business is investment and trading on the recognised stock exchanges and the business of lending and borrowing. It is thus, severely prejudiced by the aforesaid direction contained in the *Interim Order*, which has been passed at a preliminary stage, without investigation being concluded in the matter. *Entity no. 4* has to pay interest on borrowings and deposit TDS, etc. Similarly, taxes and salaries to its staff have to be paid. For the purposes thereof, certain assets of *Entity no. 4* have to be divested, a function it is unable to perform due to the restraint imposed by SEBI.
- 14.3 Therefore, the directions contained in the *Interim Order* are causing *Entity nos. 3* and *4* grave prejudice and the bar imposed on them vide said order should be lifted till completion of proceedings as they have already deposited the amounts impounded on them and thus, no prejudice will be caused to SEBI or the markets if the interim debarment is lifted and they are permitted to conduct their business.
- 14.4 The *Interim Order* has been passed in an *ex-parte* fashion merely on the basis of suspicion and conjectures and without any cogent reasons for issuance of the same. In light of the fact that no such hearing has been provided, and the fact that the requirements of dispensing with pre-decisional hearing in exceptional circumstances have not been met by SEBI, the *Interim Order* suffers from the vice of arbitrariness and is liable to be set aside.
- 14.5 From the observations set out in the *Interim Order*, it is evident that SEBI has already concluded that the impugned trades were motivated by UPSI and therefore, has

directed the impounding of the alleged profits from the *Entities* and therefore, filing of reply and a post decisional hearing at this stage is nothing more than a formality in the present matter.

- 14.6 Considering the fact that the investigation in the matter was initiated back in May 2021, there was no urgency to pass an *ex-parte* order without hearing or asking for an explanation in the matter. The justification given by SEBI to explain urgency is itself against the principles of what essentially constitutes ‘urgency’. Urgency needs to be shown on a factual footing and not merely on anticipation. In this regard, the *Entity nos. 3 and 4* have relied upon the observations in the following judicial decisions:
- Hon’ble Supreme Court in the matter of *SEBI vs. Udayant Malhontra (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 *Pancard Clubs Limited vs. Securities and Exchange Board of India (Appeal No. 254 of 2014 with M.A. No. 104 of 2014)*
- 14.7 The *Interim Order* is in effect an attachment before judgment as there is a direction passed to deposit the alleged unlawful gains.
- 14.8 *Entity no. 3* did not have access to any UPSI as alleged in the *Interim Order*. Without establishing as to when and how UPSI, if any, came to be in the possession of *Entity nos. 1 and 2*, SEBI is precluded from surmising that UPSI would have been passed on *Entity no. 3* by *Entity nos. 1 and 2*. SEBI has failed to produce any evidence demonstrating that *Entity nos. 1 and 2* were in possession of such UPSI, and therefore, the order is *ex-facie* erroneous.
- 14.9 SEBI has not brought on record any evidence whatsoever of any flow of UPSI from *Entity nos. 1 and 2* to *Entity no. 3*, but merely arrived at a conclusion by virtue of the relationship shared between them. It is submitted that SEBI itself, in the matter of *Sanjay D. Gala & Ors. (Order dated December 2, 2016)* has held that only relationship cannot be relied upon for arriving at the conclusion that a person was in possession of UPSI.
- 14.10 The *Interim Order*, has failed to appreciate that the trades of *Entity no. 4* (placed by *Entity no. 3*), was based on the reporting of positive performance of the *Company* by media houses and brokers. In fact, right from March 2021, various renowned media houses had commented on the positive financial performance of *Lux* for the F.Y. ending March 2021. For example, the Times of India, in its article dated April 8, 2021 titled “*Lux to clock Rs 1800 cr revenue post-merger*”, discussed the NCLT’s approval of the composite scheme of amalgamation of J M Hosiery & Co. and Ebell Fashions Private

Limited with *Lux*, and stated that the profit after tax of the consolidated unit of Lux would be INR. 177 Crore, up from the existing level of INR 122 Crore.

14.11 SEBI has come to its conclusive findings holding the *Entity nos. 3 and 4* guilty, admittedly only on the basis of so called “preponderance of probabilities”. It is settled law that the communication of UPSI cannot be assumed merely on the basis of the relationship between the parties or merely on the basis of the trading done, and that additional evidence is required to establish the charge. To further buttress the arguments, *Entity nos. 3 and 4* have relied in the following judicial decisions:

- Hon’ble SAT in the matter of *Shruti Vora vs. SEBI (Appeal No. 308 of 2020)*
- Hon’ble SAT in the matter of *HB Stockholdings vs. SEBI (Appeal No. 114 of 2012)*
- Hon’ble SAT in the matter of *Dilip S. Pendse vs. SEBI (Appeal no. 80 of 2009, decided November 19, 2009);*
- Hon’ble Supreme Court of India in the matter of *SEBI vs. Shri Kanaiyalal Baldevbhai Patel ((2017) 15 SCC 7)*

Entity nos. 5, 6 and 7

15) I note that *Entity no. 5* has submitted joint replies on his as well as on behalf of his father (*Entity no. 6*) and Dinero (*Entity no. 7*, an entity controlled *inter alia* by *Entity nos. 5 and 6*) vide letter dated February 14, 2022 which are summarised as under:

- 15.1 The findings that *Entity no. 5* received UPSI from *Entity no. 8* (Mujtaba), who is one of his old college friends, is incorrect and baseless. Further, the latter part of allegation that *Entity no. 5* passed the alleged UPSI received from Mujtaba to his father (*Entity no. 6*) and his another friend i.e., *Entity no. 9* (Shubham), with whom his friendship goes back to his school days, is utterly false and is a cock and bull story.
- 15.2 *Entity no. 8* (Mujtaba) and *Entity no. 1* (Udit) are friends from their college days. Notably, *Entity no. 5* and *Entity no. 8* also became friends over a decade ago during their undergraduate days through mutual friends. In fact, *Entity nos. 5 and 8* had even planned on starting a health and hygiene related e-commerce venture during the 2nd Wave of Covid-19 by the name of Kleazy Ventures. Whereas, *Entity no. 5* came to know about *Entity no. 1* since the year 2011, as they both did their post- graduation together in the same course from London.
- 15.3 *Entity no. 6* (Arun), father of *Entity no. 5*, has been an active investor in the securities market for over 32 years now and has absolutely clean antecedents. Significantly, around the alleged period (and even before that) *Entity no. 6* was already very bullish on the textiles industry (from even before the period considered in the *Interim Order*)

and invested through *Entity no. 7* (Dinero) over INR 4.7 Crore in textiles scrips between 30.03.2021 to 24.01.2022, and sold some of these investments at profit.

- 15.4 Further, *Entity no. 6* had also bought textile shares worth INR 1.35 Crore in his individual account during the contemporaneous period with **no purchase of Lux**. Most significantly, *Entity no. 6* invested INR 67.7 Lakh into textiles shares between 10.05.2021 to 24.05.2021 and over INR 43.1 Lakh between 14.05.2021 to 24.05.2021 with no purchase of *Lux*. But, the *Interim Order* ignores all these crucial facts. On the contrary, the *Interim Order* baselessly, vaguely and impermissibly assumes that *Entity no. 5* passed on some UPSI to his father (*Entity no. 6*) on/after May 14, 2021 whereas clearly it was *Entity no. 6*'s bullishness on textile sector that had persuaded *Entity no. 5* to invest into *Lux*, a scrip which was seemingly bullish in media and amongst some renowned brokers during that time. Going by the market experts who feature on news channels, *Lux*'s scrip was a 'hot pick' and thus both *Entity nos. 5* and *6* made a miniscule investment in *Lux* as well to test the waters.
- 15.5 Impermissible, baseless and incorrect assumptions are replete in the *Interim Order*. For instance, no SMS was sent by *Entity no. 5* to *Entity no. 8* on May 14, 2021 (the day when UPSI is alleged to have been passed on to *Entity no. 5* by *Entity no. 8*) at 5:11 PM as claimed in the *Interim Order*. On confirmation, *Entity no. 5* states that the message *Entity no. 8* had received is an automated missed call alert from Airtel that *Entity no. 5* was not even aware of until he sought a confirmation recently while scrutinizing the *Interim Order*.
- 15.6 Phone calls made on May 14, 2021 where the *Interim Order* alleges that UPSI was allegedly passed on *Entity no. 5* by *Entity no. 8*, was actually on the occasion of festival of Eid when *Entity no. 1* is also found to have talked to *Entity no. 8*. Further, as per *Interim Order*, there were no telephonic communications between *Entity no. 5* and *Entity no. 1* during or even in proximity to the UPSI period.
- 15.7 From May 14, 2021 and up until purchasing any shares of *Lux*, *Entity no. 5* had purchased 8 individual equity scrips in the cash market for over INR 70 Lakh and 6 individual equity scrips were sold in the cash market with a value of over INR 83 Lakh by May 24, 2021 which shows that there was nothing unusual in his trading behaviour when it came to *Lux*. If buying before financial results and selling after they come out, is in itself suspicious, a significant majority of investors in the Indian market should face charges of Insider Trading. Had SEBI perused *Entity no. 5*'s past trading behaviour in other scrips they would have found that there was nothing unusual in his dealing with *Lux*.

- 15.8 It is incorrectly observed in the *Interim Order* that *Entity no. 5* had bought shares of *Lux* from the money received from *Entity no. 10* (Anju) whereas the truth is that *Lux* shares were bought from the funds already available in his account and the fund transfer of INR 20 Lakh from *Entity no. 10* (Anju) went straight to the margin account and were used as margin collateral for the SunTV Futures trade taken on the same date. On May 24, 2021 (the day when the shares of *Lux* were bought) the buy value for all trades of *Entity no. 5* was INR 83.31 Lakh out of which the *Lux*'s trade only accounted for INR 10.85 Lakh. It is less than 14% of the buy value for that particular day itself.
- 15.9 *Entity no. 5* had no shortage of funds and had requested for funds from *Entity no. 10* around that time for increasing positions in the Sun TV's Futures trade which was significantly bigger than the *Lux* trade, for which margins were required. *Entity no. 5* herein also wishes to put on record that he has taken an interest-bearing total loan of INR 2,60,32,135 as of February 14, 2022 @ interest of 12% per annum. Proper interest has been capitalized in the audited books and TDS has been paid to the government on the same.
- 15.10 It has been assumed in the *Interim Order* that merely because *Entity no. 5* is friends with *Entity no. 1*, he is restricted from trading into *Lux*'s scrip or his trading should be viewed as insider trading and such assumption of SEBI has no basis in law.
- 15.11 Even going by the version/theory of SEBI, there is absolutely no proximity between the call between *Entity no. 5* and *Entity no. 8* (on May 14, 2021) and the trading done by *Entity no. 5* and *Entity no. 6* in the scrip of the *Company* on May 24, 2021. It would be illogical to assume that a person with UPSI would wait for a period of 10 days to enter into the trade, especially when they had sufficient funds and when the scrip price of *Lux* moved up almost by 10% between the said period.
- 15.12 The *Interim order* does not only throw *Entity nos. 5, 6* and *7* out of the securities market but it also puts an indelible blot on their names and causes irreparable injury to them. Therefore, they seek an urgent hearing to explain the matter and will also file detailed representation in writing if so desired. In the interregnum, kindly recall said *Interim Order* which also transgresses on their rights, even their constitutional rights.

Entity no. 8

- 16) It is noted that vide letter dated March 03, 2022 and oral submissions made during the course of hearing, *Entity no. 8* has advanced following submissions in his defence:
- 16.1 *Entity no. 8* has never invested into share market throughout his life nor, possesses any knowledge about the same. *Entity no. 8* has not invested any amount and hence, could not make any secret profit nor personal gain, directly or indirectly.

- 16.2 *Entity nos. 8, 1 and 5* are friends since college days and *Entity no. 8* regularly talks to them over calls as well as texts just like friends do. On May 14, 2021 *Entity nos. 1 and 5* had called *Entity no. 8* for wishing Eid in a similar manner like other friends, relatives and connections had also called him and the telephonic conversations were not related to any trading of shares rather they were personal conversations like normal friends do.
- 16.3 Contrary to the finding of *Interim Order*, *Entity no. 5* did not send any text message to *Entity no. 8* on May 14, 2021 i.e., the day of Eid and the said text message that was sent to/received by *Entity no. 8* at 5:11 pm is, in fact, an automated missed call alert message which was sent by the network provider i.e. Airtel in the present case.
- 16.4 There is nothing on record at the time of passing of the *Interim Order* except that *Entity no. 8* had calls with *Entity nos. 1 and 5* with whom he has been in regular touch.
- 16.5 The blanket *interim order* is in gross violation of the principle of *audi alteram partem* in as much as no opportunity of being heard was granted to *Entity no. 8* before passing of the *interim order*. It is a known fact that no person could be penalized before giving adequate opportunity of being heard.

Entity nos. 9 and 10

- 17) I note that *Entity no. 9* (Shubham) vide his letter dated February 15, 2022 has filed common replies on his behalf as well as on behalf of his mother i.e., *Entity no. 10*(Anju) and along with his submissions made before me in the hearing, has submitted as under:
- 17.1 *Entity no. 10* had no involvement in the impugned trades, and all trading decisions in her trading account are made by *Entity no. 9* and it is requested that no adverse order be passed against her, and the present SEBI Order and proceedings be limited to *Entity no. 9*.
- 17.2 *Entity nos. 9 to 13* are all associated and related with each other for a long time and therefore, the exercise of SEBI in trying to connect the *Entities* is not only irrelevant but superfluous given the admitted relationship between these *Entities*.
- 17.3 SEBI has not even pointed out if during the so-called calls, if any information was communicated to one other and there is only a mere inference drawn without any basis.
- 17.4 *Entity no. 9* has been trading and taking investment decisions in the account of *Entity nos. 10 and 11* since a long time and the trading decisions in the accounts of *Entity nos. 10 and 11*, were made solely on the basis of independent research and extensive discussion with *Entity no. 12* who is his uncle and is an experienced player in the securities market. *Entity no. 9* decided to take position only in the scrip of *Lux* based

on his conviction on the research analysis and discussions with *Entity no. 12* and thus traded in the account of *Entity nos. 10* and *11*, which only shows the extent of his conviction in the scrip of *Lux*.

- 17.5 When compared with all their other trading and investments, the impugned trades can reasonably be stated to be “in the course of investments and regular business” and nothing else.
- 17.6 There are several Crore of transactions between *Entity nos. 5* and *10*, but unfortunately SEBI has cherry picked a transaction of INR 20 Lakh on May 24, 2021, to allege that his mother i.e., *Entity no. 10* was financing/ facilitating insider trading by *Entity no. 5* in the scrip of *Lux*. It is pertinent to note that *Entity no. 10* has had a turnover of over INR 4.07 Crore in the capital market segment during the period from January 1, 2021 to April 19, 2021, and a turnover of over INR 18.48 Crore in the Future and Options segment during the corresponding period.
- 17.7 Based on research and several reports in general and SMIFS report in particular (on 4 innerwear stocks, published on April 6, 2021), *Entity no. 12* realised that investments in cotton and hosiery industry would be very promising. Upon getting this advice from his uncle i.e., *Entity no. 12*, *Entity no. 9* immediately began researching in the scrip of *Lux* and came to the realization that the shares were going to see a massive rise pursuant to the announcement of the financial results for the Quarter and Financial Year ended March 31, 2021. Also, in the financial quarters starting October 1, 2020, up to pre-trade time, i.e., the week of May 21, 2021, the scrip of *Lux* moved significantly lesser than its peers and was evidently available at a huge discount before the announcement of its results on May 25, 2021 and thus *Entity no. 9* traded in the scrip of *Lux*. *Entity no. 9* has taken results-based trades not just in *Lux*, but in several other stocks, including various types of companies such as SBI Futures, ZEEL Futures, Vodafone Idea Options, etc.
- 17.8 *Entity no. 9* sold 90% of the shares through trading account of *Entity no. 10* in a hurry, at approximately INR 3,040/- per share, in two lots, as and when his target price was achieved and retained 10% of the shares for long term investment, and still continues to hold the same.
- 17.9 A detailed review of CDRs of *Entity no. 9* will show that he had telephonic conversations with *Entity no. 5*, almost on daily basis throughout the alleged UPSI period. In the scenario that *Entity no. 9* possessed UPSI, the same could have been transmitted to him much before May 25, 2021, and he could have traded on that basis much earlier and increased his gains multi-fold. However, *Entity no. 9* placed purchase orders (through trading accounts of both *Entity nos. 10* and *11*) only on May 25, 2021,

when the price of the scrip has already risen significantly. Therefore, *Entity no. 9* was never in possession of UPSI from *Entity no. 5* or otherwise.

- 17.10 SEBI has failed to discharge its burden in proving that *Entity no. 9* is an insider holding the alleged UPSI.
- 17.11 Trades in the shares of the *Company* have been executed based on publicly available information and not based on any UPSI.
- 17.12 Conversations and Financial Transactions with other *Entities* were legitimate and independent of the trades in shares of the *Company*.
- 17.13 *Entity no. 9* has not divulged any UPSI to any *Entity*
- 17.14 The *Interim Order* has been passed in violation of the principles of natural justice. Reliance has been placed on judicial decisions such as Hon'ble SAT in the matter of *Anugrah Stock & Broking Private Limited vs. NSEIL* decided on August 17, 2020.
- 17.15 SEBI has proceeded to invoke Section 11 and 11B only on the basis of preliminary examination and not a preliminary investigation and reference is drawn to the decision of Hon'ble Tribunal in the matter of *Bhoruka Financials vs. SEBI* decided in May 2006.
- 17.16 The *Interim Order* is in the nature of an attachment before judgment, and must be declared void on such ground, and disposed of without any further adverse findings. There is not even a hint of allegation that there is any suspicion that *Entity nos. 9* and *10* may alienate their property with a view to nullifying any future SEBI order. On this ground as well, the *Interim Order* is liable to be struck down with immediate effect.
- 17.17 One of the major source of income is derived from trading in the securities market for *Entity nos. 9* and *10*. The restriction imposed upon them to refrain from dealing in the securities market is leading to loss of livelihood and opportunity and they are neither able to hedge or dispose our investments/portfolio against the intense outgoing volatility in the market.
- 17.18 There is no requirement for continuation of restraints after deposit has been made in compliance with the directions of the *Interim Order*.

Entity no. 11

18) I note that the oral submissions advanced by *Entity no 11* during the hearing, its replies made vide letters dated February 14, March 03 and March 24, 2022 and post hearing submissions of *Entity no. 11* are narrated as under:

- 18.1 *Entity no. 11* has adopted the submissions made by *Entity no. 9*.

- 18.2 *Entity no. 9* has been trading and taking investment decisions in *Entity no. 11* since a long time and all the trades undertaken are on the basis of independent research and extensive discussion with *Entity no. 12* who is uncle of *Entity no. 9*.
- 18.3 SEBI has not even pointed out if during the so called calls, if any information was communicated to one other and there is only a mere inference drawn without any basis. A charge of insider trading being a serious charge could not have been passed on the basis of mere preponderance or SEBI's assumptions without reviewing the complete records.
- 18.4 SEBI has failed to consider that trading in the *Company's* scrip is not out of the ordinary course as *Entity no 11* has also placed orders in the scrip of 9 other companies functioning within the same industry in the last three financial years. The trades conducted in the present scrip reaped profits based on the market sentiment and cannot be attributed to possession of UPSI.
- 18.5 A commonly used strategy by *Entity no 11* is to monitor scrip prices and trade before and immediately after the announcement of *inter alia* quarterly financial results, annual reports, corporate announcements, research reports and any other corporate events. These events very often display significant movement in share prices. For example, *Entity no 11* has traded in the shares of Havells India Ltd, PVR etc.
- 18.6 Proprietary and arbitrage trading of *Entity no 11* constitute a major portion of its revenues as compared to very small income from broking and depository services. By restraining *Entity no 11* from accessing the securities market, SEBI has cut out its main source of revenue and gravely affected its livelihood and of its people.
- 18.7 *Entity no 11* is facing massive losses due to the fall in the securities market and is unable to even sell the shares held by it to recover the loss, and the value of the same is decreasing day by day. The value of the portfolio which was valued at INR 14.17 Crore as on January 25, 2022 is depleted to INR 11.64 Crore as on March 02, 2022, thereby causing a loss INR 2.53 Crore.
- 18.8 The loss of income is not only affecting it but also the people working in its office. There are around 60 people who are working and its operating cost including the expenses for the day to day running of the office is around INR 40 Lakh per month. With very minimal brokerage income and no other income being generated, there is continuous prejudice being caused to everyone associated with it. In light thereof, *Entity no 11* is seeking for kind intervention to issue *interim* relaxation of the directions contained in paragraph 81(a) of the *Interim Order* till the investigation is over. *Entity no*

11 requests to permit it to trade in securities except in the scrip of *Lux*, pending the disposal of the proceedings.

Entity no. 12

19) Vide letter dated February 16, 2022, *Entity no. 12* has filed his reply. The oral submissions made during the hearing and reply submitted by *Entity no. 12* are narrated as follows:

- 19.1 Regulation 4(2) of the PIT Regulations puts the onus upon SEBI to demonstrate, in case of a non-connected person, alleged to be an insider, the presence of UPSI with such party. As *Entity no. 12* is not a connected person, the onus is upon SEBI which has not been discharged by SEBI in the present case.
- 19.2 It is correct that *Entity no. 9*(Shubham) is my nephew, however, there is nothing to indicate that he has provided any UPSI to *Entity no. 12*. It is natural that, being family members, there would be telephonic conversations between them. These conversations have happened not only during the UPSI Period but also before and after the same.
- 19.3 It is *Entity no. 9*(Shubham) who regularly relies upon his research and guidance to invest in stocks. The investment in the scrip of *Lux* is also one such instance where *Entity no. 12* had recommended to Shubham. Shubham has also, in line with his research and suggestion, invested in various stocks including *Lux*. It is submitted therefore that the trading by him, *Entity no. 13*(Suyash) and Shubham in *Lux* and other hosiery stocks have been based on my research.
- 19.4 The trading by *Entity no. 12* in the shares of *Lux* was not influenced by the UPSI but based on in depth research, various newspaper and social media articles and various reports such as SMIFS Report dated April 06, 2021, Anand Rathi Securities Report dated March 18, 2021.
- 19.5 The price of the shares of *Lux* have steadily increased during the alleged UPSI Period. Therefore, had *Entity no. 12* been in possession of UPSI, he would have purchased the shares on April 20, 2021 itself (when the UPSI came into existence as per SEBI), at a meagre price of INR 1,876.75/- per share. However, *Entity no. 12* did not do so which demonstrates that his trades were pursuant to the trading strategy of awaiting the financial results and not based on any USPI.

Entity no. 13

20) It is noted that the reply of *Entity no. 13* submitted vide his letter dated February 16, 2022 and his oral submissions made in the course of the personal hearing are briefly summarized as follows:

- 20.1 The trades were effected in the trading account of *Entity no. 13* by *Entity no. 12* with his consent and approval.
- 20.2 *Entity no. 13* repeats, reiterates and adopts the submissions made by his father i.e., *Entity no. 12* (Sunder).
- 20.3 The minuscule quantity of trading in his account indicates the lack of any UPSI being the basis or influencing the trading of *Entity no. 13*.

Entity no. 14

21) The Authorised Representative of *Entity no. 14* vide letters dated February 14, 2022 and April 17, 2022 has *inter alia* submitted as under:

- 21.1 In order to appropriately and adequately meet the allegations against *Entity no. 14*, an opportunity of inspections of documents is requested. Additionally, copies of the documents as specified in the said letter are also requested.
- 21.2 *Entity no. 14* further requests to extend the time to file reply, till such time the inspection and the said documents are provided and four weeks thereafter.
- 21.3 *Entity no. 14* was provided with a redacted copy of the information received from *Lux* during the inspection of documents provided by SEBI which renders *Entity no. 14* incapable of placing reliance upon the same or to examine.
- 21.4 It is not a fit case to pass *Ad-Interim Ex-Parte Order* and reliance is placed upon various orders including order dated March 30, 2022 passed by the Hon'ble SAT in the matter of *Jaya Hemant Ghai vs. SEBI (Appeal no. 111 of 2022)*.
- 21.5 *Entity no. 14* had a turnover of over INR 375.64 Crore in the cash segment during the period from January 1, 2021 to January 24, 2022, and a turnover of over INR 1967.02 Crore in the F&O segment during the corresponding period. Thus, it is evident that *Entity no. 14* has been a trader for decades and no such aspersions have ever been cast upon it.
- 21.6 SEBI has wrongly concluded that *Entity no. 9* is a director of *Entity no. 14* on the basis of the LinkedIn profile of the *Entity no. 9* and has overlooked the statutory filing i.e. Form No. DIR 11, which evidently states that *Entity no. 9* ceased to be a director of *Entity no. 14* since February 2017.
- 21.7 *Entity no. 9* had become shareholder of *Entity no. 14* by inheriting the shares upon his father's demise in February 2018. Prior to this *Entity no. 9* was not related to *Entity no. 14*. As on the date of the transaction i.e. May 24, 2021, *Entity no. 9* had already ceased to be a director and shareholder of *Entity no. 14* as *Entity no. 9* had entered into a Memorandum of Understanding (MoU) dated April 01, 2021 to sell his 9.61% stake

i.e. 2,86,966 to Evermore Global DMCC. The permission to transfer these shares was sought from the NSE, the BSE and the MSEI on May 10, 2021 and the same was received from the NSE on May 20, 2021, from the BSE on June 22, 2021 and from the MSEI on June, 28 2021. Evermore Global DMCC had transfer the fund on June, 14 2021 which could not be completed due to Emirates bank credit/Debit transactions policy. *Entity no. 14* has sought for extension through its email dated December 24, 2021 for a period of 3 months. However, thereafter another MOU was negotiated on December 26, 2021 which was an addendum to the original MOU dated April 01, 2021. Accordingly new application was filled with Exchanges i.e. the NSE, the BSE and the MSEI on March 15, 2022 for seeking permission for transfer of shares and got the permissions from the NSE on March 29, 2022, the BSE on March 28, 2022, and the MSEI on March 22, 2022. The shares were finally transferred on March 29, 2022.

- 21.8 All the decisions regarding the proprietary trading of *Entity no. 14* is taken by Mr. Tarun Dhabalia. Further, this proprietary trading desk is handled by Mr. Tarun Dhabalia from the office of *Entity no. 14*, which is located at GIFT City, Gandhinagar. It is pertinent to note that, no calls have been made to and from the desk handled by Mr. Tarun Dhabalia.
- 21.9 The landline numbers on which *Entity no. 9* has allegedly called were handled by the different individuals and were not at all related to the trading desk of *Entity no. 14* and therefore there is no passage of the UPSI from Entity no. 9 to Entity no. 14 as alleged in the *Interim Order*.
- 21.10 Unless and until it has been conclusively established that the UPSI was passed from *Entity no. 1* to *Entity no. 8*; *Entity no.* to *Entity no. 5* and *Entity no. 5* to *Entity no. 9*, it cannot be alleged that *Entity no. 9* was in possession of the UPSI. *Entity no. 9* is neither 'connected' nor a 'designated person' as defined under the SEBI (PIT) Regulations, 2015.
- 21.11 It is highly improbable that if someone is in possession of UPSI, he would sell the shares at a mere profit of 2.85% on May 24, 2021 i.e., same day when *Entity no. 14* bought shares of *Lux*. *Entity no. 14* had sold a total number of 18000 shares of *Lux* on May 26, 2021. It is reiterated that it is highly unlikely that if someone has UPSI, he would sell the shares at that price on that same day.
- 21.12 *Entity no. 14* has followed a pattern of executing BTST or STBT trades, on basis of the corporate announcements, including results or on basis of corporate action. *Entity no. 14* had followed this pattern while trading in the host of stocks including scrip of *Lux*.

- 21.13 If *Entity no. 14* was in possession any UPSI, as alleged, *Entity no. 14* could have purchased the shares of *Lux*, for much lesser price, during the period of UPSI i.e. April 20, 2021 to May 25, 2021. It would not have waited until a day prior to declaration of the results. Similarly, *Entity no. 14* should have sold at much higher price than the price at which *Entity no. 14* actually sold the shares of *Lux* on May 24, 2001 and May 26, 2001.
- 21.14 *Entity no. 14* had decided to invest in the shares of *Lux*, based upon the publicly available information and various research reports. *Lux* was not a standalone stock where *Entity no. 14* had traded. In fact, *Entity no. 14* had invested approximately INR 6.41 Crore in the scrips related to cotton/innerwear industry.
- 21.15 *Entity no. 14* has not booked unusual profit as compared to other scrips such as Adani Power, MCX, NMDC and R Power where it booked huge profits.

Post Hearing submissions of Entity nos. 9-14

- 22) The Authorised Representative of *Entity nos. 9-13* vide letter dated May 09, 2022 has submitted their post hearing submissions which are *inter alia* summarised as under:
- 22.1 Appropriate directions/relaxations in view of the decision of the Hon'ble Supreme Court in the matter of *SEBI vs. Bijal Shah (Civil Appeal No. 1488-1490 of 2022)* which has been followed by the learned Member in other matters, may also be passed in the present matter
- 22.2 The definition of UPSI under regulation 2(n) of the PIT Regulations only covers information which is not 'generally available'. The records and documents in public domain exclude the applicability of the said regulation in the present case.
- 22.3 Without prejudice, the UPSI according to SEBI was 'profitability' in the financial results which publically reported even by the *Company* in the announcement made to the exchanges on April 26, 2021.
- 22.4 SEBI has not satisfied the onus under regulation 2(1)(g) of the PIT Regulations of showing that the *Entities* were in possession of or had access to UPSI at the time of trading. Once the rationale of trades has been proved, the burden would lie upon SEBI to rebut the same.
- 22.5 Vide order dated April 19, 2022, in the matter of *Balram Garg vs. SEBI*, the Hon'ble Supreme Court has observed the factors to be considered while adverting to preponderance and presumptions.
- 22.6 The *Noticee nos. 9-13* request learned WTM to urgently consider their request of passing an urgent Corrigendum pending passing of the Confirmatory Order. They are not requesting therefore for an interim relief in the Confirmatory Order but an exoneration from the *prima facie* findings of SEBI.

23) The Authorised Representative of *Entity no. 14* vide letter dated April 28, 2022 has submitted post hearing submissions which are *inter alia* summarised as under:

- 23.1 SEBI has taken contradictory stand in the *Interim Order* in as much in para 64 at one place it records that the financials of the *Company* were ‘presumably finalised’ whereas at another place in the same para it records that the financials of the *Company* were ‘almost ready for discussion’. SEBI has presumed the existence of foundational facts i.e preparation of financial results. Unless and until this fact is conclusively established, it cannot even be said that *Entity no. 1* was in possession of UPSI, much less *Entity no. 14*.
- 23.2 If the financial results were presumably finalised and almost ready, then by no stretch of imagination, it can be alleged that the UPSI was unmistakably passed to *Entity no. 14*.
- 23.3 SEBI has reached to a conclusion that *Entity no. 14* is an insider only on the basis of circumstantial evidences which are not based upon foundational facts. In this regard, the reliance is placed on order passed by the Hon’ble Supreme Court of India in *Balram Garg vs. SEBI (Civil Appeal No 7054 of 2021, decided on April 19, 2022)*.

Consideration of Issues

24) In the light of the preliminary observations made in the *Interim Order*, submissions made by the *Entities* and materials available on record, it is relevant here to emphasise that the present proceedings are in the nature of confirmatory or revocation proceeding. The domain of the instant proceedings is very limited to the extent of assessing whether the *Entities* are successful in refuting the *prima-facie* observations of insider trading as recorded in the *Interim Order* conclusively or have been able to carve out a case warranting modification in the directions issued against them in the *Interim Order*. Before dwelling upon the submission of the *Entities* to the observations in the *Interim Order*, I would like to mention that the premise that became the basis of passing the *Interim Order* pertained to the backdrop of the *Financial Results*, wherein certain *Entities* enjoying connection through blood relations, phone calls, fund transactions etc. were found to have traded in the scrip of the *Company prima facie* while in possession of the UPSI about the *Financial Results*. It was observed that *Entity no. 1* being a connected person / insider in terms of the PIT regulations, 2015, has by communicating UPSI to the *Entity nos. 2, 3 and 8* enabled them to engage themselves in insider trading in the scrip of *Lux* either directly or indirectly through their connected *Entities* (*Entity no. 3* through *Entity nos. 4*), or have further aided and abetted other *Entities* (*Entity no. 5, 6, 7, 9-14*) to indulge in insider trading either through individual trading accounts (*Entity nos. 5, 12, 13*) or through trading accounts of their connected *Entities* (*Entity nos. 7, 10, 11, 14*) in the scrip of the *Company* while in possession of UPSI pertaining to the *Financial Results* of the *Company* and in the process, most of the said *Entities* had made ill-gotten gains. In addition to the above, there were fund transactions

amongst *Entity nos. 5 and 10* which provided strength to the *prima facie* observations of their engagement in insider trading activities in the scrip of *Lux*.

25) The above preliminary facts were observed as providing a sufficient cause demonstrating *prima facie* that the trades executed by the *Entities* in the scrip of *Lux* were executed while in possession of UPSI by the respective *Entities*. Before I proceed to examine as to whether or not the *Entities* have been successful in disputing the above stated *prima facie* observations and have been able to make out a case warranting relief in the directions of the *Interim Order*, I find it relevant to record certain facts from the submissions made by the *Entities*:

25.1 None of the *Entities* has disputed the *inter se* connection with each other, as mentioned in the *Interim Order*. Rather, they have admitted that their connection with other *Entities* existed for a longer period of time. For instance, *Entity nos. 1, 5 and 8* have admitted to have known each other since their school/college days. Further, *Entity nos. 9 to 13* have self-confessed that they are all associated and related with each other for a long time and are part of the Somani family.

25.2 There is no dispute with regard to the various phone calls exchanged between various *Entities* as recorded in the *Interim Order*. Further, *Entity nos. 5 and 10* have not denied the fund transfers executed between them as highlighted in the *Interim Order*. In fact, they have admitted to have entered into transactions worth several Crore of rupees between them and have further admitted that the transaction of INR 20 Lakh on May 24, 2021 between them was one such instance of their long standing financial relations. Thus, from the above, it emerges that the *Entities* are not strangers but known to each other so the *prima facie* observations pertaining to their connection is not found to be disputed, rather the same gets further reinvigorated on the strength of additional facts brought by the *Entities* in this regard.

26) In the above background, now I proceed to deal with the issue in the subsequent paragraphs of this Order as to whether, on the basis of submissions filed by the *Entities* and other materials available on record, the *Entities* have been successful in dispelling the *prima facie* observations of *Interim Order* conclusively or have made out a case for interfering with the directions of the *Interim Order*.

27) With regard to the observations pertaining to *Entity no. 1*, I note that the *Interim Order* has stated that the *Entity no. 1* being a connected person and aware about the *Financial Results*, had exchanged phone calls with *Entity nos. 2, 3 and 8*, out of whom *Entity no. 3* was noticed to have traded indirectly through the trading accounts of *Entity nos. 4* in the scrip of *Lux* during the UPSI period. Further, it was also seen that *Entity no. 2* (wife of *Entity no. 1*) and *Entity no. 3* (father-in-law and father of *Entity nos. 1 and 2*, respectively) had phone calls between them on trading day (May 21, 2021) during the UPSI period. The above facts have also become a

preponderant basis to *prima facie* observe that *Entity no. 1* had communicated the UPSI to *Entity nos. 2 and 8* and *Entity no. 1 and 2* had communicated the UPSI to *Entity no. 3* who, after having received the UPSI has dealt in the scrip of *Lux* by placing order in the account of his family controlled company i.e., *Entity no. 4*, in contravention of the mandate of the PIT Regulations, 2015. In this regard, while denying the observations recorded in the *Interim Order*, *Entity nos. 1 and 2* have jointly advanced submissions to controvert the *prima facie* observations noted in the *Interim Order*. The multiple submissions advanced on behalf of *Entity nos. 1 and 2* can broadly be classified into 5 arguments viz. (a) There was no scope for *Entity no. 1* to be aware of the contents of the alleged UPSI i.e., the financial results of the *Company* because of his limited role in the affairs of the *Company*; (b) *Entity no. 1* is categorised as a ‘Designated Employee’ due to his senior position and admittedly, he had no role pertaining to the financial statements of the *Company*; (c) There was ample positive information circulating in the public domain during and before the alleged UPSI period and there was no reason for the trading *Entities* to rely on any alleged UPSI. The positive nature of the financial results for the Quarter Ending March 2021 was well anticipated, and therefore practically had ceased to remain ‘unpublished’; (d) 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; (e) The *Interim Order* is entirely silent on whether *Entity nos. 1 and 2* gained in any manner from the alleged transmission of UPSI;

28) With regards to the observation about he being a connected person and having access to UPSI, *Entity no. 1* has denied having any role whatsoever in preparing or even overlooking the preparation of the financial statements of the *Company* on the ground that his role in the *Company* was limited to setting up new facilities for growth plans, participating in business expansion, marketing and brand management of specific segment and therefore, there was no scope for him to be aware of the contents of the alleged UPSI i.e., the financial results of the *Company*. As regards the aforesaid submissions of *Entity no. 1*, I note that he has not denied that he was part of the list of “Designated Persons” under the insider trading policy of the *Company* i.e. list of persons having access to the UPSI as on April 30, 2021 and was continuing to be part of the said list as on November, 2021. Further, it is also an admitted fact that he is the son of the Managing Director (i.e., Mr. Pradip Kumar Todi) of the *Company* and is also associated with the *Company* for last 7 years. In view of the admitted position, I see no reason to deviate from the observation that has been recorded in the *Interim Order* stating that *Entity no. 1* was a connected person and an insider and was reasonably expected of having access to the UPSI relating to the *Financial Results*.

29) As regards to his submission that the *Interim Order* is entirely silent on whether *Entity nos. 1 and 2* gained in any manner from the alleged transmission of UPSI, it is noted that it is immaterial for a charge of insider trading to get established or succeed under the PIT Regulations, 2015 that any pecuniary benefit/monetary gain necessarily has to accrue to the insider, as the same

is not a requirement/ingredient under both Section 12A(d) and (e) of the SEBI Act, 1992 and regulation 3(1) of the PIT Regulations, 2015 i.e., the provisions which *Entity no. 1* are *prima facie* alleged to have violated. To put it differently, it is not a pre-condition/ requirement under the PIT Regulations, 2015 to bring evidence of sharing of unlawful gains earned out of insider trading, so as to prove existence of insider trading or transmission of UPSI under the 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 accrual of unlawful gains made from those alleged breach of the PIT Regulations, 2015.

30) I have perused the submissions and materials brought on record by *Entity no. 1* to prove his innocence. In this regard, I note that none of the *Entities* has denied their association with each other. For instance, the fact that the *Entity nos. 1, 5 and 8* have been friends since school/college days has been admitted by *Entity nos. 5 and 8* in their respective replies. Admittedly, *Entity nos. 5 and 8* had even planned on starting a health and hygiene related e-commerce venture during the 2nd Wave of Covid-19 by the name of Kleazy Ventures. Further, it is also admitted by both *Entity nos. 5 and 9* that they are childhood friends who share a very close relationship over two decades. Similarly, *Entity no. 1* has not denied his connections with *Entity nos. 2 and 3*. Similarly *Entity nos. 9-13*, have also not denied the connection amongst themselves. Despite the above admissions and non-denials of the facts by the *Entities*, it is also on record that there were various phone calls between *Entity no. 1* and other *Entities* (*Entity nos. 3 and 8*) during the UPSI period. The frequent calls show that the *Entity no. 1* was regularly talking with other *Entities* (*Entity nos. 2, 3 and 8*); and based on the above facts of having frequent call, the possibility of communication of the UPSI during such frequent calls cannot be ruled out conclusively at this stage. These frequent telephonic conversations between them as evidenced from the CDRs, in fact, tilts the balance of preponderance of probabilities in favour of communication of the impugned UPSI. In such circumstances, the burden of proof requires stronger evidence and it lies upon *Entity no. 1* to prove that there was indeed no communication of UPSI during such frequent conversations by him with any person. It would not be right to hold that direct evidence is the only requirement and in the absence of any such direct evidence, the wheel of law would not set in motion. Rather, the requirement of law shows that even in the absence of direct evidences, the law will not remain silent, but the proceedings can continue against the *Entities* based on the other surrounding, proximate and corroborating facts and evidences. Therefore, at this stage I am of the considered view that it cannot be stated with same latitude that *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.

31) To deny the *prima facie* observation pertaining to the communication of UPSI by him, *Entity no. 1* has submitted that the alleged communications with *Entity nos. 3 and 8* were in the ordinary

course of family affairs/friendly conversations. Further, he has claimed that *Entity no. 1* and *Entity no. 8* do not discuss the stock markets and in fact, *Entity no. 8* never even participates in the stock market and does not even hold a demat account. As regards the phone-call on May 14, 2021, *Entity no. 1* has submitted that he had called up *Entity no. 8* to wish him on the occasion of Eid. In this regard, I find that the submission of *Entity no. 1* has proceeded on a misguided assumption about the implication of the phone calls that have been attributed to him in the *Interim Order*. In this regard, I note that the purpose and intent behind highlighting the telecommunications between the *Entities* are succinctly captured in the *Interim Order* as under:

“72) In my view, the purpose of highlighting the telephonic communications as revealed from the examination is not to suggest with conviction that the UPSI has indeed been transferred from one entity to another entity only through the telephonic communication that have been pointed out in the order. Needless to emphasize that transmission of UPSI will always belong to the realm of extremely private world between/amongst the connected parties and the same can be transmitted in any mode of communication including telephonic communication. The intent behind highlighting the aforesaid phone calls that have been exchanged during the UPSI period is primary to bring home the point that the *Entities* were in the habit of talking to each other on a regular basis and hence passing of the UPSI in the course of such interactions/ telephonic or otherwise *prima facie* cannot be ruled out. Therefore, the preponderance of probability of overall factual context of the matter, the proximity amongst the *Entities*, frequency of their interactions and peculiar facts and circumstances under which the shares of the Company has been traded during the UPSI period, etc. have to be considered holistically for arriving at a *prima facie* view about the possibility of violations of the PIT Regulations by the *Entities*.”

- 32) Thus, the test is the appreciation of cogent facts and material events that are good enough from the normal person’s perspective 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 CDRs. What the *Interim Order* has sought to achieve and 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 the communication of UPSI to persons, who are seen to have traded in the scrip of *Lux* while in possession of the said UPSI, during the UPSI period hence, the *Entities* were observed to have possession of UPSI due the facts of their inter-se close connections. Moreover, from the reply of Mujtaba(*Entity no. 8*), I find that he has stated to have a HDFC demat account no. 63xxxx00 in his name and therefore, the submission of *Entity no. 1* that *Entity no. 8* even does not have demat account in his name, loses

its relevance, rather further signifies and strengthens the *prima facie* observations made in the *Interim Order*.

- 33) The contentions of *Entity no. 1* are that no connection is shown between him and the ultimate trading *Entities* in the *Interim Order*, without which, SEBI's assumption that *Entity no. 1* intended to help his friends /relatives /acquaintances falls apart. He has also argued 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. In this regard, as pointed out in the preceding paragraph, I can reiterate that the *Interim Order* was passed based on the combination of various unassailable *prima facie* facts and materials viz; *Entity no. 1* was a connected person and was having access to UPSI, he has exchanged phone calls with different *Entities* during the UPSI period, the fund transactions noticed among *Entities* (*Entity nos. 5 and 10*) coupled with abnormal and unusual trading in the shares of *Lux* indulged in by different *Entities*, etc., strongly indicated the probability that it was pursuant to receipt of the communication of UPSI from *Entity no. 1*, either directly or indirectly, that the other *Entities* have executed trades in the scrip of *Lux* during the UPSI period. Thus, the contention of *Entity no. 1* that SEBI's assumption that *Entity no. 1* intended to help his friends /relatives /acquaintances falls apart as no connection is shown between him and the ultimate trading *Entities* in the *Interim Order* lacks substance and merit. Further, considering the facts and materials available at the time of passing of the *Interim Order*, I am of the view that the *Entities* have not brought any evidence to counter the appreciation of facts and *prima facie* findings that were made in the *Interim Order* and according to me the observations made in the *Interim Order* issued therein still hold their ground firmly on their own merit even till date, as mere denial will not come to the rescue of *Entities* especially when no supporting evidence has been presented before me either to dispute the existence of UPSI, or to deny the access to UPSI by *Entity no. 1* and other *Entities*, 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 while issuing directions through the *Interim Order*.
- 34) 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 have been observed to have traded in the scrip of *Lux* directly and some of them indirectly through trading account of their connected entities, cannot be overlooked merely based on the claim that the connected persons were having frequent phone calls amongst themselves in regular course of their relationships. 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 detailed investigation which is ongoing in the matter. Therefore, I find no merit in the submission that materials on record were not sufficient or that there were no cogent evidences to justify the passing of the *Interim Order*. It would be however a different consideration

altogether as to whether or not after examining certain additional material facts with supportive evidences presented by the *Entities* during the present proceedings, the directions issued under the *Interim Order* require any modification.

- 35) With regard to the *prima facie* findings pertaining to the *Entity nos. 3* and *4*, I note that the *Interim Order* has recorded that *Entity no. 3*, who is very closely connected with *Entity nos. 1* and *2*, was reasonably expected that pursuant to receipt of UPSI either from *Entity nos. 1* or *2* or from both of them, would execute trades in the scrip of *Lux* during the UPSI period which he did, in the trading account of his family-controlled company i.e., *Entity no. 4*. In this regard, *Entity no. 3* has already admitted that he has executed trades in the scrip of *Lux* from the trading account of his family-controlled company i.e., *Entity no. 4*. As regards to the receipt of UPSI from *Entity nos. 1* and *2*, *Entity no. 3* has denied the same and has contended that SEBI has not brought on record any evidence whatsoever of any flow of UPSI from *Entity nos. 1* and *2* to *Entity no. 3*, but merely has arrived at a conclusion by virtue of the relationship that exists between them. He has further submitted that *Entity no. 3* did not have access to any UPSI as alleged in the *Interim Order* and without establishing as to when and how UPSI, if any, came to be in the possession of *Entity nos. 1* and *2*, SEBI is precluded from surmising that UPSI would have been passed on *Entity no. 3* by *Entity nos. 1* and *2*.
- 36) In this regard, it is already *prima facie* noted in the preceding paragraphs of this Order that *Entity no. 1* (being a connected person and having access to UPSI) is that husband of *Entity no. 2* and thus *Entity nos. 1* and *2* are insiders within the ambit of the PIT Regulations, 2015. Considering the unusual and abnormal trading indulged in the scrip of *Lux* by *Entity no. 3* and the admitted position of his close ties not only with *Entity no. 1* but also with the *Entity no. 2*, I find it difficult to be persuaded that the trades in the scrip of *Lux* executed by *Entity no. 3* from the account of *Entity no. 4* 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 the trades in the account of *Entity no. 4* were executed by *Entity no. 3*, after having considered the materials on record alongwith the submissions made by the *Entities* before me during the present proceedings, I do not find that *Entity nos. 3* and *4* 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. 4* were apparently influenced by the possession of UPSI by *Entity no. 3* remains intact and un-refuted. Therefore, when a detailed fact finding exercise (investigation) is ongoing, during which it will get unearthed as to whether or not, the trades executed by *Entity no. 3* from the account of his controlled company (*Entity no. 4*) were done in the normal course of trading without any influence of possession of UPSI or otherwise, it will be premature for me to sit in judgement over the *bonafide* of the trades executed by *Entity no. 4* in the absence of any tangible fact or evidence produced by

Entity nos. 3 and 4 to controvert the facts and prima facie evidences already recorded in the Interim Order.

- 37) Moving further, it is noted that the *Interim Order* records that facts and evidences indicate that *Entity no. 8* (Mujtaba), after receiving UPSI from *Entity no. 1* has seemingly relayed the UPSI to *Entity no. 5* (Akshay), who, having come in possession of the said UPSI has executed trades in the scrip of *Lux* from his trading account during the UPSI period. It is also seen that the funds transactions were existing between the *Entity nos. 5 and 10*. It is also observed that *Entity no. 6* (father of *Entity no. 5*) has traded apparently under the influence of UPSI which he *prima facie* received from his son i.e., *Entity no 5* in the trading account of his connected entity i.e., *Entity no. 7* during UPSI period.
- 38) In this regard, *Entity no. 5* has submitted that he is a friend of *Entity nos. 1, 8 and 9* since their college/school/childhood days and was regularly talking to them and that *Entity nos. 1 and 5* had called *Entity no. 8* on May 14, 2021 to wish him on Eid. Further, no SMS was sent by *Entity no. 5* to *Entity no. 8* on May 14, 2021 at 5:11 PM as claimed in the *Interim Order* and actually the said SMS was an automated missed call alert from Telecom Service Provider i.e., Airtel, that *Entity no. 5* was not even aware of until he sought a confirmation recently while scrutinizing the *Interim Order*. Also, from May 14, 2021 onwards until purchasing any shares of *Lux*, *Entity no. 5* had already purchased 8 individual equity scrips in the cash market for over INR 70 Lakh and 6 individual equity scrips were sold in the cash market with a value of over INR 83 Lakh by May 24, 2021 which shows that, there was nothing unusual in his trading behaviour when it came to trading in the scrip of *Lux*. The shares of *Lux* were bought from the funds already available in his account and the fund transfer of INR 20 Lakh from *Entity no. 10* (Anju) went straight to the margin account and were used as margin collateral for the SunTV Futures trade taken on the same date. On May 24, 2021 (the day when the shares of *Lux* were bought) the buy value for all trades of *Entity no. 5* was INR 83.31 Lakh out of which the *Lux*'s trade only accounted for INR 10.85 Lakh. Even going by the version/theory of SEBI, there is absolutely no proximity between the call between *Entity no. 5* and *Entity no. 8* (on May 14, 2021) and the trading done by *Entity no. 5* and *Entity no. 6* in the scrip of the *Company* on May 24, 2021. It would be illogical to assume that a person with UPSI would wait for a period of 10 days to enter into the trade, especially when they had sufficient funds and when the scrip price of *Lux* moved up almost by 10% between the said period.
- 39) As regards the aforesaid submissions of *Entity no. 5*, I note that the *Interim Order* has recorded that he has traded in the scrip of *Lux* during UPSI period when *Entity nos. 5 and 8* (who was *prima facie* in possession of UPSI from *Entity no. 1*) had frequent phone calls (a total of 22 calls for 8770 seconds) between them including a call at 19:51:06 hrs. on May 14, 2021 for 509 seconds and on the same day the *Company* (at 13:42 hrs.) made an announcement on exchange

platform that the Board Meeting of the *Company* would be held on May 25, 2021 to consider and approve the financial results for the period ending March 31, 2021. The *Interim Order* has further recorded that fund transfers were observed from *Entity no. 10* to *Entity no. 5* and such funds were used by *Entity no. 5* to trade in the scrip of *Lux* from his trading account. The funds transactions noted to be existing between *Entity nos. 5* and *10* and the kind of close connections observed to be present between *Entity nos. 1, 5 8, 9* and *10* when examined in the context of the unusual trading done by several entities during the UPSI period in the scrip of *Lux*, lead to a compelling possibility of such trades having been executed by *Entity no. 5* under the influence and possession of UPSI. Further, I note that none of the above noted *Entities* has denied the said phone calls, fund transfers and trading in the scrip of *Lux*.

- 40) Before, I advert to the specific submissions made by *Entity no. 5* pertaining to automated missed call alert message, shares of *Lux* purchased out of the funds available with him, his trading in the other scrips etc., I must clarify that under the instant proceedings, it would not be appropriate to make observation which could have impact on the ongoing investigation during which the veracity and authenticity of such claims put forth by the *Entities* and their transactions can be tested, however at the same time, as noted above, 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, so as to prove existence of insider trading or transmission of UPSI under the PIT Regulations, 2015. The factum of transmission of UPSI and execution of insider trades on its own are sufficient enough to bring home the charge of insider trading under the PIT Regulations, 2015 and need not be further validated by funds transactions. Therefore, even if it is revealed that the fund transactions indulged in by *Entity nos. 5* and *10* were entered into between them in the regular course of their business transactions or the funds so received were used for transactions in another scrips, 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 and the trades executed during the UPSI period themselves *prima facie* demonstrate that they have been influenced by an information that was not generally available to public. a fact that itself forms a solid fulcrum for a charge of insider trading which has not been disputed or dispelled conclusively. Therefore, the *prima facie* observations regarding *Entity no. 5* as recorded in the *Interim Order* do not in any way get impacted at this stage. I also do not find merit in the submission that fund received from *Entity no. 10* has no bearing to the matter, when *Entity no. 5* on the one hand claims to have sufficient balance and was financially independent he has on other hand admitted to have received the said fund used the same for trading in the securities market. Considering the above undisputed fact, it may not be apposite at this stage, pending completion of investigation to make any remarks, which could be adversarial to the parties and would amount to exceeding the mandate and scope of the instant proceedings.

41) *Entity no.6* has contended that he is an active investor for last 32 years and was very bullish on textile industry (from even before the period considered in the *Interim Order*) and invested through *Entity no. 7* (Dinero) over INR 4.7 Crore in textiles scrips between March 30, 2021 to January 24, 2022, and sold some of these investments at profit. Going by the market experts who feature on news channels, *Lux's* scrip was a 'hot pick' and thus both *Entity nos. 5* and *6* made a miniscule investment in *Lux* as well to test the waters. In this regard, it is noted from the *Interim Order* that *Entity nos. 5* and *6* are blood relatives. *Entity no. 7* was not seen to have traded in the past in the scrip of *Lux*. Such an unusual trading pattern leads to a *prima facie* observation that such a sudden spurt of exuberance on the part of the *Entity no. 7* to trade in the scrip of the *Company* during the UPSI period was primarily motivated by the possession of UPSI with its dominant shareholder who placed orders in its trading account i.e. the *Entity no. 6*. As per the submission made before me, *Entity no. 6* in his individual trading account has invested around INR 1.11 Crore into textiles shares for the period from May 10, 2021 to May 24, 2021 but strangely enough, no investment was done in the scrip of *Lux* despite claiming that he was very bullish on textile industry and had chosen to trade in the scrip of *Lux* only on May 24, 2021 when he, through *Entity no. 7* bought shares of *Lux*. Thus, confronted with such overwhelming factual chain of events and conflicting stand taken by *Entity no. 6*, I cannot persuade myself towards any other view but to reiterate the *prima facie* un-refuted view already taken in the *Interim Order* that the trades executed by *Entity no. 6* from the trading account of *Entity no. 7* were *prima facie* based on or influenced by the possession of UPSI which he appeared to have received from his son i.e., *Entity no. 5*. Under the circumstances, when records available before me sufficiently suggest that *Entity no. 6* was enjoying close connections with persons who were reasonably likely to be in possession of UPSI, it is well-nigh impossible to accept the contention of *Entity no. 6* that the trades executed in the scrip of *Lux* from the trading account of *Entity no. 7* were based on the generally available information or were executed in normal course of his trading activities. Further, from the records, I see that *Entity nos. 6* and *7* have not brought before me any fresh evidence or material which can be held as a sufficient evidence calling for dispelling those *prima facie* observations made against them in the *Interim Order*. Moreover, the *Interim Order* was passed pending the fact finding exercise, wherein the *Entities* will have sufficient opportunity to furnish justification with supporting evidences in support of their respective claims of trading in different segments of securities market and such trading activities were undertaken based on information available in the public domain as has been alluded to before me.

42) With regard to the observations made in the *Interim Order* pertaining to *Entity no. 8*, I note that *Entity no. 8* has submitted that he has never invested into share market throughout his life nor, possesses any knowledge about the same. The blanket *interim order* is gross violation of the principle of *audi alteram partem* in as much as no opportunity of being heard was granted to *Entity*

no. 8 before passing of the *interim order*. In this regard, I note that *Entity no. 8* has not adduced any clinching evidence to oust the *prima facie* findings/observations made against him in the *Interim Order*. Seen from the prism of undisputed facts that *Entity no. 8* enjoys close connection with *Entity no. 1* as friends who were in regular touch with each other, coupled with the facts that *Entity no. 5* had ostensibly traded in the scrip of *Lux* after having exchanged phone calls with *Entity no. 1*, it has been seen *prima facie* sufficient to make a *prima facie* observation about the communication of the UPSI which became the basis of passing of the *Interim Order*. At present also, I see that the facts have not gone through any sea change *qua Entity no. 8* so as to exonerate him from the aforesaid *prima facie* observation at this stage especially when the investigation is in progress.

- 43) It is also seen from the *Interim Order* that *Entity nos. 5 and 9* were talking over phone on several occasions during the UPSI period and those telephonic communications followed by trades in the scrip of *Lux* have given rise to a strong suspicion that having received the UPSI from *Entity no. 5*, *Entity no. 9* has executed trades in the trading account of his connected entities like his mother i.e., *Entity nos. 10* and his other connected entities i.e., *Entity no. 11* apart from aiding & abetting his connected *Entity no. 14* to trade in the scrip of *Lux* by sharing the said UPSI with it.
- 44) In this regard, I note that *Entity no. 9* has submitted that he has been trading and taking investment decisions in the account of *Entity nos. 10 and 11* since a long time and the trading decisions in their accounts were made solely on the basis of independent research and extensive discussion with *Entity no. 12* who is his uncle and is an experienced player in the securities market. *Entity no. 9* decided to take position only in the scrip of *Lux* based on his conviction on the research analysis and discussions with *Entity no. 12* and thus traded in the account of *Entity nos. 10 and 11*. It has also been submitted that he was in telephonic conversations with *Entity no. 5* on regular basis. Had *Entity no. 9* been actually in possession of UPSI, trades could have been made much earlier, consequently increased his gains multifold. However, *Entity no. 9* placed purchase orders (through trading accounts of both *Entity nos. 10 and 11*) only on May 25, 2021, when the price of the scrip has already risen significantly. Therefore, it may not be right to hold that *Entity no. 9* was in possession of UPSI from *Entity no. 5* or otherwise, at the time of his trading in the scrip of *Lux*.
- 45) With regard to the submissions made by *Entity no. 9*, I note that there are certain glaring contradictions in the submissions made by him. *Firstly*, on one hand he is submitting that all trading decisions in the trading account of *Entity no. 10* are made by him and hence requesting that the present proceedings be limited to him, possibly canvassing a picture that his mother was only the trading account holder and had no knowledge about trades being executed in her account. Whereas on the other hand he emphatically submitted that *Entity no. 10* has had a

turnover of over INR 4.07 Crore in the capital market segment during the period from January 1, 2021 to April 19, 2021, and a turnover of over INR 18.48 Crore in the Future and Options segment during the corresponding period. The said admitted facts ostensibly show that she was well versed with the trading in and functioning of the capital market and it was a normal course of business for her as far as trading in the capital market is concerned. Further, *Entity no. 9* has also submitted that there are several transactions worth Crore of rupees between *Entity nos. 10* and *5*, but unfortunately SEBI has cherry picked a transaction of INR 20 Lakh on May 24, 2021, to allege that his mother i.e., *Entity nos. 10* was financing/ facilitating insider trading by *Entity no. 5* in the scrip of *Lux*. However, none of the aforesaid two entities has cared to explain as to why *Entity no. 9* executed trades in the trading account of *Entity no. 10* when she was herself a prolific trader and was trading in F&O segments which require greater degree of knowledge and understanding of capital market than trading in the cash segment. Nonetheless, the *Interim Order* records the observation *prima facie* based on the apparent connection between the two entities and from the replies so submitted and argument so advanced, I see no dispute to the aforesaid *prima facie* views already taken in the *interim order*. Further, frequent fund transaction can't be held as conclusive evidence of trades having been executed in the normal course of trading. The transactions as have been highlighted in the *Interim Order* pertaining to the *Entities* were delineated therein only to indicate the possibility that their trades appeared to have been executed under the influence of possession of UPSI, which in my considered view still remains un-refuted, notwithstanding the aforesaid arguments advanced by the *Entities*.

- 46) *Secondly*, *Entity no. 9* has contended that in the financial quarters starting from October 1, 2020, up to pre-trade time, i.e., the week of May 21, 2021, the scrip of *Lux* moved significantly lesser than its peers and was evidently available at a huge discounted price before the announcement of its financial results on May 25, 2021. , However, *Entity no. 9* has chosen to place purchase orders (through trading accounts of both *Entity nos. 10* and *11*) only on May 25, 2021, when the price of the scrip had already risen significantly and therefore, *Entity no. 9* cannot be said to be in possession of UPSI from *Entity no. 5* or otherwise. In this regard, I note that the aforesaid submission of *Entity no. 9* is once again fraught with inherent contradictions. The decision of *Entity no. 9* to buy the shares of *Lux* only on May 25, 2021 when admittedly earlier the same shares were actually available at a cheaper rate, reinforces the *prima facie* finding that he decided to deal in the shares of *Lux* only when he came under the influence of UPSI especially when his transactions are seen in the background of said connections as witnessed between *Entity nos. 5 & 9* and *9, 10, 11* and *14* through their call records & funds transfers through bank accounts etc. Thus, based on the preponderance of the aforesaid factual details as brought out so succinctly in the *Interim Order*, it led to an obvious inference that the *Entity no. 10* was in receipt of the UPSI either directly or through her son i.e., *Entity no. 9* and the

afore-noted fund transfers further buttress the said connections witnessed amongst the *Entity nos. 5, 9 and 10* in this regard. The funds transactions noted to be existing between the *Entity nos. 5 and 10* and the kind of close connections observed to be present between *Entity nos. 5, 9 and 10*, when examined in the context of the unusual trading done by them during the UPSI period in the scrip of *Lux*, invariably lead to an obvious possibility of such trades having been executed under the influence and possession of UPSI. Hence, the vigour of the aforesaid *prima facie* findings recorded against *Entity nos. 9 and 10* in the *Interim Order* do not get diminished conclusively and such *prima facie* findings do not deserve any consideration at this stage, when a holistic and detailed investigation into the matter is already underway.

- 47) Regarding *Entity nos. 12 and 13*, the *Interim Order* records that after receiving the UPSI from *Entity no. 5*, *Entity no. 9* has apparently communicated the UPSI to his uncle i.e., *Entity no. 12* that ultimately moved to his son, *Entity no. 13* and both of them i.e., *Entity nos. 12 and 13* after being enriched with the UPSI, are seen to have executed trades in the scrip of *Lux* during the UPSI period only to pocket good amounts of quick profits from such apparent insider trades. To refute the aforesaid *prima facie* observations, *Entity no. 12* has contended that his trading in the shares of *Lux* was not influenced by the possession of UPSI but based on in depth research, various newspaper and social media articles and various reports such as SMIFS Report dated April 06, 2021, Anand Rathi Securities Report dated March 18, 2021 etc. Further, *Entity no. 12* claims to be an avid trader whose strategy was to invest in shares of these companies depending on the share movement and financial results around the time of their financial results are out. Also, *Entity no. 14* has made similar contentions pertaining to publicly available information and research reports
- 48) I note that though *Entity nos. 11, 12 and 14* have vehemently relied upon certain research reports as reason behind their decision to trade in the scrip of *Lux*, however, on perusing their submissions so submitted, I can observe that such explanations and contentions do not provide any compelling ground so as to grant exoneration from the *prima facie* observation made against them in the *Interim Order*. I further find that considering the limited scope of the instant proceedings, it would not be appropriate to make observations that are conclusive in nature and character and that could impact the interest of an entity as well as influence the fair investigation into the matter. Therefore, I leave it to the fact finding authority to ascertain the veracity and credibility with support of necessary factual details about the aforesaid claims put forth by the *Entities*, under the instant proceedings, it is not feasible to ascertain the veracity of the facts submitted by them from the limited information available on record. I also note that the major thrust of *Entity nos. 11, 13 and 14* is on SMIFS Report dated April 06, 2021 and an article titled "*Lux to clock Rs 1800 cr revenue post- merger*" dated April 8, 2021 published in the Times of India which projected *inter alia* that "*Lux Industries, one of India's leading knitwear producers, would have a consolidated revenue of close to Rs 1,800 crore after the merger of group companies with*

itself". As regards the said projection, I note that National Company Law Tribunal, Kolkata vide its order dated March 26, 2021 ordered the merger of two unlisted promoter owned companies i.e., Ebell Fashion Pvt. Ltd. (owned brand 'GenX') and J.M Hosiery (owned brand 'Lyra') with the *Company* (a listed entity) and the said merger came into being with effect from May 01, 2021 when the *Company* filed the said order of National Company Law Tribunal with Registrar of Companies, Kolkata. It is very unlikely on the part of a self-proclaimed prudent investor like *Entity nos. 11, 12 and 14* to invest in a *Company* 1-2 months after the publication of the aforesaid reports and after positive news about the *Company* had already become old. On the one hand, *Entity nos. 11 & 12 and 14* are claiming that the information about the promising *Financial Results* was already anticipated by the market participants well in advance while on the other hand, they claim to have waited and carried out trading in the scrip of *Lux* only on May 25, 2021 (which is when the *Company* made the corporate announcement regarding its *Financial Results* after market hrs.) and May 24, 2021, respectively on the basis of certain positive news and reports that were published 1-2 months ago. Such an explanation involving dual contradicting claims, in their arguments makes it difficult to accept their contention on its face value, under the instant proceedings for granting exoneration, more particularly when a detailed investigation into the matter is already proceeding pursuant to passing of the *Interim Order*. It is equally difficult to accept it as a mere coincidence that some of the *Entities* have purchased the scrip of *Lux* during the UPSI period on the basis of certain old positive news that were circulated in the public domain 1-2 months ago without being influenced by the UPSI. The undisputed fact that the *Entities* having sold the shares immediately after the publication of financial results and their decision not to hold the shares for long even though it is their own submissions that the shares of *Lux* were not moving at par with its peers before the financial results and were available at huge discount, are sufficient enough to raise suspicion when it is viewed in the background of the facts narrated in the *Interim Order* that constituted the foundation for issuance of the *Interim Order*. Under the circumstances, in my view, the veracity of such contradictory claims pressed by some of the *Entities* before me to justify their trading in the shares of *Lux* during the UPSI period based on market news etc. cannot be verified at this stage when a detailed investigation into their conduct is in progress.

- 49) As regards, *Entity no. 13*, I note that his submission that *Entity no. 12* has effected trading in his trading account with his consent and approval stands at variance with the *prima facie* findings in the *Interim Order* in as much it records that he himself has traded in his own trading accounts. Similarly, *Entity no. 14* has also presented certain facts/submissions pertaining to directorship/shareholding of *Entity no. 9* in *Entity no. 14*, the phone calls made by *Entity no. 9* to the landline numbers of *Entity no. 14*, Proprietary trading desk being handled by one Mr. Tarun Dhabalia etc. which are contrary to the *prima facie* observations/findings recorded in the *Interim Order*. I do not find it appropriate to go into the veracity of their submissions/claims at

this stage as a detailed investigation has already started and these aspects of the matter will get covered in the said investigation.

- 50) Further, *Entity no. 14* has contended that the information received from the *Company* was given in redacted form by SEBI during the inspection of documents which rendered *Entity no. 14* incapable of examining the same and putting a defence in this regard. It is highly improbable that if *Entity no. 14* is in possession of UPSI, he would sell the shares at a mere profit of 2.85% on May 24, 2021 i.e., same day when *Entity no. 14* bought shares of *Lux*. *Entity no. 14* had sold a total number of 18000 shares of *Lux* on May 26, 2021. It is reiterated that it is highly unlikely that if *Entity no. 14* has UPSI, it would sell the shares at that price on that same day. *Entity no. 14* has also endeavoured to demonstrate that there are certain contradictions in the *Interim Order*; that *Entity no. 14* has not booked unusual profit in the scrip of *Lux* as compared to other scrips where it booked huge profits to impress upon me that its trading was not done under the influence of the UPSI. As far as the submission of *Entity no. 14* pertaining to redacted information is concerned, I note that SEBI has appropriately responded. Further, I note that paras 65 and 66 of the *Interim Order* have already taken into account the gross buy and sell of shares of *Lux* by *Entity no. 14* and has recorded a *prima facie* findings regarding net buy/sell and the corresponding profits earned by *Entity no. 14* which is not disputed by it. Further, *Entity no. 14* has not disputed the facts that there is a sharp increase in its exposure to the shares of the *Company* in the year of 2021 as compared to year 2019 and that *Entity no. 14* had Nil concentration in *Lux* vis-à-vis other scrips during the pre-UPSI period, which however jumped substantially to 33.51% during the UPSI period. Hence, the rigour of the aforesaid *prima facie* findings recorded against *Entity no. 14* in the *Interim Order* do not get affected convincingly and such *prima facie* findings do not merit any deliberation at this stage, when a holistic and thorough investigation into the matter is already proceeding where veracity of all these claims of *Entity no. 14* will be tested and expressing my opinion on these facts at this stage is not warranted that too on the limited details/information available on record before me. Further, I am of the considered view that booking profit is not a benchmark to decide a matter relating to insider trading under the PIT Regulations, 2015 and therefore, arguments made on these line do not make out a case for exoneration for *Entity no. 14* at this stage as well.
- 51) 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 some of the *Entities* including *Entity no. 11* that grave allegations have been made merely placing reliance on call data records without providing the details of the contents of such phone calls.

- 52) With respect to the argument of the *Entities* regarding their phone calls, I have already discussed at length in earlier paragraphs of this Order about the implication of such phone calls to demonstrate and establish the evident connections that existed 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 about the phone calls especially the phone calls exchanged during the UPSI period and a holistic appreciation of which lead to the preponderance of a strong *prima facie* possibility of exchange/sharing of UPSI amongst different *Entities*. The said preponderance possibility further got 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 complete satisfaction that the facts and materials based on which the *Interim Order* was passed, continue to hold their ground since factual details and evidence sufficient enough to warrant an interim intervention by the Regulator provided overwhelming reasons to the Regulator to pass an interim order at that point of time. 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*.
- 53) As stated above, the *Interim Order* was issued based on various *prima facie* observations about the *Financial Results* (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 *Lux* by certain *Entities* during UPSI period who were suspected to have received UPSI when they traded in the shares of *Lux*, 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 require 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 majority of those premises or factors have not 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 the *Entities* as evidenced from the CDRs, more so with one person (*Entity no. 1*) who was *prima facie* observed to an insider and was reasonably expected of having access to USPI, coupled with fund transactions followed by trading in scrip of *Lux* during the UPSI period, sufficiently tilt the balance of preponderance of probabilities in favour of communication of the UPSI and therefore, the materials on records and the aforementioned attending circumstances justifiably warranted passing of an *Interim Order*.

- 54) 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. In this regard, *Entities* have further relied upon the judicial observations made by the Hon'ble SAT in the various matters including *Jaya Hemant Ghai(supra)*, *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)*, , *Dr. Udayant Malbhoutra* to further impress upon their contention.
- 55) 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 the 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 the 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, the attending factors were sufficient enough 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 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 Malbhoutra (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 Malbhoutra* 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 Malbhoutra (supra)*. Therefore, the aforesaid decision in the case of *Dr. Udayant Malbhoutra (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 Malbhoutra (supra)*, I find that in the instant matter, the impugned insider trades pertain to the period of May, 2021 – June, 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 January 24, 2022, which was within nine months from the *prima facie* detected acts of insider trading in the scrip of *Lux* indulged in by the *Entities*. Therefore, the observations of Hon'ble SAT in the matter of *Dr. Udayant Malbhoutra (supra)* are not squarely applicable to the instant matter.

- 56) As regards the power of passing interim orders by SEBI, I can only remind *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”.

- 57) The aforesaid findings have been reiterated in the decision of *Dr. Udayant Malbhoutra(supra)* as well hence, the contention of the *Entities* questioning the power of SEBI to pass an interim order is not sustainable. Moreover, I note that in *Dr. Udayant Malbhoutra(supra)*, 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 and circumstances, the aforesaid contention of the *Entities* is found to be devoid of any substance and not tenable.
- 58) 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 Malbhoutra(supra)* was specific to the facts of that matter only. Moreover, with respect to the findings of the Hon’ble Tribunal relating to impounding of the unlawful gains in the aforesaid case of *Dr. Udayant Malbhoutra(supra)*, 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 Apex court vide order its 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)*
- 59) In view of the above cited categorical observations of the Hon’ble Supreme Court of India which do not leave any room for fancy interpretation 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 Malbhoutra (supra)*, I find no substance in such contentions (regarding attachment before judgment) of *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.
- 60) Moving on to the determination of UPSI period, as already mentioned in the *Interim Order*, the discussions on the proposed *Financial Results* started on April 20, 2021 which was finally disseminated to the public on May 25, 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 audited financial results for the Quarter and Financial year ended March 31, 2021 was generally available to the public prior to May 25, 2021. In my opinion, the *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*.

- 61) 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. The *Entities* have relied upon the decisions of the Hon'ble Supreme Court of India and of the Hon'ble SAT in matters such as *Dilip S. Pendse (supra)*, *VK Kaul (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 as lucidly elucidated in paragraph 72 of the *Interim Order*. 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 *Lux* during the UPSI period.
- 62) Notwithstanding the aforesaid, I can observe that the above noted case laws cited by the *Entities* relate to those cases where adjudication proceedings were initiated based on the facts and evidences collected during and after completion of the fact finding exercise (investigation) and 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 *Entities* based on various *prima facie* factual observations which are subject to the final 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. The *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 *Entities* to take shelter under the garb of requirement of higher degree of evidence can best be stated to be a premature and misplaced plea taken by *Entities* when detailed investigation into their alleged misconduct is in progress. Keeping the aforesaid in view, the argument of *Entities* regarding requirement of high level of proof does not warrant any further consideration at this juncture.

63) 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 the Noticees therein as to why suitable direction/penalty be not issued/imposed. Thus, the above noted observations recorded by the respective Adjudicating authorities were related to the quality of evidence that was brought out after completion and outcome of 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*.

64) I further note that the *Entities* have vehemently argued during course of hearing before me that SEBI has proceeded to invoke Section 11 and 11B only on the basis of preliminary examination and not a preliminary investigation and they have relied upon the decision of Hon'ble Tribunal in the matter of *Bhoruka Financials vs. SEBI (Appeal No. 18/2006, decided on May 10, 2006)* in this regard. To deal with such a protest, it is needed to understand the scope and mandate of Section 11(4) of the SEBI Act in its correct perspective. In this context, I note that Hon'ble SAT in *Appeal No. 92 of 2006- Karry Stock Broking Ltd. vs. SEBI (decided on January 08, 2007)* in respect of scheme, scope and reach of section 11(4) has *inter alia* held as under:

“.....As is clear from the language of Section 11 (4) the measures that the Board may take or the orders that it may pass would be **“either pending investigation or enquiry or on completion of such investigation or enquiry”**.....The word ‘inquiry’ too has not been defined in the Act though it finds mention in Sections 11, 11B, 11D and 15I. Under section 12(3) of the Act also, the Board holds an inquiry under the inquiry regulations for imposing major or minor penalties including the penalty of suspension or cancellation of a certificate of registration. It is, thus, clear that an inquiry is held under sections 11, 11B and 11D, it is also held under section 12(3) and also under section 15I. Having regard to the scheme of the Act, the rules and regulations made thereunder we are clearly of the view that even though the inquiries contemplated

by the Act may be held under different set of provisions, their object is one and the same viz. to help the Board to promote the development of and to regulate the securities market and protect the interests of investors. The inquiry under section 11 of the Act is held by the Board to find out what measures it needs to take to protect the interests of the investors and what steps it needs to take to promote the development of and to regulate the securities market. Similarly, the inquiry which the Board is required to make or causes to be made under section 11B is to find out what directions should be issued to an intermediary or any person associated with the securities market or to a company in respect of matters referred to in section 11A. As already observed, the Board also causes an inquiry to be made by an inquiry officer under the inquiry regulations and/or by an adjudicating officer under Chapter VIA. It is during the pendency of any of these inquiries or on their completion that the Board may pass appropriate order – interim or final. This is clear from the language of section 11(4).” (emphasis supplied)

- 65) Interestingly, while recording the aforesaid observations in *Karry Broking*(*supra*), the Hon’ble Tribunal relied on its earlier order passed in *Bhoruka Financials* (*supra*) and concluded that:

“In view of the above, we hold that the word ‘inquiry’ used in section 11(4) refers to the inquiries held under sections 11, 11B, also to the enquiry under the inquiry regulations framed under section 12(3) and also to the inquiry held under Chapter VIA and it is during the pendency of any of these inquiries that an interim order could be passed with a view to protect the interests of investors or in the interest of the market.”

Therefore, in view of the aforesaid observations made and conclusions reached by the Hon’ble Tribunal in *Bhoruka Financials* (*supra*) and *Karry Broking* (*supra*), it is abundantly clear that after causing a preliminary inquiry under sections 11 and 11B an interim order can be passed. It is in this background of the legal position that one has to see the validity of the *Interim Order*. In this context, I find that admittedly the *Interim Order* was passed based on the preliminary examination of the materials available on record which *prima facie* indicated possible violations of securities law, especially the alleged acts of insider trading in violation of the PIT Regulations, 2015 and the said fact is also recorded at appropriate places in the *Interim Order*. Hence, I find that passing of the *Interim Order* does not suffer from any infirmity as alleged by the *Entities* and therefore, the contentions of the *Entities* lack any merit and thus are liable to be rejected.

- 66) 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 any definite observation on the explanation or justification offered by *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 appropriately 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 at this stage.

- 67) 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 *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 *Entity nos. 2, 3 and 8* and the said UPSI in turn got shared with *Entity no. 5* by *Entity no. 8*, and thereafter, certain persons/entities have traded in the scrip of the *Company* while in possession of the UPSI. Accordingly, all *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*. 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 *Lux* during the UPSI period.
- 68) I find that certain additional facts have been submitted by some of the entities to passionately impress upon me that the trades in the share of *Lux* was not based on the UPSI but was on the basis of publicly available research reports and positive outlook expressed towards *Lux* by various news articles and media reports well in advance as dealt in detail above. Also, *Entity nos. 3, 4, 11 and 14* have submitted that the directions contained in the *Interim Order* are causing them grave prejudice as *Entity no. 3* being a registered mutual fund distributor, is unable to carry out his distribution business and is also precluded from participating in the stock markets which is causing him undue hardship. For instance, *Entity no. 3* holds about 40 shares in Tata Consultancy Services and is precluded from tendering his shares in the ongoing buy-back whereby shares are being bought back by the company at INR 4500 which is about INR 1000 above the market rate. Also, *Entity nos. 4, 11 and 14* being NBFCs stand severely prejudiced as their primary business of investment, trading on the recognised stock exchanges, lending and

borrowing have come to a complete standstill. Besides, they have to pay interest on borrowings and deposit TDS, etc. and also taxes and salaries to their staff which they are unable to do and the same is causing excessive hardship to them and affecting the livelihood of their employees as well.

69) Further, *Entity no. 11* has submitted that it is facing severe losses in the securities market in as much as the value of the scrips in their portfolio had already dropped from INR 14.17 Crore as on January 25, 2022 to INR 11.64 Crore on March 02, 2022, thereby causing a loss of INR 2.53 Crore. In support of their submissions requesting for modifying the restraints imposed vide the *Interim Order* and the factors to be considered while adverting to preponderance and presumptions, 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*, SEBI Confirmatory Order dated March 28, 2022 passed in the matter of *Insider Trading in the scrip of Magma Fincorp Limited (now known as Poonawalla Fincorp Limited)* and the order dated April 19, 2022, passed by Hon'ble Supreme Court in the matter of *Balram Garg 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, as set out in the beginning and reiterated at appropriate places above, 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. However, I am aware and equally mindful of the fact that there is a requirement of striking a balance between enforcing regulatory action of SEBI in the pending proceedings and also protecting the business interest of *Entities* which are getting adversely affected by the restraint directions passed vide the *Interim Order*. Further, *Entity nos. 4, 11 and 14* being NBFCs have demonstrated the difficulties encountered by them on account of the operation of the *Interim Order* to conduct their NBFC activities.

70) It is also noted that all *Entities* have deposited the amount directed to be impounded by the *Interim Order* into an escrow account/FDR, pursuant to which their respective bank accounts were unfrozen and hence I observe that the interest of securities market is secured as far as the *Entities* are concerned. In this regard, it is pertinent to note that in *Appeal No. 689 of 2021-Pranshu Bhutra vs. SEBI* (decided on April 25, 2022), the Hon'ble SAT has *inter alia* held that *by complying with the direction to deposit the unlawful gain the interest of securities market is safeguarded*. At present, the *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 03 months. Further, I note that the UPSI, on the basis of which the impugned insider trades were allegedly undertaken by the *Entities* has already become generally available and the said UPSI has since ceased to exist.

Keeping in view the requests fervently made by the *Entities* expressing the urgency with respect to their requests for relaxations of the directions contained in the *Interim Order* and after considering their peculiar business exigencies, I am of the view that for the time being, till the investigation in the matter reaches its logical conclusion, certain relaxation from the operation of the said *Interim Order* may be granted to *Entities* to facilitate their business operations. Therefore, having regard to all the facts and circumstances of the case and taking into account the fact that the *Entities* have already suffered restraint from the securities market for more than 04 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 *Company* i.e., Lux Industries Ltd.

- 71) 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 January 24, 2022, as follows:
- a) The *Entities* are restrained from buying, selling or dealing in securities of Lux Industries Ltd., either directly or indirectly, in any manner whatsoever until further orders. Accordingly, the directions issued vide paragraph 81 (a) of the *Interim Order* stand modified to the extent of allowing credit and debit of securities in the accounts of the above *Entities* except the securities of Lux Industries Ltd.
 - b) It is clarified that restraint related to buying, selling or otherwise dealing in securities in respect of Lux Industries Ltd. would not prohibit the credit of shares to be received on account of stock option, bonus etc. issued by the *Company*.
- 72) It is clarified here that the funds deposited by *Entities* in an interest bearing escrow account/FDR will remain in the said account with lien in favour of SEBI until further orders.
- 73) 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.
- 74) This Order shall come into force with immediate effect.
- 75) 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*.

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

-Sd/-

DATE: MAY 27 , 2022

PLACE: MUMBAI

**S. K. MOHANTY
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA**