National Stock Exchange of India
Circular

Department: Investigation	
Download Ref No: NSE/INVG/53149	**Date: July 29, 2022**
Circular Ref. No: 101/2022	

To All NSE Members

Sub: **SEBI Order in the matter of Kushal Ltd.**

SEBI vide its order no. WTM/AB/IVD/ID1/18233/2022-23 dated July 29, 2022, has hereby restrained the below mentioned entities from accessing the securities market and further prohibited from buying, selling or otherwise dealing in the securities (including units of mutual funds), directly or indirectly, or being associated with the securities market in any manner for a period of one (1) year from the date of the order.

Sr. No.	Name of the Entity	PAN
1	Sandeep Tulsiram Agrawal	ABBPA8827F
2	Namrata Sandeep Agrawal	ABTPN6298B
3	Sudha Mahendra Agrawal	ACRPA9590N
4	Pushpadevi Tulsiram Agrawal	ABAPA7804R
5	Manoj Tulsiram Agrawal	ABTPA9396H
6	Mahendra Tulsiram Agrawal	ABLPA0011D

Further, entities are restrained from buying, selling, or dealing in the securities of the company i.e. Kushal Ltd., directly or indirectly, in any manner whatsoever, for a period of two (2) years, from the date of the order.

Further, all open positions, if any, of the entities, restrained/prohibited in the present Order, in the F & O segment of the recognized stock exchange(s), are permitted to be squared off, irrespective of the restraint/prohibition imposed by the Order.

The Order shall come into force with the immediate effect.

National Stock Exchange of India

The detailed order is available on SEBI website (http://www.sebi.gov.in).

Further, the consolidated list of such entities is available on the Exchange website http://www.nseindia.com home page under "Home-Regulation-Members-Action against Members-Regulatory Actions".

Members are advised to take note of the above and ensure compliance.

In case of any further queries, members are requested to contact the following officials:

Mr. Rakesh Sharma (Extension: 24052), Mr. Anand Jangir (Extension: 22385)
Direct No: 022-26598417/18 Fax: 022-26598195

For and on behalf of
National Stock Exchange of India Limited

Anand Jangir
Manager

Annexure

SEBI Order in the matter of Kushal Ltd.

WTM/AB/IVD/ID1/18233/2022-23

SECURITIES AND EXCHANGE BOARD OF INDIA
FINAL ORDER

Under Sections 11(1), 11(4) 11(4A), 11B (1) and 11B (2) read with Section 15G of the Securities and Exchange Board of India Act, 1992 and Rule 5 of the SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995

In respect of:

Noticee No.	Name of the Noticees	PAN
1	Sandeep Tulsiram Agrawal	ABBPA8827F
2	Namrata Sandeep Agrawal	ABTPN6298B
3	Sudha Mahendra Agrawal	ACRPA9590N
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6	Mahendra Tulsiram Agrawal	ABLPA0011D

In the matter of Kushal Limited

(Aforesaid entities are hereinafter individually referred to by their respective name or Noticee number and collectively as "the Noticees".)

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1. The present proceedings emanate from a Show Cause Notice (hereinafter referred to as "**SCN**") dated August 20, 2021 issued by the Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") against the Noticees in the matter of Kushal Limited (hereinafter also referred to as the **"the Company"/ "Kushal**"). Vide the said SCN, Noticee Nos. 1, 2, 3 and 4 were called upon to show cause as to why suitable directions including disgorgement of wrongful gain made and penalty under Sections 11(1), 11(4), 11(4A), 11B(1) and 11B(2) of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as "**SEBI Act, 1992**") read with Section 15G of the SEBI Act, 1992

and SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995 (hereinafter referred to as "**the Rules**"), should not be issued against them for the alleged violation of Regulation 4(1) of SEBI (Prohibition of Insider Trading) Regulations, 2015 (herein after referred to as "**PIT Regulations, 2015**") and Section 12A(d) and (e) of the SEBI Act, 1992. Vide the said SCN, Noticees No. 1, 5 and 6, were also called upon to show cause as to why suitable directions including penalty under Section 11(1), 11(4), 11(4A), 11B (1) and 11B (2) of the SEBI Act, 1992 read with Section 15G of the SEBI Act, 1992 and the Rules, should not be issued against them for the alleged violation of Regulation 3(1) of PIT Regulations, 2015 and Section 12A(e) of SEBI Act, 1992.

2. The brief facts of the case, the brief findings of the investigation and the allegations levelled against the Noticees, as mentioned in the SCN are as follows:

2.1. Pursuant to receipt of a complaint against Kushal, SEBI conducted an investigation in the scrip of Kushal for the period between January 01, 2016 to July 12, 2018 to determine contraventions, if any, of SEBI Act, 1992 Rules and Regulations framed thereunder.

2.2. On December 05, 2017, Kushal made the following corporate announcement on BSE –

> *"This is to inform that a meeting of the Board of Directors of the Company is scheduled to be held on Thursday, December 14, 2017 at the registered office of the company, inter-alia, for the following –*
>
> *i. To consider and if thought fit, declaration of Second (2nd) Interim Dividend on Equity Shares for the Financial Year 2017-18 and other ancillary business related to the same.*
> *ii. To consider, approve and take on record the Un-Audited Financial Results (Standalone & Consolidated) of the company under Ind AS for the Quarter/Half year ended September 30, 2017.*
> *iii. Note: Trading Window shall remain closed from December 5, 2017 to December 16, 2017 (both days inclusive) on account of above Board*

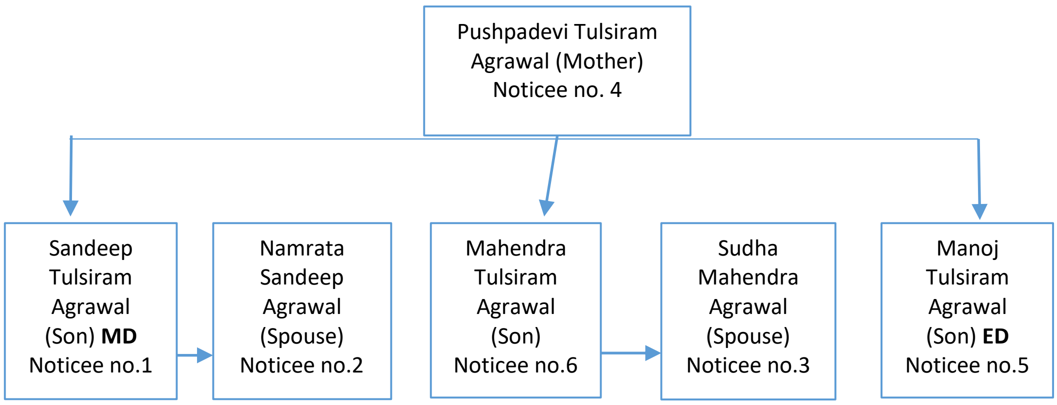
> *Meeting. Accordingly, Promoters, Directors and Designated Employees have been advised not to deal in securities of the company from December 5, 2017 to December 16, 2017 (both days inclusive)."*

2.3. Considering that the corporate announcement was related to financial results for the quarter ended September 30, 2017 and 2nd interim dividend, therefore, in terms of Regulation 2(1)(n) of PIT Regulations, 2015 the information pertaining to financial results and 2nd interim dividend was unpublished price sensitive information" (hereinafter referred to as "**UPSI**") prior to its publication through intimation to the stock exchange on December 14, 2017. The said UPSI relating to financial result and 2nd interim dividend, had material impact on the price of Kushal and the closing price of the scrip on the December 15, 2017 was Rs. 143.05, increased by 1.74% as compared to the close price of Rs. 140.60 on December 14, 2017.

2.4. Based on the information sought from the Company, its promoters and Directors and in the absence of any log of activities maintained by the Company, regarding the details of processes and people involved in the finalization of the financial results for the quarter/half year ended September 30, 2017, UPSI period for the corporate announcement relating to the financial results for the quarter/ half year ended September 30, 2017 and 2nd interim dividend, is taken as October 01, 2017 – December 14, 2017 (hereinafter referred to as "**UPSI period**").

2.5. The SCN alleged that Noticee No. 5, was the Executive Director and Noticee No. 1 was the Managing Director of Kushal. Noticee no. 5 informed SEBI that the proposal for 2nd interim dividend originated on December 05, 2017 and that he had informed Noticee No. 1 regarding the proposal of 2nd interim dividend, prior to taking the same as agenda to the board. The proposal was also informed to the stock exchange on December 05, 2017 at 11:39 A.M. Dividends are linked to the financial results of a company, and the position of Noticee No. 1 and 5 as the Managing Director and the Executive Director of the Company, allowed them access to the financial results for the quarter ended September 30, 2017. Hence, it is alleged that Noticee No. 1 and 5 were privy to the UPSI relating to the financial results for the quarter ended September 30, 2017 and the proposal for 2nd interim dividend. Therefore, they were termed as connected persons in terms of Regulation 2(1)(d)(i) of PIT Regulations, 2015 and hence, insiders in terms of 2(1)(g)(i) of PIT Regulations, 2015 with respect to the UPSI.

2.6. The relationship between the promoters, has been brought out as below.



2.7. It is observed that Ms. Namrata Sandeep Agrawal (Noticee No. 2), Ms. Pushpadevi Tulsiram Agarwal (Noticee No. 4) and Shri Mahendra Tulsiram Agrawal (Noticee No. 6), who are part of the promoter/ promoter group of the Company are immediate relatives of the two insiders i.e. Noticee No. 1 and 5. It is observed that the three of them had considerable income for the financial year 2017-18 and therefore, they are not termed as financial dependent on the insiders, Noticee No. 1 and 5. Ms. Sudha Mahendra Agrawal(Noticee No. 3), who is the spouse of the Shri Mahendra Tulsiram Agrawal(Noticee No. 6), is financially dependent on her husband. It is also observed that Noticee 1 and 2 had the same address and the Noticee No. 3, 4, and 6 had the same address. Both these addresses are in the same locality and were within 250 meters of each other. From the bank statement of Noticee No. 2, it was observed that she had received Rs. 40 lacs from Noticee No. 5 on November 30, 2017. It was also observed that the Rs. 40 lacs was paid towards her trades during the period November 22, 2017 – November 30, 2017.

2.8. In view of the above:

(i) It is alleged that Noticee No. 2, 4 and 6 were connected persons in terms of Regulation 2(1)(d)(i) of PIT Regulations, 2015 and hence, insiders in terms of Regulation 2(1)(g)(i) of PIT Regulations, 2015.

(ii) It is alleged that Noticee No. 3, being the spouse of Noticee No. 6, and financially dependent on Noticee No. 6, was a deemed connected person and hence an insider in terms of 2(1)(g)(i) of PIT Regulations, 2015.

2.9. During the UPSI period, four out of the six promoters namely Noticee 1, 2, 3 and 4 had traded in the scrip of Kushal Limited. The details of the trades are tabulated in the following table–

Promoter Name	PAN	Date of Trade	Gross Buy (Quantity)	Value (Rs)
NAMRATA SANDEEP AGRAWAL	ABTPN6298B	22.11.2017	1,00,000	1,36,96,786
		23.11.2017	56,630	77,01,132.20
		27.11.2017	43,370	58,65,792.50
		30.11.2017	1,35,000	1,82,52,537
Total			**3,35,000**	**4,55,16,247**
PUSHPADEVI AGRAWAL	ABAPA7804R	04.12.2017	1,00,000	1,37,49,293.05
Total			**1,00,000**	**1,37,49,293.05**
SANDEEP TULSIRAM AGRAWAL	ABBPA8827F	28.11.2017	64,765	86,78,510
		29.11.2017	94,235	1,26,47,587
Total			**1,59,000**	**2,13,26,097**
SUDHA MAHENDRA AGRAWAL	ACRPA9590N	01.12.2017	1,25,000	1,69,43,750
Total			**1,25,000**	**1,69,43,750**

2.10. The trades of Noticee No. 1, 2, 3 and 4 in the scrip of Kushal vis-à-vis other scrips during UPSI period, pre UPSI period and post UPSI period were analyzed in terms of quantity as well as value. It is observed that Noticee No. 1, 2, 3 and 4 had not traded in any scrip during UPSI period, pre UPSI period and post UPSI period, except in the scrip of Kushal. It is also observed that Noticee no. 5 and 6 had not traded in any scrip during UPSI period, pre UPSI period and post UPSI period.

2.11. Based on the above stated reasons, it is alleged that trades of Noticee No. 1, 2, 3 and 4 in the scrip of Kushal during the UPSI period was on the basis of UPSI. It is alleged that Noticees No. 1 and 5 being insiders have communicated the UPSI to Noticees No. 2, 4 and 6. Further, since Noticee No. 3 is the immediate relative of Noticee No. 6 and had traded in the scrip of Kushal during the UPSI period, it is alleged Noticee No. 6 had communicated the UPSI to Noticee 3.

2.12. Therefore, it is alleged that by trading in the scrip of Kushal on the basis of UPSI during the UPSI period, Noticees No. 1, 2, 3 and 4 had violated Regulation 4(1) of PIT Regulations, 2015 and Section 12A(d) and (e) of SEBI Act, 1992 and for communicating the UPSI, Noticee Nos. 1, 5 and 6 have violated Regulation 3(1) of PIT Regulations, 2015 and Section 12A(e) of SEBI Act,1992.

2.13. Based on the trades done by the Noticees 1, 2, 3 and 4, it is alleged that the Noticees 1, 2, 3 and 4 had made wrongful notional gains on account of insider trading, details of which are mentioned in the following table. The Company informed BSE regarding the approved financial results for the quarter ended September 30, 2017 and 2nd Interim Dividend on December 14, 2017. Accordingly, the closing price of the scrip of Kushal Limited on December 15, 2017 i.e. Rs. 143.05, has been used for computation of the alleged wrongful notional gains.

Promoter Name	PAN	Date of Trade	Gross Buy (Quantity) (A)	Value (Rs) (B)	Notional Sale price based on Closing price of December 15, 2017 (Close Price Rs 143.05) (C)	Notional gains (Rs) (D = C – B)
NAMRATA SANDEEP AGRAWAL	ABTPN6298B	22.11.2017	1,00,000	1,36,96,786	Rs 143.05 * 335000 = Rs 4,79,21,750	Rs 24,05,503
		23.11.2017	56,630	77,01,132.20		
		27.11.2017	43,370	58,65,792.50		
		30.11.2017	1,35,000	1,82,52,537		
Total			**3,35,000**	**4,55,16,247**	**4,79,21,750**	
PUSHPADEVI AGRAWAL	ABAPA7804R	04.12.2017	1,00,000	1,37,49,293.05	143.05*100000 = 14305000	Rs 5,55,706.95
Total			**1,00,000**	**1,37,49,293.05**	**1,43,05,000**	
SANDEEP TULSIRAM AGRAWAL	ABBPA8827F	28.11.2017	64,765	86,78,510	143.05*159000 = **2,27,44,950**	Rs 14,18,853
		29.11.2017	94,235	1,26,47,587		
Total			**1,59,000**	**2,13,26,097**	**2,27,44,950**	
SUDHA MAHENDRA AGRAWAL	ACRPA9590N	01.12.2017	1,25,000	1,69,43,750	143.05*125000 = **1,78,81,250**	Rs 9,37,500
Total			**1,25,000**	**1,69,43,750**	**1,78,81,250**	

2.14. In view of the above, the SCN dated August 20, 2021 came to be issued to the Noticees.

3. SCN dated August 20, 2021 was served upon the Noticees through post as well as through emails. The Noticees, vide email dated September 15, 2021, sought an extension of additional 15 days time to file their written submissions. However, vide email dated October 08, 2021 the Noticee again sought time till October 11, 2021 to file their replies, but no such reply was filed. Vide email dated October 13, 2021 the Noticee were reminded that despite repeated grant of extension of time for filling replies, no reply has been received and the Noticees were given time till October 15, 2021 to file their replies, but no reply was filed by them. Vide email dated October 19, 2021, the Noticees informed that due to some medical issue with their family member, they have not been

able to file their replies and sought extension of 7 days for submitting replies. Vide email dated October 27, 2021, Noticee No. 1 filed his preliminary reply, wished to file para wise reply to the SCN and sought to inspect all the documents that had been relied upon in the SCN. Further, vide email dated October 28, 2021, the Noticees sought inspection of documents by them or through their authorized representatives (hereinafter referred to as "**AR**"). Vide email dated November 01, 2021, it was informed to the Noticees that all the documents that have been relied upon for the SCN has already been made available to them along with the SCN. Further, the physical inspection of the documents was scheduled on November 09, 2021. On the request of the Noticees, the physical inspection was later rescheduled to November 11, 2021. Inspection of the documents was undertaken by the ARs of the Noticees on November 11, 2021. Vide email dated November 24, 2021, the Noticees were again advised to file their replies by December 03, 2021. Vide their emails dated December 03, 2021, and December 03, 2021, the Noticees again requested for additional two weeks' time to file their replies which was acceded to.

4. Vide emails dated December 19, 2021 and December 20, 2021, the Noticees filed their replies to the SCN. The replies filed by the Noticees were placed before me for consideration and to decide if further inquiry is required to be conducted. After perusal of the replies of the Noticees and the allegations made in the SCN, I was of the *prima facie* view that the objections raised by the Noticees require detailed consideration which can be done by passing of final order. Accordingly, the Noticees were granted personal hearing in the matter. Hearing for the Noticees was scheduled on February 11, 2022 at 2.30 PM. One Ms. Rishika Harish, Advocate, appeared and made the submissions on behalf of the Noticees No. 1 and 5. One Ms. Mona Vora, Advocate, appeared and made the submissions on behalf of the Noticees No. 2, 3, 4 and 6. The Advocates reiterated the contents of the written replies already filed by the Noticees in the matter. Accordingly, hearing was concluded *qua* all the Noticees.

5. Post the personal hearing which concluded on February 11, 2022, Noticees No. 1 and 5 vide emails dated February 21, 2022 filed additional written submissions. The Noticees No. 1 and 5 in their submissions, filed vide emails dated February

21, 2022, reiterated the contents of their submissions filed earlier. Additionally, the Noticees forwarded a copy of the judgement of Hon'ble Supreme Court in the matter of T. Takano v. Securities & Exchange Board of India & Anr., decided on February 18, 2022, to contend that they have not been provided with copy of complaint against the Noticees, copy of investigation report and trade and order log in the scrip of Kushal, alleging violation of principles of natural justice. The Noticees no. 1 and 5 also contended that there has been no wrongful gain by the Noticees as alleged in the SCN and assuming whilst denying that there has been any wrongful gain made by the Noticees, it is submitted that the method of computation employed in the SCN, is erroneous. The contentions raised by the Noticees are addressed in subsequent paragraphs.

6. I note that the Noticees have filed separate but similar written submissions and raised the following contentions.

<u>Violation of principles of Natural Justice</u>

6.1. The Noticees have raised preliminary objections with regard to violation of principles of natural justice. It is stated that the Investigation Report and complaint copy based on which the SCN has been issued has not been provided, in violation of principles of natural justice.

<u>Determination of UPSI Period</u>

6.2. The Noticee no. 1 and 6 have submitted that the entire SCN is based on the premise that the alleged UPSI period ranges from October 01, 2017 to December 14, 2017 and the Noticees were in possession of UPSI and traded during UPSI period.

6.3. These Noticees have stated that the finalization of accounts for the quarter ended September 30, 2017 has been assumed by SEBI to commence from October 1, 2017, as against the actual date of December 4, 2017. It is contended that finalization of financial results can in no case start from the date succeeding the end of the quarter. Finalization of accounts involves cutoff date entries and accounting entries as per applicable Indian Accounting Standards. This process normally starts after the books of accounts are otherwise complete as regards to the transactions pertaining to the particular Quarter. This also involves the finalization of GST Data pertaining to the last month of the relevant quarter. Hence, the presumed date of initiation of finalization as October 1 is illogical and determination of UPSI period from October 01, 2017 to December 14, 2017 is arbitrary. Further, the Company had to present consolidated results covering its Wholly Owned Subsidiary, abroad and hence the very basis of allegation regarding UPSI relating to results and proposal of interim dividend at an early date is hypothetical.

6.4. Further, it is submitted that merely the fact that detailed log of activity was not maintained cannot be a base to presume the start date from the next day of quarter end. Rather material events, which have been brought to the notice / available on public domain, should also be given cognizance for deciding the UPSI Period. It is submitted that the then Statutory Auditor resigned on November 10, 2017, and so the finalization of the result for the quarter ended 30th September, 2017 was not completed. Further, emails exchanged between the Manager of Wholly owned subsidiary and CA Vimal Shah-CFO dated December 8, 2017 and December 9, 2017 regarding the figures for consolidation is also show that financial results for the quarter ended September 30, 2017 were not ready. Also, communication with the new auditor vide emails dated December 13, 2017 and December 14, 2017 also leads to a conclusion that the results were not ready prior to the date of publishing the results.

6.5. Furthermore, it is submitted that on December 05, 2017 an agenda of the proposed 2nd Interim Dividend and unaudited financial results for quarter ending September 2017 was circulated to the Board of directors of the Company – meeting was scheduled to be held on 14th December, 2017. A circulation of agenda is a routine phenomenon which is done with the sole intention of informing the board of directors as well as to the Public at Large about an upcoming board meeting and the topics/issues which will be taken up for the consideration of the board of directors therein. It is submitted that the circulation of agenda and readiness of financial statement are two totally different issues which cannot be interlinked. In order to show that it was in possession of price sensitive information pertaining to the periodic financial results of the Company, SEBI at the least was required to place on record some evidence to show that the financials of the Company were ready on October 01, 2017.

Determination of UPSI

6.6. Noticee No. 1 and 5 have submitted that admittedly dividend is an UPSI for any company as defined in Regulation 2(1)(n) of PIT Regulations. However, in their case, company had already declared 1st Interim Dividend for the Financial Year 2017-18 on November 13, 2017. The corporate announcement was made to BSE stating in its minutes that the Company is expecting good profit in current financial year. It is submitted that that there was no UPSI as pursuant to announcement of Board Meeting, the public was already aware of news about forthcoming financial results and interim dividend. As the Company already had declared 1st Interim dividend, it was very reasonable & wide expectation of the shareholders and investors at large that 2nd Interim Dividend will come with the results of 2nd Quarter ended 30.09.2017. Further, the announcement of the proposal was made on December 5, 2017 with the notice to Stock Exchange bringing the information within the public domain. The quantum of dividend was not in the knowledge of any one and the same was decided by the Board in its meeting of 14th December, 2017, which decision was conveyed to the Stock Exchanges on 14th December, 2017, at the earliest possible, and the Trades in question, though highly insignificant in volume, were transacted much before that.

6.7. It is submitted that declaration of 2nd Interim Dividend for the financial year 2017-2018 was expected by the public and its not falling under category of not generally available and it was known to the public at large even if it was not published it was known to the people. It is submitted that it was very reasonable and wide expectation of the shareholders and investors at large that 2nd

Interim Dividend was going to be declared and it did not materially impact the price of the script and as it is not likely to materially affect the price of the securities and it's a normal information rather than termed as UPSI.

6.8. Noticees No. 1 and 5 have further submitted that vide SEBI (PIT) (Amendment) Regulations, 2018, Regulation 2(1)(n)(vi) was specifically omitted. The amendment is evidently a clarificatory amendment to ensure that each and every time there is an announcement under listing requirements, it should not be assumed that the period prior to the announcement constitutes a UPSI period. The SCN was issued to the Noticees on August 20, 2021. The main reason given by the TK Vishwanathan Committee (August 2018) for removal of explicit mention of material event disclosure under the definition of UPSI was that all material events which are required to be disclosed as per the LODR Regulations may not necessarily be UPSI under the PIT Regulations. It is submitted that the PIT Regulations intended that information that is not generally available would be UPSI only if it is likely to materially affect the price upon becoming generally available. If the impact on price is unlikely to be material, as a matter of principle, the information cannot be price sensitive even if unpublished. Besides, the listed illustrations are ordinarily in the nature of UPSI, which also means they need not be UPSI. Merely because a particular type of event is listed it would not follow that it would inevitably constitute UPSI regardless of the materiality of its potential price impact.

6.9. Similarly, the other Noticees have also raised the same objection regarding determination of UPSI period in their separate replies.

<u>No Violation</u>

6.10. In this regard, Noticee No. 1, 2, 3 and 4 have inter alia submitted as follows.

6.11. It is submitted that their trades in the scrip of the Company from November 22, 2017 to December 04, 2017 are independent and not on the basis of alleged UPSI. It is stated that they have not sold the shares purchased by them and continue to hold the same as on date. It is contended by Noticee No. 2, 3 and

4, that they are financially independent and have deployed their own funds for investing in the scrip of Kushal. It is contended by Noticee No. 2, 3 and 4 that apart from being a promoter of the Company, they are neither employees of the Company and nor are they involved in the management of the Company or its day to day affairs of the Company.

6.12. It is stated that the Noticee No. 1, 2, 3 and 4 have bought the shares prior to the announcement (alleged UPSI), so if their behavior was speculative in nature, they should have sold it after announcement. But they kept the shares as an investment which demonstrates that they are long term investor in their own promoted company.

6.13. It is submitted by Noticee No. 1, 2, 3 and 4 that It is well settled that the reasons for which the trades in the securities took place are at the heart of the determination of whether the trading by an alleged insider is violative in nature. [Abhijit Rajan vs. SEBI (Appeal 232 of 2016) and in Rajiv Gandhi vs. SEBI (Appeal 50 of 2007)]. Further, it is submitted that a person who is trading on the basis of UPSI is highly unlikely to hold the position for such a long period of time after UPSI has become public. Typically, traders who trade UPSI buy the stock just before event and sell it immediately after the event thereby avoiding any sort of market risk. It is stated that the Noticees are holding the position till date during which stock has also declined more than 97 % (approx.) from the alleged UPSI. Therefore, not traded on alleged UPSI but had taken a directional view on the securities of the Company being promoters of the Company. A person holding a stock position despite a market -to market loss has to have another view for his strong directional view.

6.14. Noticee No. 1, 2, 3, 4 and 6 have also relied on the Judgement of Hon'ble SAT in Rakesh Agarwal Vs. SEBI wherein Hon'ble SAT had decided that in order to penalize an insider for violating the Regulations, it must be proven that the insider benefited unfairly from the trade. It is stated that after revisiting the entire jurisprudence of insider trading on requirement of mens rea under Indian legal system, the tribunal has held that: "*Taking into consideration the very objective of the SEBI Regulations prohibiting the insider trading, the* *intention/motive of the insider has to be taken cognizance of. It is true that the regulation does not specifically bring in mens rea as an ingredient of insider trading. But that does not mean that the motive need be ignored".*

6.15. Noticees No. 1, 2, 3, 4 and 6 have further relied upon the decision of Hon'ble SAT in Dilip S. Pendse vs. SEBI (Appeal No. 80 of 2009 decided on November 19, 2009) and have quoted the following observation of Hon'ble SAT.

> *—13. The charge of insider trading is one of the most serious charges in relation to the securities market and having regard to the gravity of this wrong doing, higher must be the preponderance of probabilities in establishing the same. In Mousam Singha Roy v. State of West Bengal (2003) 12 SCC 377, the learned judges of the Supreme Court in the context of the administration of criminal justice observed that, —It is also a settled principle of criminal jurisprudence that the more serious the offence, the stricter the degree of proof, since a higher degree of assurance is required to convict the accused.‖ This principle applies to civil cases as well where the charge is to be established not beyond reasonable doubt but on the preponderance of probabilities. The measure of proof in civil or criminal cases is not an absolute standard and within each standard there are degrees of probability.*

6.16. It is submitted by Noticee No. 1 that the he has never communicated any UPSI to Noticee No. 2, 4, 6. Noticee No. 5 have submitted that he has not communicated any UPSI to Noticee No. 1,2, 4,6 or any other person. It is further stated by Noticee No. 1 and 5 that the alleged UPSI has been shared only on a 'need to know' basis and "in furtherance of legitimate purposes, performance of duties or discharge of legal obligations" on December 5, 2017 by the Noticee No. 5 for the purpose of preparation of agenda of the Board meeting. Further, it is stated that there is no evidence or proof that they have communicated the alleged UPSI to the Noticee No. 2, 4 and 6. It is submitted by the Noticees that the mere fact related to residential address of the Noticee and within the same locality addresses within 250 meters of each other with other Noticees cannot be the basis to assume that they have communicated the alleged UPSI. For the charge of communication there is no deeming fiction and it is incumbent on the investigation to show the actual incumbent. It is submitted that SEBI has failed to produce any email and /or any written or oral communication which shows that the Noticees have communicated the alleged UPSI to the other Noticees. Such an approach of presuming communication of information would fall foul of the explicit ruling of the Hon'ble Supreme Court of India in the matter of Chintalapati Srinivasa Raju vs Securities and Exchange Board of India.

6.17. It is submitted by Noticee no. 2, 3 and 4 that that they are independent person and in their personal capacity, they had traded as per their view, conviction and risk appetite and not on the basis of any alleged UPSI relating to Kushal. They have stated that deeming provisions and legal fiction, if any has no application to their trading which was honest, bonafide and in the normal course of things. It is further submitted that a fiction cannot be extended by importing another fiction. In her case, deeming that they are connected person could be permissible in law but other fiction that they had the knowledge of alleged UPSI is wrongly assumed, false and erroneous.

6.18. Further, it is submitted by Noticee No. 2, 3, 4 and 6 that the decision to declare or not to declare the dividend was totally dependent on the directors, which could have been ascertained in the meeting scheduled on December 14, 2017. Further, no contrary evidence is placed on record to show that they had information that such a proposal of the declaration of dividend will be cleared by the board of directors of Kushal. Therefore, in the absence of any such evidence, it cannot be stated that they, being 'Insiders' or 'deemed connected persons', had any information or knowledge to suggest that such a proposal will be approved by the Board of Directors of Kushal in the meeting scheduled on December 14, 2017.

6.19. Further, it is submitted by Noticee No. 2, 3, 4 and 6 that in order to establish any violation of Regulation 4(1) of PIT Regulations or under Section 12A (d) and (e) of the SEBI Act, 1992, it is sine qua non requirement that the trading of a Noticee should have been carried out 'while in possession' of any UPSI. It is claimed by the Noticee that facts in the case show that there was no UPSI existing during the relevant period and therefore the issue of trading while in possession of any UPSI does not arise. Further, it is submitted that in order to establish a violation under regulation of PIT Regulations and for levy of penalty under section 15 G of the SEBI Act, 1992, it is essential to demonstrate that the trading was done 'on the basis of UPSI' and not otherwise. In their support, Noticee No. 2, 3 and 4 have relied on to the following observations made by the Hon'ble Securities Appellate Tribunal in its order dated 31 January 2011 as passed in the matter of Chandrakala v/s. SEBI, Appeal No. 209 of 2011.

> *"The prohibition contained in regulation 3 of the regulations apply only when an insider trades or deals in securities on the basis of any unpublished price sensitive information and not otherwise. It means that the trades executed should be motivated by the information in the possession of the insider. If an insider trades or deals in securities of a listed company, it may be presumed that he / she traded on the basis of unpublished price sensitive information in his / her possession unless contrary to the same is established. The burden of proving a situation contrary to the presumption mentioned above lies on the insider. If an insider shows that he /she did not trade on the basis of unpublished price sensitive information and that he /she traded on some other basis, he/she cannot be said to have violated the provisions of regulation 3 of the regulations."*

6.20. It is submitted by Noticee No. 2, 3, 4 and 6 that the ratio laid down by the Hon'ble Securities Appellate Tribunal in the aforesaid matter was also applied by the Hon'ble Tribunal in its order dated 3rd October 2012 as passed in matter of Manoj Gaur and Ors. V. SEBI, Appeal no. 64 of 2012. The Tribunal after observing the trading pattern of the Mrs Urvashi Gaur, wife the Appellant clearly held the trading pattern clearly suggest that she has not traded on the basis of UPSI and there is no evidence on record to suggest that she was in possession of any UPSI.

6.21. It is submitted by Noticee No. 2, 3, 4, 5 and 6 that they have received/or/and provided the funds to other Noticees and from other Noticees in normal course of things and which has already been refunded by the passage of time, and the same cannot be the basis to assume that they have received or communicated the alleged UPSI.

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

Consideration of the issues and findings:

7. Before dealing with the violations alleged in the SCN, it would be appropriate to refer to the provisions of SEBI Act, 1992 and PIT Regulations, which are relevant for determining the said violations. The relevant extract of these provisions is as under:

Relevant extract of the provisions of SEBI Act, 1992:

"Functions of Board.

11. (1) Subject to the provisions of this Act, it shall be the duty of the Board to protect the interests of investors in securities and to promote the development of, and to regulate the securities market, by such measures as it thinks fit.

(2) Without prejudice to the generality of the foregoing provisions, the measures referred to therein may provide for—
(a)…….
(b)……
.
(g) prohibiting insider trading in securities;
……………………………..

Prohibition of manipulative and deceptive devices, insider trading and substantial acquisition of securities or control.

12A. No person shall directly or indirectly—
(a)….
(b)……
(c)…….
(d) engage in insider trading;

(e) deal in securities while in possession of material or non-public information or communicate such material or non-public information to any other person, in a manner which is in contravention of the provisions of this Act or the rules or the regulations made thereunder;
(f)……………………."

Relevant extract of provisions of PIT Regulations:

"Definitions.

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

(d) "connected person" means, -

(i) any person who is or has during the six months prior to the concerned act been associated with a company, directly or indirectly, in any capacity including by reason of frequent communication with its officers or by being in any contractual, fiduciary or employment relationship or by being a director, officer or an employee of the company or holds any position including a professional or business relationship between himself and the company whether temporary or permanent, that allows such person, directly or indirectly, access to unpublished price sensitive information or is reasonably expected to allow such access.

(ii) Without prejudice to the generality of the foregoing, the persons falling within the following categories shall be deemed to be connected persons unless the contrary is established, -

(a). an immediate relative of connected persons specified in clause (i); or
(b). a holding company or associate company or subsidiary company; or
(c).an intermediary as specified in section 12 of the Act or an employee or director thereof; or
(d). an investment company, trustee company, asset management company or an employee or director thereof; or
(e). an official of a stock exchange or of clearing house or corporation; or
(f). a member of board of trustees of a mutual fund or a member of the board of directors of the asset management company of a mutual fund or is an employee thereof; or
(g). a member of the board of directors or an employee, of a public financial institution as defined in section 2 (72) of the Companies Act, 2013; or
(h). an official or an employee of a self-regulatory organization recognized or authorized by the Board; or

(i). a banker of the company; or
(j). a concern, firm, trust, Hindu undivided family, company or association of persons where in a director of a company or his immediate relative or banker of the company, has more than ten per cent. of the holding or interest;

NOTE: It is intended that a connected person is one who has a connection with the company that is expected to put him in possession of unpublished price sensitive information. Immediate relatives and other categories of persons specified above are also presumed to be connected persons but such a presumption is a deeming legal fiction and is rebuttable. This definition is also intended to bring into its ambit persons who may not seemingly occupy any position in a company but are in regular touch with the company and its officers and are involved in the know of the company's operations. It is intended to bring within its ambit those who would have access to or could access unpublished price sensitive information about any company or class of companies by virtue of any connection that would put them in possession of unpublished price sensitive information.

(f) "immediate relative" means a spouse of a person, and includes parent, sibling, and child of such person or of the spouse, any of whom is either dependent financially on such person, or consults such person in taking decisions relating to trading in securities;

(g)"insider" means any person who is:

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

NOTE: Since "generally available information" is defined, it is intended that anyone in possession of or having access to unpublished price sensitive information should be considered an "insider" regardless of how one came in possession of or had access to such information. Various circumstances are provided for such a person to demonstrate that he has not indulged in insider trading. Therefore, this definition is intended to bring within its reach any person who is in receipt of or has access to unpublished price sensitive information. The onus of showing that a certain person was in possession of or had access to unpublished price sensitive information at the time of trading would, therefore, be on the person leveling the charge after which the person who has traded when in possession of or having access to unpublished price sensitive information may demonstrate that he was not in such possession or that he has not traded or he could not access or that his trading when in possession of such information was squarely covered by the exonerating circumstances.

Communication or procurement of unpublished price sensitive information.

3. (1) No insider shall communicate, provide, or allow access to any unpublished price sensitive information, relating to a company or securities listed or proposed to be listed, to any person including other insiders except where such communication is in furtherance of legitimate purposes, performance of duties or discharge of legal obligations.

NOTE: This provision is intended to cast an obligation on all insiders who are essentially persons in possession of unpublished price sensitive information to handle such information with care and to deal with the information with them when transacting their business strictly on a need-to-know basis. It is also intended to lead to organizations developing practices based on need-to-know principles for treatment of information in their possession.

2) No person shall procure from or cause the communication by any insider of unpublished price sensitive information, relating to a company or securities listed or proposed to be listed, except in furtherance of legitimate purposes, performance of duties or discharge of legal obligations.

NOTE: This provision is intended to impose a prohibition on unlawfully procuring possession of unpublished price sensitive information. Inducement and procurement of unpublished price sensitive information not in furtherance of one's legitimate duties and discharge of obligations would be illegal under this provision.

………………….

Trading when in possession of unpublished price sensitive information.

4.(1) No insider shall trade in securities that are listed or proposed to be listed on a stock exchange when in possession of unpublished price sensitive information:

………………………….

(2) In the case of connected persons the onus of establishing, that they were not in possession of unpublished price sensitive information, shall be on such connected persons and in other cases, the onus would be on the Board.

………………………

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

8. Section 11(1) of the SEBI Act, 1992 provides that it shall be the duty of the Board to protect the interests of investors in securities and to promote the development of, and to regulate the securities market, by such measures as it thinks fit. Section 11(2)(g) provides that prohibiting insider trading as one of the measures, for this purpose. In discharge of its duty under Section 11(1) read with Section 11(2)(g), SEBI had framed SEBI (Prohibition of Insider Trading) Regulations, 1992 (*since rescinded*). Further, Section 12A of SEBI Act, 1992, as introduced by SEBI (Amendment) Act, 2002, in Clause (d) provides that no person shall directly or indirectly in indulge in insider trading. Section 12A(e) provides that no person shall directly or indirectly deal in securities while in possession of material or non-public information or communicate such material or non-public information to any other person, in a manner which is in contravention of the provisions of this Act or the rules or the regulations made thereunder. SEBI (Prohibition of Insider Trading) Regulations, 1992 came to be repealed by PIT Regulations, 2015. Thus, at present, regulations referred to in Section 12A(e) are PIT Regulations, 2015. Once a person is found to be in violation of PIT Regulations, 2015, it leads to violation of Section 12A(d) and (e) of SEBI Act, 1992, also. Regulation 4(1) of PIT Regulations, 2015 provides that no insider shall trade in the securities of a company when in possession of unpublished price sensitive information. Further, Regulation 4(2) provides that if the "insider", as envisaged under Regulation 4(1), is a connected person then the onus of establishing that he was not in possession of UPSI, shall be on such connected persons and in other cases, the onus would be on SEBI. The Note appended to Regulation 4(1) clarifies that when a person trades in securities when in possession of UPSI, his trades would be presumed to have been motivated by the knowledge and awareness of such UPSI in his possession. Proviso to Regulation 4(1) provides that despite presence of all the ingredients of Regulation 4(1) of PIT Regulation, 2015, the insider may prove his innocence by demonstrating the circumstances including those which are mentioned in the said proviso. The Note to Regulation 4(1) states that once it is established that an insider traded when in possession of UPSI, it would be open to the insider to

prove his innocence by demonstrating the circumstances mentioned in the proviso, failing which he would have violated the prohibition.

9. In the present case, Noticee No.1 to 4 are alleged to have violated Section 12A(d) and (e) of the SEBI Act, 1992 and Regulation 4(1) of the PIT Regulations, 2015 by trading in the shares of the Company when in possession of UPSI whereas Noticee No. 1, 5 and 6, are alleged to have violated Section 12A(e) of the SEBI Act, 1992 and Regulation 3(1) of PIT Regulations, 2015. Thus, in these proceedings, it has to be determined whether Noticee No. 1 to 4 have violated Regulation 4(1) of the PIT Regulations, 2015. If yes, then, Noticee No. 1 to 4 can be said to be in violation of Section 12A(d) and (e) of the SEBI Act, 1992. Similarly, it has to be determined whether Noticee No. 1, 5 and 6 have violated Regulation 3(1) of PIT Regulations, 2015. If yes, then, Noticee No. 1, 5 and 6 can be said to be in violation of Section 12A(e) of SEBI Act, 1992.

10. Before dealing with the aforesaid questions, it would be relevant to deal with the preliminary objections raised by Noticees in their submissions regarding violation of principles of natural justice. I note that the Noticees in their written submissions have contended that they have not been provided with copy of the complaint received against them and the investigation report, thus contending that principles of natural justice have been violated. During the inspection which was carried out by the ARs of the Noticees, it was also remarked that copies of complaint and investigation report has not been provided. Noticees No. 1 and 5 in their additional submissions filed vide email dated February 21, 2022 reiterated the submissions regarding non-provision of complaint and investigation report. During the personal hearing and the additional submissions filed vide email dated February 21, 2022, it was also contended that the Noticees have not been provided with order log and trade log in the scrip of the Company by SEBI along with complaint and investigation report which has resulted into violation of principles of natural justice.

11. I note that it is admitted fact that the Noticees had sought copy of complaint against the Company, during inspection of documents carried by the ARs of the Noticees. However, SEBI had refused to provide the copy of the said complaint

since the complaint copy was marked as "Confidential". In this regard, I note that SEBI had received a complaint from Central Vigilance Commission (hereinafter referred to as "**CVC"**) which had *inter alia* alleged market manipulation in the scrip of Kushal. The Complaint was marked as "private and confidential" by CVC. I note that the complaints received from any external sources specially from agencies like CVC are required not to be disclosed so as to protect the identity of the complainant and also to protect the integrity of complaint handling mechanism of SEBI especially when the complaint itself is marked as "private and confidential" by CVC. Disclosure of such confidential communications would be detrimental to public interest. In such cases, it is also essential to ensure that the source of information is not identified.

12. I also note that the complaint received by SEBI was merely the basis for looking into the affairs of the Company. It is pursuant to receipt of complaint that SEBI carried out its own investigation in the affairs of the Company. I note that the contents of the complaint have not been relied upon in the investigation against the Noticees and none of the allegations contained in the SCN are emanating from the contents of the complaint. It is also noted that during the inspection and after the personal hearing all the relied upon and relevant material have been provided to the Noticees. I am of the view that by not providing the copy of complaint no prejudice has been caused to the Noticees and their rights have not been infringed. Accordingly, I am of the view that the request of the Noticees for providing the complaint copy has been rightly denied by SEBI. The contention of the Noticees regarding violation of principles of natural justice as far as the same is related to providing of complaint, is misplaced.

13. I note that during the inspection of the documents, the ARs of the Noticees *inter alia* had remarked that they have not been provided with complete trade log for all the Noticees for the entire investigation period and the UPSI Period. During the personal hearing before me, the ARs of the Noticees also raised contention that they have not been provided with complete trade and order log. Further, vide their additional submissions sent vide emails dated February 21, 2022, Noticees No. 1 and 5 again raised the request for providing the complete trade

and order log and thus contended that by not the providing the same, principles of natural justice have been violated.

14. In this regard, I note that in response to the remarks made by the ARs of the Noticees during inspection, it was informed to the ARs of the Noticees that trade and order log would be provided to them by email or Compact Disc(CD). Thereafter, vide email dated November 18, 2021, the entire trade and order log was provided to the ARs of the Noticees. Further, two copies of CDs containing the trade and order log in the scrip of Kushal were also physically provided to the ARs of the Noticees on November 24, 2021, which was also acknowledged by the representative of ARs. Further, in response to the request of the Noticees for providing trade and order log made vide additional written submissions dated February 21, 2022, SEBI vide email dated February 25, 2022 informed that the trade and order log for the scrip Kushal have already been provided to the ARs of the Noticees. Copy of the acknowledgement from the ARs was also shared with the Noticee No. 1 and 5. Further, it was informed that in case the Noticees require another copy of the trade and order log for the scrip of Kushal, they may send an AR to collect the CD from SEBI office. The Noticees were again reminded by email dated March 02, 2022 to collect the collect the CD from SEBI office. In response to which, from an email dated March 05, 2022 received from cmd@kushallimited.com, it was informed that the Noticee has now been able to trace the CD provided by SEBI and do not require fresh copy of the CD. The Noticee also sought one-week's time to make any further submissions on the aspects of trade log. However, till date no additional submissions have been made by the Noticees on the aspects of trade log, indicating that they have nothing further to add to their submissions already filed before. Accordingly, the contention raised by the noticees is misplaced and the question of violation of principles of natural justice by not providing the order and trade log does not arise.

15. I note that the Noticees had also sought a copy of investigation report during inspection of documents, in their written submissions dated December 19, 2021 and December 20, 2021 and additional written submissions dated February 21, 2022. In this regard, I note that pursuant to judgement dated February 18, 2020

of the Hon'ble Supreme Court in the matter of T. Takano Vs. SEBI (CA No. 487-488 of 2022), SEBI vide email dated March 30, 2022, provided the investigation report to the Noticees after making the suitable redactions in line with the exceptions permitted by the Hon'ble Supreme Court in T. Takano (supra). The Noticees were advised to make additional submissions, if any, by April 08, 2022. Vide email dated April 09, 2022, the Noticees sought additional time of 7 days for filling submissions pertaining to investigation report. However, no reply has been filed by the Noticees after receipt of the investigation report. Therefore, it shows that the Noticees have nothing further to add to their defense and their replies/written submissions, which had already been filed with SEBI are taken into consideration. As the investigation report has been shared with the Noticees and ample time has been provided to them to file any additional response pursuant to receipt of investigation report, the contention raised by the noticees is misplaced and the question of violation of principles of natural justice for not providing the investigation report does not arise.

16. Having dealt with the preliminary objections of the Noticees regarding violation of principles of natural justice, I would now examine the violations alleged in the SCN which have been carried out in subsequent paragraphs under the following heads:

A. <u>UPSI:</u>

17. I note that the Company on December 05, 2017 had made the following corporate announcement on BSE –

> *"This is to inform that a meeting of the Board of Directors of the Company is scheduled to be held on Thursday, December 14, 2017 at the registered office of the company, inter-alia, for the following –*
>
> *i. To consider and if thought fit, declaration of Second (2nd) Interim Dividend on Equity Shares for the Financial Year 2017-18 and other ancillary business related to the same.*

ii. *To consider, approve and take on record the Un-Audited Financial Results (Standalone & Consolidated) of the company under Ind AS for the Quarter/Half year ended September 30, 2017.*

iii. *Note: Trading Window shall remain closed from December 5, 2017 to December 16, 2017 (both days inclusive) on account of above Board Meeting. Accordingly, Promoters, Directors and Designated Employees have been advised not to deal in securities of the company from December 5, 2017 to December 16, 2017 (both days inclusive)."*

18. Regulation 2(1)(n) of PIT Regulations, defines UPSI as under –

> *(n) "unpublished price sensitive information" means any information, relating to a company or its securities, directly or indirectly, that is not generally available which upon becoming generally available, is likely to materially affect the price of the securities and shall, ordinarily including but not restricted to, information relating to the following: –*
>
> *(i) financial results;*
> *(ii) dividends;*
> *(iii….*
> *(iv…*

19. I note that as per Regulation 2(1)(n) of PIT Regulations, 2015, any information related to the Company or its securities which is not "generally available" to the public and upon becoming public is likely to materially affect the price of the securities is defined as UPSI. Regulation 2(1)(e) also defines "generally available information" which means information that is accessible to the public on a non-discriminatory basis. The legislative note appended to Regulation 2(1)(e) states that "*it is intended to define what constitutes generally available information so that it is easier to crystallize and appreciate what unpublished price sensitive information is. Information published on the website of a stock exchange, would ordinarily be considered generally available*." I note that Regulation 2(1)(n) also provides a list of information which contains financial results, dividends etc. which shall ordinarily be considered as UPSI. The list provided under Regulation 2(1)(n) is not exhaustive and not restricted to the illustrations contained therein. The same is also clear from the legislative note appended to Regulation 2(1)(n) which states that "*It is intended that information*

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

In the instant case, since the corporate announcement of the Company of December 05, 2017 was related to declaration of Second (2^{nd}) Interim Dividend and to consider, approve and take on record the Un-Audited Financial Results of the Company, the said information had been termed as UPSI.

20. In the instant case, after perusal of the replies filed by the Noticees in response to the SCN issued against them, I note that the Noticees in their replies have not contested the terming of declaration of financial results as UPSI. However, I note that Noticees, mainly Noticees No. 1 and 5, have raised objections regarding the terming of declaration of 2^{nd} Interim Dividend as UPSI. It is submitted by Noticee No. 1 and 5 that, admittedly dividend is a UPSI for any company. However, in their case, the Company had already declared 1^{st} Interim Dividend for the Financial Year 2017-18 on November 13, 2017 which information was published in the corporate announcement on BSE stating in its minutes that the Company was expecting good profit in current financial year. It is contended that in their case, declaration of 2^{nd} Interim Dividend for the financial year 2017-2018 was expected by the public and hence was generally available. The Noticees have contended that there was a wide expectation of the shareholders and investors that 2^{nd} Interim Dividend was going to be announced and it did not materially impact the price of the scrip. Accordingly, the same may be treated as a normal information rather than terming it as UPSI.

21. In this regard, I note that definition of UPSI and the illustrative list provided in it makes it clear that any information related to financial results and declaration of dividend is treated as UPSI if it is not published and thus not generally available. In ordinary circumstances any information which is published on the website of a stock exchange, is considered as generally available and thus, not treated as UPSI. The declaration of dividend is prerogative of the Company which is

announced after taking into account the profit available for distribution. The contention of the Noticees that while declaring the 1st dividend for Financial Year 2017-18 on November 13, 2017, the Company, in its minutes to the announcement on BSE, had announced that the Company was expecting good profit in the current financial year and thus, the information about 2nd interim dividend was generally available, is misplaced, as unaudited financial results were not available with the public. Further, information like unaudited financial results, quantum of the 2nd interim dividend, whether it will be declared and when it will be declared, was not available with the investors. On declaration of 1st interim dividend investors only had the expectation of further dividend. Such expectation can not be equated with actual general availability of the information pertaining to the 2nd interim dividend. Also, generally, dividend is declared *inter alia* out of the profits of the company and it is only one of the methods for distributing profits to the shareholders. The premise that any company expecting good financial results would invariably declare dividend is misplaced. Further, as per corporate announcement of the Company dated December 05, 2017 also, declaration of 2nd interim dividend was only at proposal stage, which was to be considered by the board of the Company and if thought fit by the board, the same was to be declared. Therefore, the contention raised by the Noticees, is untenable.

22. It is contended by the Noticees no.1 and 5 that vide SEBI (PIT) (Amendment) Regulations, 2018 (w.e.f. April, 2019), regulation 2(1)(n)(vi) was specifically omitted. The amendment is evidently a clarificatory amendment to ensure that each and every time there is an announcement under listing requirements, it should not be assumed that the period prior to the announcement constitutes a UPSI period. The SCN was issued to the Noticees on August 20, 2021. The main reason given by the TK Vishwanathan Committee (August 2018) for removal of explicit mention of material event disclosure under the definition of UPSI was that all material events which are required to be disclosed as per the LODR Regulations, 2015 may not necessarily be UPSI under the PIT Regulations, 2015.

23. In this regard, I note that it is fact that the PIT Regulations, 2015 was amended and w.e.f. April, 2019, Regulation 2(1)(n)(vi) which was "*material events in accordance with the listing agreement*" was specifically omitted. The purpose of the said amendment was to ensure that all the material event in accordance with the listing agreements are not to be treated as UPSI under the PIT Regulations, 2015. It is fact that any material event in accordance with listing agreement would not be termed as UPSI on its own, it may or may not be UPSI, it is only if the material event falls within the definition of Regulation 2(1)(n) of PIT Regulation, 2015 that it would be termed as UPSI. The contention raised by the Noticees is misplaced as Regulation 2(1)(n) itself states that any information related to the event of declaration of dividend and financial results would be UPSI. In this regard, I also note that the Hon'ble SAT in its order dated December 16, 2021 in the matter of *Rupesh Kantilal Savla Vs. SEBI* (Appeal no.581 of 2019) held as follows in relation to the aforesaid omitted Clause:

> *"….*
> *12.A perusal of the aforesaid provision indicates that any information which is not generally available and which upon becoming generally available is likely to materially affect the price of the securities would be an UPSI. Thus, any information which may affect the price of the securities would be an UPSI. Clause (vi) which provided that "material events in accordance with the listing agreement" was deleted on April 1, 2019. The contention that in view of this deletion, any information disclosed on the stock exchange platform under the listing agreement was not a material event which could materially affect the price of the securities. In our view, such contention raised is patently erroneous and is not relevant to the issue.*
>
> *13. In this regard, we are of the opinion that any information disclosed under the listing agreement or under the relevant provisions of the LODR Regulations may or may not materially affect the price of the securities and it is not necessary that every information disclosed under the listing agreement / LODR Regulations will affect the price of the securities. This deletion of Clause (vi) in Regulation 2(1)(n) of the PIT Regulations has no relevance to the fact as to whether an information which was known to the appellant and which was not generally available to the public was an UPSI or not.*
> *…"*

Therefore, the contention raised by the Noticee, is untenable.

24. It is also contended by the Noticees that PIT Regulations, 2015 intended that information that is not generally available would be UPSI only if it is likely to materially affect the price upon becoming generally available. If the impact on price is unlikely to be material, as a matter of principle, the information cannot be price sensitive even if unpublished. The listed illustrations are ordinarily in the nature of UPSI, which also means they need not be UPSI. Merely because a particular type of event is listed it would not automatically follow that it would inevitably constitute UPSI regardless of the materiality of its potential price impact.

25. In this regard, I note and as observed above also, any information related to unaudited financial results and declaration of dividend shall, ordinarily be termed as UPSI unless it is shown by cogent evidences that such information was already available to public on non-discriminatory basis. The list of illustration provided under the Regulation is not exhaustive. The information which is unpublished and likely to materially affect the price upon coming into the public domain is UPSI. The regulation provides that there should be a likelihood that the information, on being published, would materially affect the price of the scrip. Whereas in fact the UPSI upon becoming public may or may not affect the price. Further, I note that the Noticees have merely made a statement without providing any cogent evidence which may suggest that the information related to declaration of 2nd Interim dividend was available to public on non-discriminatory basis. Nonetheless, I also note that SCN has observed that after the publication of the said UPSI relating to financial result and 2nd interim dividend on December 14, 2017, there was a material impact on the stock price of the Company. The closing price of the scrip on the December 15, 2017 was Rs. 143.05/-, an increase of 1.74%, as compared to the closing price of Rs. 140.60/- as on December 14, 2017. Therefore, the contention raised by Noticees is misplaced.

26. Therefore, in view of the observations made above, I am of the view that the information related to unaudited financial results for the quarter ended on September 30, 2017 and and 2nd interim dividend is rightly termed as UPSI.

27. SCN alleges that period from October 01, 2017 to December 14, 2017 is the UPSI period. In this regard, I note that SCN records that during investigation, in order to determine the date on which the UPSI came into existence and the date of dissemination to the public, the information regarding the chronology of events (i.e. activities such as initiation of preparation of accounts, review by statutory auditor, approval by managing director, etc.) leading up to the origination of the above UPSI relating to financial results was sought from the Company. SCN further states that as per the submissions of the Company made vide its email dated November 24, 2020, Annexure - 2 to the SCN, it did not maintain such detailed log of activities and that the activities broadly happened over 7-10 days before the Board Meeting which was scheduled to be held on December 14, 2017. SCN further states that if the submissions of the Company are considered then the preparation of the financial results started from December 04, 2017. However, SCN does not treat this date as the date of coming into existence of UPSI for the reason that as per the copy of the agenda of the board meeting dated December 14, 2017, provided by the Company vide email dated November 03, 2020, it was observed that Noticee no. 5, promoter and director of the Company, had made the proposal for the 2nd Interim Dividend, Annexure - 3 to the SCN. Further, as per the submissions by Noticee no. 5 made vide his reply dated December 23, 2020, Annexure-4 to the SCN, the proposal for 2nd Interim Dividend originated on December 05, 2017, wherein Noticee no. 5 informed the proposal for dividend to Noticee no. 1, promoter and managing director of the Company and then took it to the board as an agenda. SCN states that while examining the submissions of the Company and Noticee no. 5, it was observed that while the Company had stated that the preparation of the financial results started on December 04, 2017, as per Noticee no. 5, the proposal of 2nd Interim Dividend originated on December 05, 2017. SCN alleges that interim dividend is linked to the financial results and without finalization of the financial results and crystallization of profits the proposal of interim dividend is unlikely to originate. In view of the date of origin of the proposal of 2nd interim

dividend i.e. December 05, 2017, as informed by Noticee no. 5, SCN alleges that the preparation of financial results for the quarter ended September 30, 2017, could not have started on December 04, 2017 i.e. 10 days prior to the board meeting on December 14, 2017 and completed before December 05, 2017. Therefore, SCN alleges that preparation of the financial results for the quarter ended September 30, 2017 started much earlier and was completed before December 05, 2017, which lead to the origination of the proposal for interim dividend. After rejecting that December 04, 2017 cannot be the date of starting of preparation of financial results and consequently, coming into existence of UPSI, SCN proceeds to determine the said date. SCN states that as per Regulation 33(3)(a) of LODR Regulations, 2015, every listed entity is required to submit quarterly and year-to-date standalone financial results to the stock exchange within forty-five days of end of each quarter, other than the last quarter. SCN states that the earlier auditor of the Company i.e. M/s. Devadiya & Associates had resigned on November 10, 2017 and the appointment of M/s. Shailesh & Co, Chartered Accountants, was approved in the Board meeting held by November 13, 2017. Thus, SCN alleges that in the absence of any log of activities maintained by the Company, regarding the details of processes and people involved in the finalization of the financial results for the quarter/half year ended September 30, 2017, processes involving preparation of the financial results, started from October 01, 2017 i.e. first day after the September quarter 2017 ended and not from December 04, 2017. Accordingly, SCN takes October 01, 2017 as the date of coming into existence of UPSI and consequently, period from October 01, 2017 to December 14, 2017, has been taken as UPSI period. The Noticees, mainly the Noticee no. 1 and 5 has contended that determination of UPSI period is not correct for the following reasons:

i. Finalization of financial results involves cutoff date entries and accounting entries as per applicable Indian Accounting Standard. This process normally starts after the books of accounts are otherwise complete as regards to the transactions pertaining to the particular Quarter. This also involves the finalization of GST Data pertaining to the last month of the relevant quarter and hence, presumed date of initiation of finalization as October 1 is illogical.

ii. The Company had to present consolidated results covering its Wholly Owned Subsidiary, abroad and hence, the very basis of allegation regarding UPSI relating to results and proposal of interim dividend at an early date is absolutely hypothetical. It is submitted that the consolidated figures were not available on October 1, 2017 and also that the same cannot be considered as UPSI as it had to be further worked upon before becoming a price sensitive information.

iii. It is submitted that merely a fact that detailed log of activity was not maintained cannot be a base to presume the start date from the next day of quarter end. Rather material events which have been brought to the notice / available on public domain should also be given cognizance for deciding the UPSI Period. It is submitted that the then Statutory Auditor of the Company had resigned on November 10, 2017 which is an event leading to the conclusion that finalization of the result for the quarter ended 30th September, 2017 was not completed. Further, the Noticees have submitted emails exchanged between the Manager of WoS and CA Vimal Shah-CFO dated December 08, 2017 and December 09, 2017 regarding the figures for consolidation, which is also an event leading to the conclusion that financial result for the quarter ended 30th September, 2017 was not ready. Also communication with the new auditor vide emails dated December 13, 2017 and December 14, 2017 also leads to a conclusion that the results were not ready prior to the date of publishing the results.

iv. It is submitted that on December 5, 2017, an agenda of proposed 2nd Interim Dividend and unaudited financial results for quarter ending September 2017 was circulated to the Board of directors of the Company and for which meeting was scheduled to be held on December 14, 2017. A circulation of agenda is a routine phenomenon which is done with the sole intention of informing the board of directors as well as to the Public at large about an upcoming board meeting and the topics/issues which will be taken up for the consideration of the board of directors therein. It is submitted that the circulation of agenda and readiness of financial statement are two totally different issues which cannot be interlinked. In order to show that it was in possession of price sensitive information pertaining to the periodic financial results of the Company, SEBI at the least was required to place on record some evidence to show that the financials of the Company were ready on 1st October 2017.

28. In this regard, it needs to be clarified that UPSI period is the period when the UPSI came into existence till it becomes public. UPSI is information which is price sensitive and unpublished or the information which is not generally available to the public. Regulation 2(1)(e) of the PIT Regulations, 2015 defines "Generally available information" as information that is accessible to the public on a non-discriminatory basis. Further, the legislative note to Regulation 2(1)(e) states that information which is published on the website of a stock exchange, would ordinarily be considered as generally available. Or to put it differently, for an information to be held as generally available, the information must be uniformly and universally disseminated in a transparent manner. It follows from the above is that any information which is of the nature of likely to materially affecting the prices of the Company or its securities and which has not been published on the website of the stock exchanges is generally and ordinarily considered as UPSI. Finalization of the financial results of any company requires various inputs like sales, expenses, taxes, interests etc., and then consolidation of such inputs which ultimately leads to profit and loss statement, balance sheet statement and cash flow statement for any company. Here I note that in terms of Regulation 5 of the PIT Regulations, 2015, an insider is allowed to formulate a trading plan pursuant to which trades may be carried out on his behalf in accordance with such plan. This provision has been made to give an option to persons who may be perpetually in possession of UPSI to enable them to trade in securities in a compliant manner. The purpose is that the possession of UPSI would not prohibit the execution of trades according to trading plan, as such person had pre-decided such trade even before the UPSI came into existence. However, even such trading plans can not entail trading for the period between the twentieth trading day prior to the last day of any financial period for which results are required to be announced by the issuer of the securities and

the second trading day after the disclosure of such financial results. This is for the reason because the trading plan is envisaged as an exception to the general rule prohibiting trading by insiders when in possession of UPSI, therefore, it is important that the trading plan does not entail trading for a reasonable period around the declaration of financial results as that would generate UPSI. Thus, PIT Regulations, 2015 envisages the period between the twentieth trading day prior to the last day of any financial period for which results are required to be announced by the listed companies and the second trading day after the disclosure of such financial results, as the period during which UPSI may exist. In this context to ascertain the period of UPSI related to financial results, information regarding the chronology of events (i.e. activities such as initiation of preparation of accounts, review by statutory auditor, approval by managing director, etc.) leading up to the origination of the UPSI is generally sought from the companies in whose securities insider trading is alleged to have taken place. All this information leading up to finalization of financial results is ordinarily treated as UPSI as the same is not generally available to public and is price sensitive. Therefore, for the UPSI, the date of initiation of preparation of quarterly/annual financial results is taken as the starting date of UPSI period which end with the information becoming public or when the financial results are published on the website of the stock exchange(s).

29. In the instant case, I note that the information regarding the chronology of events (i.e. activities such as initiation of preparation of accounts, review by statutory auditor, approval by managing director, etc.) leading up to the finalization of financial results was sought from the Company. In response to which it was submitted by the Company that the Company did not maintain such detailed log of activities but the activities broadly happened over 7-10 days before the Board Meeting which was held on December 14, 2017. Therefore, as per the Company's submissions the preparation of financial results started from December 04, 2017. I do not find the said submission of the Company as plausible. I find that the Company had on November 13, 2011 had announced the 1st interim dividend. The interim dividend is linked to the financial results and without finalization of the financial results and crystallization of profits, the proposal of interim dividend is unlikely to originate. In this regard, I note that

Section 123 of the Companies Act, 2013 which deals with declaration of dividend provides as under:

> ***"Declaration of Dividend***
>
> *123. (1) No dividend shall be declared or paid by a company for any financial year except—*
>
> *(a) out of the profits of the company for that year arrived at after providing for depreciation in accordance with the provisions of sub-section (2), or out of the profits of the company for any previous financial year or years arrived at after providing for depreciation in accordance with the provisions of that sub-section and remaining undistributed, or out of both:*
>
> *Provided that in computing profits any amount representing unrealised gains, notional gains or revaluation of assets and any change in carrying amount of an asset or of a liability on measurement of the asset or the liability at fair value shall be excluded; or*
>
> *(b) out of money provided by the Central Government or a State Government for the payment of dividend by the company in pursuance of a guarantee given by that Government:*
>
> *Provided that a company may, before the declaration of any dividend in any financial year, transfer such percentage of its profits for that financial year as it may consider appropriate to the reserves of the company:*
>
> *Provided further that where, owing to inadequacy or absence of profits in any financial year, any company proposes to declare dividend out of the accumulated profits earned by it in previous years and transferred by the company to the free reserves, such declaration of dividend shall not be made except in accordance with such rules as may be prescribed in this behalf:*
>
> *Provided also that no dividend shall be declared or paid by a company from its reserves other than free reserves.*
> *Provided also that no company shall declare dividend unless carried over previous losses and depreciation not provided in previous year or years are set off against profit of the company for the current year.*
>
> *(2) For the purposes of clause (a) of sub-section (1), depreciation shall be provided in accordance with the provisions of Schedule II.*

(3) The Board of Directors of a company may declare interim dividend during any financial year or at any time during the period from closure of financial year till holding of the annual general meeting out of the surplus in the profit and loss account or out of profits of the financial year for which such interim dividend is sought to be declared or out of profits generated in the financial year till the quarter preceding the date of declaration of the interim dividend:

Provided that in case the company has incurred loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding three financial years.

(4) The amount of the dividend, including interim dividend, shall be deposited in a scheduled bank in a separate account within five days from the date of declaration of such dividend.

(5) No dividend shall be paid by a company in respect of any share therein except to the registered shareholder of such share or to his order or to his banker and shall not be payable except in cash:

Provided that nothing in this sub-section shall be deemed to prohibit the capitalisation of profits or reserves of a company for the purpose of issuing fully paid-up bonus shares or paying up any amount for the time being unpaid on any shares held by the members of the company:

Provided further that any dividend payable in cash may be paid by cheque or warrant or in any electronic mode to the shareholder entitled to the payment of the dividend.

(6) A company which fails to comply with the provisions of sections 73 and 74 shall not, so long as such failure continues, declare any dividend on its equity shares."

30. As can be noted from Section 123(3) above, board of directors of a company may declare interim dividend out of surplus in the profit and loss account or out of profits of the financial year for which such interim dividend is sought to be declared or out of profits generated in the financial year till the quarter preceding

the date of declaration of the interim dividend. In his reply dated December 19, 2021, Noticee no. 5 while submitting that the information pertaining to 2nd interim dividend was generally available information, have contended that the Company had already declared 1st Interim Dividend for the Financial Year 2017-18 on November 13, 2017 which information was published in the corporate announcement on BSE stating in its minutes that the Company was expecting good profit in current financial year. It was contended that declaration of 2nd Interim Dividend for the financial year 2017-2018 was expected by the public. Considering the above statement of the Company, I note that the Company on November 13, 2017, intimated stock exchange i.e. BSE Ltd. *inter alia* as under:

> "…………We would like to inform that in today's board meeting held at the Registered Office of the company besides other subjects, the following matters were considered, discussed, approved by resolution passed thereof by the board:
>
> 1). Declared First (1st) Interim Dividend on Equity Shares for FY 2017-18 at the rate of 10% per fully paid up equity share of ₹ 2/- each. (₹. 0.20 per share);………"

As mentioned in para 29 above, I note that dividend can be declared by a company in accordance with the provisions of the Companies Act, 2013 and Companies (Declaration and Payment of Dividend) Rules, 2014. Interim dividend can be paid by a company out of surplus in the profit and loss account or out of profits of the financial year for which such interim dividend is sought to be declared or out of profits generated in the financial year till the quarter preceding the date of declaration of the interim dividend. Thus, for arriving at the decision to declare interim dividend, a company is required to know the key financial figures to assess the availability of the profit. Dividend whether interim or final has to be on the basis of profits which can be ascertained only with the help of financial results. The interim dividend has to be out of profit and also to be approved by audit committee and that such precise declaration of dividend without availability of information such as figures of sales, revenue, expenditure and without crystalisation of profits after providing for depreciation and other expenses, is not possible. Therefore, I find that UPSI pertaining to unaudited financial results had crystalised on November 13, 2017 when the board of director of the Company declared the 1st interim dividend and thus, the submissions of the Noticees that preparation of financial results for the quarter ended September 30, 2017 started on December 04, 2017 i.e. 10 days before the board meeting scheduled on December 14, 2017, is not tenable.

31. The Company has taken the plea that the fact that its Statutory Auditor had resigned on November 10, 2017 and a new Statutory Auditor was appointed on November 13, 2017 indicates that the process of finalization of financial results had not been completed. However, I note that the statutory auditors do not prepare the accounts. Rather, he reviews and verifies the accuracy of the financial statements. Finalization of financial results requires review by statutory auditor but it is an independent process as compared to the preparation of financial data. Unaudited quarterly financial results are prepared by the company accountant and thereafter, the same are subjected to limited review by the statutory auditor. Review by the auditor comes at a later stage and date after the circulation of draft financial data. Further, as discussed above, UPSI pertaining to unaudited financial results crystalised on November 13, 2017 when the board of director of the Company declared the 1st interim dividend. Hence, the submission of the Noticee that financial results preparation started only 10 days before board meeting scheduled on December 14, 2017, to consider *inter alia* 2nd interim dividend, is not tenable.

32. I also note that Noticees No. 1 and 5 have provided copy of the emails dated December 08, 2017 and December 09, 2017 between one Mr. Anil Kakadiya which the Noticees are claiming to be manager of the Wholly owned subsidiary of the Company and Mr. Vimal Shah, the CFO of the Company, regarding the purported figures for consolidation to contend that financial result for the quarter ended 30th September, 2017 was not ready by then. In this regard, after perusal of the said email, I note that in the email dated December 08, 2017 mentioned by the Noticees six excel files which are named as Kashish financials 201616.05.16, kashish financials, kashish final 31.12.2016 etc. are attached. Similarly, in the email dated December 09, 2017, two zip folders are attached. I note that both the emails do not contain any text in their body, none of the documents which are attached in those emails has been provided by the

Noticees to SEBI so that their contents may be examined. Since, the emails contents cannot be examined, merely because the same has been sent by one manager of the wholly owned subsidiary of the Company to the CFO of the Company does not prove anything. In any case, UPSI pertaining to unaudited financial results crystalised on November 13, 2017 when the board of director of the Company declared the 1st interim dividend. Hence, the submission of the Noticee is not tenable.

33. I also note that the Noticees No. 1 and 5 have provided copy of two emails dated December 04, 2017 and December 13, 2017 between one Mr. Nilay Shah and Mr. Vimal Shah, CFO of the Company to contend that financial result for the quarter ended 30th September, 2017 was not ready by then. In this regard, I note that the in the email dated December 04, 2017, only one file titled TCS_Q1_2017-18_Financial Results is attached. In the email dated December 13, 2017, two documents titled limited review report-30.09.17-standalone-final and limited review report-30.09.17-consolidated-final are attached. Both these emails are without any content and none of the documents which are attached in these emails have been provided to SEBI so that the same may be examined. Therefore, the emails do not prove anything and thus, cannot be taken into consideration. Moreover, from the email dated December 04, 2017, it appears that a file relating to financials results was shared with the CFO of the Company which *prima facie* suggest that that the draft financials results of the Company which could give idea about profit/loss, were ready by then. In any case, UPSI pertaining to unaudited financial results crystalised on November 13, 2017 when the board of director of the Company declared the 1st interim dividend. Hence, the submission of the Noticee is not tenable.

34. Regarding the contention of the Noticees that circulation of agenda and readiness of financial statement are different issues, I note that it is true that circulation of agenda and readiness of financial statement are different issues. However, as observed above, dividends are declared out of the profits of a company and are directly linked to the financial results of the company. A proposal of interim dividend is unlikely to originate without crystallizing the profits of a company and even less likely to originate even before the preparation of

financial results has commenced. As discussed above, the Company had declared the 1st interim dividend on November 13, 2017 which could not be possible without having crystalised key financial figures. Therefore, it shows that key information pertaining to unaudited financial results for the quarter ended on September 30, 2017 were available on November 13, 2017. Accordingly, based on sufficient amount available for 2nd interim dividend, the agenda for the board meeting to be held on December 14, 2017, also included the proposal for declaration of 2nd interim dividend. Thus, the Company's contention that preparation of financial results started on December 04, 2017 is not correct.

35. I further note that the Noticees have claimed that the SCN has considered October 01, 2017 as the date of finalization of financial results and thus, date of coming into existence of UPSI. In this regard, I note that the SCN has taken the date of initiation of preparation of quarterly financial results i.e. October 01, 2017 as the starting date of UPSI period and not the date of finalization as claimed by the Noticees.

36. Apart from dealing with the aforesaid contentions of Noticees with respect to coming into existence of the UPSI, I note that technically, a MD or CEO along with the CFO is a person who is primarily responsible for managing the financial risks of the corporation. He is responsible for financial planning, day to day operation, record-keeping, as well as financial reporting to the board. He has to keep a tab on the sales, revenue and expenditure as well as the financial risk of the company. Hence, MD or CEO will be a bird's eye view of the financials with financial numbers at a macro level. Further, the preparation of financial results is wholly technology driven these days. The MD/ED being a core functionary in the aspects of monitoring of the financials of the company would keep in touch with the financial position of the company on a regular basis. Further, they occupy the highest position of the finance function in a company. The profile of a MD/ED and their responsibilities gives an insight into how important their portfolio is. Generally, their portfolio includes:

(i) heading the finance and business contracts of the company;
(ii) customer and vendor negotiations and negotiations of large contracts;

(iii) handling investor relations;
(iv) participation in the internal functional reviews;
(v) treasury management.

It is seen that generally the CEO/CFO/ED is the person who makes detailed presentations before the Committee members in Audit Committee meetings and before the Directors of the board in the board meeting. In any company, the preparation of the books of account is done on a monthly basis by the internal finance team for both standalone and consolidated books. The standalone results are audited, quarterly and the consolidated results, annually. The books are maintained in the ERP system. The book closure process (i.e. finalisation of accounts) typically starts around the last week of every month and is completed by the first week of the succeeding month. The statutory auditors commence the audit of books of account for every quarter during the last week of the quarter and complete the same by first week of succeeding month of the next quarter. This clearly suggests that the MD/ED/CEO/CFO of the company, would obviously have a clear picture of the financial position of the company. MD/ED is reasonably expected to have access to the price sensitive information pertaining to the financial position of the company and also certain major corporate developments. Being the MD/ED of the company, the person would also have the responsibility of accounting, reporting and compliance with the statutory regulation/ rules by listed entities. In the present case, as discussed above key financial figures of the unaudited financial results for the quarter ended on September 30, 2017, of the Company, were available by November 13, 2017 which led to declaration of 1st interim dividend by the board of the Company on the same date and inclusion of agenda of 2nd interim dividend for the board meeting to be held on December 14, 2017, as circulated on December 05, 2017.

B. <u>Insiders:</u>

37. Regulation 2(1)(g) of PIT Regulations, 2015 provides that an insider means any person who is either a connected person or who is in possession of or having access to unpublished price sensitive information. Connected person in terms

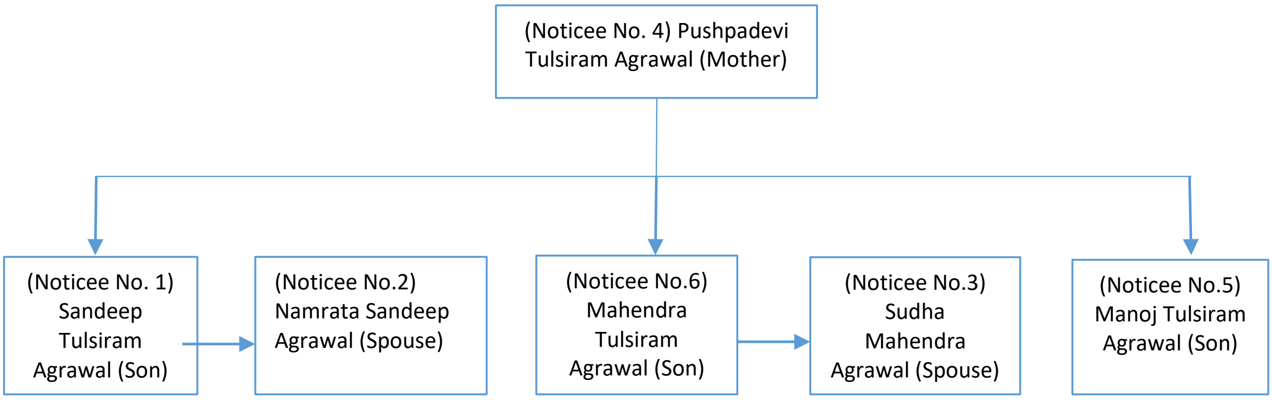
of Regulation 2(1)(d)(i) of PIT Regulations, 2015 means any person who is or has during the six months prior to the concerned act been associated with a company, directly or indirectly, in any capacity including by reason of frequent communication with its officers or by being in any contractual, fiduciary or employment relationship or by being a director, officer or an employee of the company or holds any position including a professional or business relationship between himself and the company whether temporary or permanent, that allows such person, directly or indirectly, access to unpublished price sensitive information or is reasonably expected to allow such access. Further, Regulation 2(1)(d)(ii) provides for certain categories of person which are deemed to be connected person, it *inter alia* includes an immediate relative of connected persons. *"Immediate relative"* means a spouse of a person, and includes parent, sibling, and child of such person or of the spouse, any of whom is either dependent financially on such person, or consults such person in taking decision relating to trading in securities.

38. I note that Noticee No. 1 was the Managing Director of the Company and whereas Noticee No. 5 was the Executive Director of the Company and thus, it is alleged in the SCN that their position in the Company allowed them access to UPSI, and therefore, they were connected persons in terms of Regulation 2(1)(d)(i) of PIT Regulations, 2015 and hence, insiders in terms of 2(1)(g)(i) of PIT Regulations, 2015.

39. In this regard, I note that Noticees no. 1 and 5 in their replies have merely denied of having access to UPSI and have not disputed their identification as connected persons and thus, insiders. I also note that Noticee No. 1 and 5 are the promoters and major shareholders of the Company holding 5.70 % and 8.66 % shares of the Company, respectively, individually. The total holding of the promoters and promoter group is 65.53 % of the total shareholding of the Company. Moreover, Noticee No. 1 and 5 were the managing director and executive director of the Company, respectively. Hence, they are "connected persons" as per Regulation 2(1)(d)(i) of the PIT Regulations, 2015. Noticee no. 1 and 5 were also in charge of the day to day operations of the Company and thus, directly associated with the Company. This association with the Company allowed them direct access to

UPSI i.e. unaudited financial results for the quarter ending September 30, 2017 and information regarding 2^{nd} interim dividend. Being the managing director and executive director of the Company, they had a bird's eye view of what was going on in the Company. Further, it is admitted fact that the Noticee No. 5 had informed Noticee No. 1 regarding the proposal of 2^{nd} Interim dividend on December 05, 2017. Hence, Noticee no.1 and 5 had access to the information pertaining to the declaration of dividend. As noted above, declaration of dividend is related to financial results of the Company. Therefore, Noticee No. 1 and 5 are connected person and thus, insiders in terms of PIT Regulations, 2015.

40. I note that the relationships between the Noticees, is as follows:



41. I note that Noticee No. 2 has been alleged as a connected person in terms of Regulation 2(1)(d)(i) of PIT Regulations, 2015 and hence, an insider in terms of Regulation 2(1)(g)(i) of PIT Regulations, 2015, for the following reasons:

(i) Noticee No. 2 was the promoter of the Company;

(ii) Noticee No. 2 was the spouse of the Noticee No. 1, who was the managing director and promoter of the Company and a connected person;

(iii) Noticee No. 2 and Noticee No. 1 resided at the same address and hence, frequent communication between Noticee No. 2 and Noticee No. 1 cannot be ruled out;

(iv) Noticee No. 2 had received funds from Noticee No. 5, for her trades during the UPSI Period;

(v) During the UPSI period Noticee No. 2 only traded in the scrip of the Company;

(vi) Notice No. 5 was the executive director of the Company and originator of the UPSI. Therefore, Noticee No. 2 was aware of UPSI, when trading in the scrip of the Company during the UPSI period.

42. I note that Noticee No. 3, being the spouse of Noticee No. 6 and financially dependent on Noticee No. 6, has been alleged as a deemed connected person under Regulation 2(1)(d)(ii) and hence, an insider in terms of 2(1)(g)(i) of PIT Regulations, 2015, for the following reasons:

(i) Noticee No. 3 was the promoter of the Company;
(ii) Noticee No. 3 was the spouse of the Noticee No. 6;
(iii) Noticee No. 3 and Noticee No. 6 resided at the same address. Therefore frequent communication between Noticee No. 3 and Noticee No. 6 cannot be ruled out;
(iv) Noticee No. 6 was a connected person in terms of Regulation 2(1)(d)(i) of PIT Regulations, 2015;
(v) Noticee No. 3 did not trade in the scrip of the Company in the three months prior to the UPSI period. Further, during the UPSI period, she only traded in the scrip of the Company. Further, Noticee No. 6 had provided 71.17% (i.e. Rs. 1.21 crore out of Rs. 1.70 crore) of the funds for the said trades. Hence, Noticee no. 3 was also financially dependent on her spouse Noticee No. 6.

43. I note that Noticee No. 4, has been alleged as a connected person in terms of Regulation 2(1)(d)(i) of PIT Regulations, 2015 and hence, an insider in terms of Regulation 2(1)(g)(i) of PIT Regulations, 2015, for the following reasons:

(i) Noticee No. 4 was the promoter of the Company;
(ii) Noticee No. 4 was the mother of the Noticee No. 1, who was the managing director and promoter of the Company;
(iii) Noticee No. 4 resided in close proximity to Noticee No. 1, and hence, frequent communication between Noticee No. 4 and Noticee No. 1 cannot be ruled out;

(iv) Notice No. 4 did not trade in the scrip of the Company before and after the UPSI period. Further during the UPSI period, she only traded in the scrip of the Company.

44. I note that Noticee No. 6, has been alleged as a connected person in terms of Regulation 2(1)(d)(i) of PIT Regulations, 2015 and hence, an insider in terms of Regulation 2(1)(g)(i) of PIT Regulations, 2015, for the following reasons:

(i) Noticee No. 6 was the promoter of the Company.

(ii) Noticee No. 6 was the brother of the Noticee No. 1, who was the managing director and promoter of the Company and himself a connected person;

(iii) Noticee No. 6 resided in close proximity to Noticee No. 1, and hence, frequent communication between Noticee No. 6 and Noticee No. 1 cannot be ruled out;

(iv) While Noticee No. 6 did not trade in the scrip of the Company during the UPSI period, his spouse i.e. Noticee No 3 had traded in the scrip of the Company during the said UPSI Period;

(v) Noticee No. 6 had fund transactions with Noticee No. 1, within the six months prior period from the date of trading by the Noticee No. 3 (i.e. spouse of Noticee No. 6).

(vi) Noticee No. 3 did not trade in the scrip of the Company in the three months prior to the UPSI period. Further, during the UPSI period, she only traded in the scrip of the Company. Further, Noticee No. 6 had provided approximately 70% (i.e. Rs. 1.21 crore out of Rs. 1.70 crore) of the funds for the said trades of Noticee No. 3.

45. I note from the shareholding pattern filed by the Company with BSE that for the quarter ending September 30, 2017, Noticee No. 2 was the promoter and largest shareholder of the Company holding 18.43 % of the shares individually and along with her family members was promoter/promoter group, who were collectively holding 65.53 % shareholding of the Company. Noticee No. 2 is also the spouse of the Noticee No. 1, who was the managing director of the Company and one of the key managerial personnel of the Company. Noticee No. 1 and 2 were also

residing at same address. It is also observed that Noticee No. 2 had received funds from Noticee No. 5, during the UPSI Period. Similarly, Noticee No. 3, 4 and 6 are also part of promoter/promoter group and among the largest shareholders of the Company having 2.88%, 9.10% and 9.57%, respectively, shareholding of the Company as on quarter ending September 30, 2017. Noticee No. 4 is mother of Noticee No. 1 and 5 and Noticee No. 6 is brother of Noticee No. 1 and 5. Noticee No. 4 and 6 were also residing within close proximity to Noticee No. 1 and 5. Further, Noticee No. 6 had fund transactions with Noticee No. 1. Noticee No. 3 is spouse of Noticee no. 6 and both of them were residing together and Noticee No. 3 is also financially dependent on him. Thus, I note that Noticee no. 2, 3, 4 and 6 are directly associated with the Company and its key managerial personnel, i.e. Noticee No. 1 and 5. Therefore, I find that Noticees No. 1, 2,3,4,5 and 6 are connected persons and thus, insiders under the provisions of PIT Regulations, 2015.

C. <u>Communication of UPSI and trading when in possession of UPSI:</u>

46. It is alleged in the SCN that during the UPSI period, Noticee No. 1, 2, 3 and 4 had traded in the scrip of the Company. The details of the trades are as follows.

Noticee Name	PAN	Date of Trade	Gross Buy (Quantity)	Value (Rs)
NAMRATA SANDEEP AGRAWAL	ABTPN6298B	22.11.2017	1,00,000	1,36,96,786
		23.11.2017	56,630	77,01,132.20
		27.11.2017	43,370	58,65,792.50
		30.11.2017	1,35,000	1,82,52,537
Total			**3,35,000**	**4,55,16,247**
PUSHPADEVI AGRAWAL	ABAPA7804R	04.12.2017	1,00,000	1,37,49,293.05
Total			**1,00,000**	**1,37,49,293.05**
SANDEEP TULSIRAM AGRAWAL	ABBPA8827F	28.11.2017	64,765	86,78,510
		29.11.2017	94,235	1,26,47,587
Total			**1,59,000**	**2,13,26,097**

Noticee Name	PAN	Date of Trade	Gross Buy (Quantity)	Value (Rs)
SUDHA MAHENDRA AGRAWAL	ACRPA9590N	01.12.2017	1,25,000	1,69,43,750
Total			**1,25,000**	**1,69,43,750**

47. The trades of Noticee No. 1, 2, 3 and 4 in the scrip of the Company vis-à-vis other scrips if any during UPSI period, pre UPSI period and post UPSI period were also examined in terms of quantity as well as value. It was observed that Noticee No. 1, 2, 3 and 4 had not traded in any other scrip except in the scrip of Kushal Limited, during UPSI period, pre UPSI period and post UPSI period. The trades of the Noticees 1, 2, 3 and 4 in terms of quantity and value are as under:

Analysis in terms of Quantity

Noticee No. 1 - Shri. Sandeep Tulsiram Agrawal (PAN - ABBPA8827F)								
Period	**KUSHAL LIMITED**				**Other Scrips**			
	Gross Buy quantity	**% to total gross buy quantity of all scrips**	**Gross Sell quantity**	**% to total gross sell quantity of all scrips**	**Gross Buy quantity**	**% to total gross buy quantity of all scrips**	**Gross Sell quantity**	**% to total gross sell quantity of all scrips**
Prior to UPSI period 01.07.2017 – 30.09.2017	0	0	0	0	0	0	0	0
During UPSI period 01.10.2017 – 14.12.2017	1,59,000	100%	0	0	0	0	0	0
Post UPSI period 15.12.2017 – 28.02.2018	0	0	0	0	0	0	0	0
Noticee No. 2 - Ms. Namrata Sandeep Agrawal (PAN - ABTPN6298B)								

Period	KUSHAL LIMITED				Other Scrips			
	Gross Buy quantity	**% to total gross buy quantity of all scrips**	**Gross Sell quantity**	**% to total gross sell quantity of all scrips**	**Gross Buy quantity**	**% to total gross buy quantity of all scrips**	**Gross Sell quantity**	**% to total gross sell quantity of all scrips**
Prior to UPSI period 01.07.2017 – 30.09.2017	5,00,000	100%	0	0	0	0	0	0
During UPSI period 01.10.2017 – 14.12.2017	3,35,000	100%	0	0	0	0	0	0
Post UPSI period 15.12.2017 – 28.02.2018	0	0	0	0	0	0	0	0

Noticee No. 3 - Ms. Sudha Mahendra Agrawal (PAN - ACRPA9590N)

Period	KUSHAL LIMITED				Other Scrips			
	Gross Buy quantity	**% to total gross buy quantity of all scrips**	**Gross Sell quantity**	**% to total gross sell quantity of all scrips**	**Gross Buy quantity**	**% to total gross buy quantity of all scrips**	**Gross Sell quantity**	**% to total gross sell quantity of all scrips**
Prior to UPSI period 01.07.2017 – 30.09.2017	0	0	0	0	0	0	0	0
During UPSI period 01.10.2017 – 14.12.2017	1,25,000	100%	0	0	0	0	0	0
Post UPSI period 15.12.2017 – 28.02.2018	2,70,000	100%	0	0	0	0	0	0

Noticee No. 4 - Ms. Pushpadevi Tulsiram Agrawal (PAN - ABAPA7804R)

Period	KUSHAL LIMITED				Other Scrips			
	Gross Buy quantity	**% to total gross buy quantity of all scrips**	**Gross Sell quantity**	**% to total gross sell quantity of all scrips**	**Gross Buy quantity**	**% to total gross buy quantity of all scrips**	**Gross Sell quantity**	**% to total gross sell quantity of all scrips**
Prior to UPSI period 01.07.2017 – 30.09.2017	0	0	0	0	0	0	0	0
During UPSI period 01.10.2017 – 14.12.2017	1,00,000	100%	0	0	0	0	0	0
Post UPSI period 15.12.2017 – 28.02.2018	0	0	0	0	0	0	0	0

<u>Analysis in terms of Value</u>

Noticee No. 1 - Shri. Sandeep Tulsiram Agrawal (PAN - ABBPA8827F)

Period	KUSHAL LIMITED				Other Scrips			
	Gross Buy value in Rs	**% to total gross buy value of all scrips**	**Gross Sell value in Rs**	**% to total gross sell value of all scrips**	**Gross Buy value in Rs**	**% to total gross buy value of all scrips**	**Gross Sell value in Rs**	**% to total gross sell value of all scrips**
Prior to UPSI period 01.07.2017 – 30.09.2017	0	0	0	0	0	0	0	0
During UPSI period 01.10.2017 – 14.12.2017	2,13,26,097	100%	0	0	0	0	0	0
Post UPSI period 15.12.2017	0	0	0	0	0	0	0	0

– 28.02.2018								

Noticee No. 2 - Ms. Namrata Sandeep Agrawal (PAN - ABTPN6298B)

Period	KUSHAL LIMITED				Other Scrips			
	Gross Buy value in Rs	% to total gross buy value of all scrips	Gross Sell value in Rs	% to total gross sell value of all scrips	Gross Buy value in Rs	% to total gross buy value of all scrips	Gross Sell value in Rs	% to total gross sell value of all scrips
Prior to UPSI period 01.07.2017 – 30.09.2017	6,07,20,388.95	100%	0	0	0	0	0	0
During UPSI period 01.10.2017 – 14.12.2017	4,55,16,247	100%	0	0	0	0	0	0
Post UPSI period 15.12.2017 – 28.02.2018	0	0	0	0	0	0	0	0

Noticee No. 3 - Ms. Sudha Mahendra Agrawal (PAN - ACRPA9590N)

Period	KUSHAL LIMITED	Other Scrips

	Gross Buy value in Rs	% to total gross buy value of all scrips	Gross Sell value in Rs	% to total gross sell value of all scrips	Gross Buy value in Rs	% to total gross buy value of all scrips	Gross Sell value in Rs	% to total gross sell value of all scrips
Prior to UPSI period 01.07.2017 – 30.09.2017	0	0	0	0	0	0	0	0
During UPSI period 01.10.2017 – 14.12.2017	1,69,43,750	100%	0	0	0	0	0	0
Post UPSI period 15.12.2017 – 28.02.2018	40497817.2	100%	0	0	0	0	0	0

Noticee No. 4 - Ms. Pushpadevi Tulsiram Agrawal (PAN - ABAPA7804R)

Period	KUSHAL LIMITED				Other Scrips			
	Gross Buy value in Rs	% to total gross buy value of all scrips	Gross Sell value in Rs	% to total gross sell value of all scrips	Gross Buy value in Rs	% to total gross buy value of all scrips	Gross Sell value in Rs	% to total gross sell value of all scrips
Prior to UPSI period 01.07.2017 – 30.09.2017	0	0	0	0	0	0	0	0

During UPSI period 01.10.2017 – 14.12.2017	1,37,49,293.05	100%	0	0	0	0	0	0
Post UPSI period 15.12.2017 – 28.02.2018	0	0	0	0	0	0	0	0

48. In view of the above observations, it is alleged in the SCN that Noticees No. 1, 2, 3 and 4 had traded in the scrip of the Company during the UPSI period on the basis and in possession of the UPSI where Noticees No. 1 and No. 5 are alleged to have communicated the UPSI to Noticee No. 2, 4 and 6 and Noticee No. 6 had communicated the UPSI to Noticee 3.

49. In this regard, I note that Regulation 4(1) of the PIT Regulations, 2015 provided that no insider shall trade in securities that are listed or proposed to be listed on a stock exchange when in possession of UPSI. The proviso to the said Regulation provides that any insider may prove his innocence by demonstrating the circumstances mentioned there under. Further, Regulation 4(2) of the PIT Regulations, 2015 provides that in the case of connected persons the onus of establishing, that they were not in possession of UPSI, shall be on such connected persons and in other cases, the onus would be on the Board. It is clear from the language of the Regulation that the legislative intent behind the Regulation 4(1) is that trading by any insider of the company, in the scrip of the said company during the UPSI period would be presumed to be on the basis of UPSI only. Further, in terms of legislative Note appended to Regulation 4 (1), it is presumed that the trading by such insider is motivated by the knowledge and awareness of UPSI in his/her possession. The legislative intent, as contained in the Note appended to Regulation 4(1), was further clarified by amendment to regulation which inserted explanation to Regulation 4(1) which states that "when a person who has traded in securities has been in possession of unpublished price sensitive information, his trades would be presumed to have been

motivated by the knowledge and awareness of such information in his possession".

50. In this regard, I note that Noticee No. 1, 2, 3 and 4 in their replies have contended that all their trades in the scrip of the Company from November 22, 2017 to December 04, 2017 are independent and not on the basis of alleged UPSI. It is contended by them that they had traded as per their views, conviction and risk appetite and not on the basis of UPSI. It is further stated that the shares of the Company were acquired through open market transactions and at the prevailing market rate. It is submitted that in order to establish any violation of Regulation 4(1) of PIT Regulations, 2015 or under Section 12A (d) and (e) of the SEBI Act, 1992, it is *sine qua non* requirement that the trading of a Noticee should have been carried out 'while in possession' of any UPSI. After perusal of the contentions raised by the Noticees, I Note that while the Noticees are claiming that all their trades were independent and based out of their conviction and their views, they have merely made a statement without providing any documentary proof to substantiate their contentions. It becomes important when 100 % of the trades of the Noticees were in the scrip of the Company only during UPSI period. The Noticees have not traded in any other scrip pre and post UPSI period. This leads to a reasonable inference that their trades were on the basis of UPSI and/or while in possession of UPSI. The contention that the shares were acquired through open market transactions and at the prevailing market rate is immaterial when it is established that the trading was done on the basis of UPSI.

51. Noticee No. 1,2,3,4 have relied upon the decision of Hon'ble SAT in the matter of Abhijit Rajan vs. SEBI (Appeal 232 of 2016) and in Rajiv Gandhi vs. SEBI (Appeal 50 of 2007) to contend that reasons for which the trades in the securities took place are at the heart of the determination of whether the trading by an alleged insider is violative in nature. It is contended by them that a person who is trading on the basis of UPSI is highly unlikely to hold the position for such a long period of time after UPSI has become public and typically, traders who trade UPSI buy the stock just before event and sell it immediately after the event thereby avoiding any sort of market risk. It is contended that the Noticees are still holding their stock position despite having mark to market losses. In this regard,

I note that both the cases relied upon by Noticees being Abhijit Rajan(supra) and Rajiv Gandhi(supra) are clearly distinguishable from the present case. In Abhijit Rajan, Hon'ble SAT had *inter alia* observed that information in that case was itself not price sensitive information and even if even assuming it to be price sensitive, the appellant in that case was able to rebut the presumption of possession by showing dire need of funds to be infused in the entity. I note that in the present case no such reason has been put forward by the Noticees. In Rajiv Gandhi, Hon'ble SAT after observing the reasons why the burden is casted on the insider to prove that the trading was not done on the basis of UPSI, had held him guilty as the appellant was not able to discharge the burden. In Rajiv Gandhi, Hon'ble SAT had observed as follows:

> "……*We are of the considered opinion that if an insider trades or deals in securities of a listed company, it would be presumed that he traded on the basis of the unpublished price sensitive information in his possession unless he establishes to the contrary. Facts necessary to establish the contrary being especially within the knowledge of the insider, the burden of proving those facts is upon him. The presumption that arises is rebuttable and the onus would be on the insider to show that he did not trade on the basis of the unpublished price sensitive information and that he traded on some other basis. He shall have to furnish some reasonable or plausible explanation of the basis on which he traded. If he can do that, the onus shall stand discharged or else the charge shall stand established. Let us illustrate to explain what we mean. If an insider who sold the shares were to plead that he wanted to raise funds to meet an emergency in his family say, marriage of his daughter or bypass surgery of a close relation and could establish that fact, it would be reasonable to hold that even though he was in possession of unpublished price sensitive information, the motive of the trade was to meet the emergency. He would not be guilty of the charge of insider trading."*

In the present case, contention of the Noticees that they have not sold their shares even after the publication of the UPSI or continue to held their position despite mark to market losses is untenable as Regulation 4(1) prohibits trading by insiders while in possession of UPSI. There could be any number of reasons for the insiders like increasing their shareholding etc., which are best known to them for trading in the scrip while in possession of UPSI. In the instant case, the Noticees No. 1, 2, 3 and 4 have not been able to demonstrate any plausible circumstances which may leads to rebuttal of presumption that the trades were not carried out while in possession of and on the basis of UPSI.

52. I note that Noticee No. 1, 5 and 6 have been alleged to have violated Regulation 3(1) of PIT Regulations, 2015 and Section 12A(e) of SEBI Act, 1992 for communicating the UPSI. I note that SCN has observed that since all the six Noticees were part of the same family, the communication between the family members would seldom be in written form. In this regard, the Noticees have submitted that no oral or written evidence has been shown in the SCN or provided during the inspection which may prove that the UPSI has been communicated. In this regard I note that all the Noticees apart from being part of the same family were also part of the promoter/promoter group of the Company. It is also noted that Noticee No. 1 and 2 being spouse were living at same address, whereas Noticee No. 3, 4 and 6 were residing at the same address. It is also observed that both these address were in the same locality and were within 250 meters of each other. It is also observed that 100 % trading activity of the Noticee No. 1, 2, 3 and 4 were in the same scrip during the UPSI period. No trading activity of the Noticee No. 1, 2, 3 and 4 were observed either three months before the UPSI period (01.07.2017– 30.09.2017) and in post UPSI period (15.12.2017 – 28.02.2018).

53. SCN alleges that the bank statements of all the Noticees were also examined and the following observations were made.

53.1. <u>Namrata Sandeep Agrawal (Noticee No. 2):</u>

From Trade Logs				**From Bank Account Statement**		
Trade Date	**Trade Qty**	**Trade Value (Rs)**		**Date of Funds Payment to Broker**	**Funds Paid to Broker (Rs)**	**Source of Funds**
22.11.2017	1,00,000	1,36,96,786		22.11.2017	2,80,00,000	**Own Funds** – Rs 4,17,00,000 (45700000 – 400000)
23.11.2017	56,630	77,01,132.20				
27.11.2017	43,370	58,65,792.50		30.11.2017	1,50,00,000	
30.11.2017	1,35,000	1,82,52,537		1.12.2017	27,00,000	

						From Manoj Tulsiram Agrawal – Rs 40,00,000
Total	**3,35,000**	**4,55,16,247**		**Total**	**4,57,00,000**	**4,57,00,000**

(a). Rs 40,00,000 was transferred by Noticee No. 5 to the bank account of Noticee no. 2 on November 30, 2017. Noticee No. 2 transferred Rs 4,57,00,000 to the broker, Kotak Securities, including Rs 40,00,000, which was received from Noticee No. 5 for her trades during November 22, 2017 – November 30, 2017.

53.2. <u>Sandeep Tulsiram Agrawal (Noticee No. 1):</u>

From Trade Logs				**From Bank Account Statement**		
Trade Date	**Trade Qty**	**Trade Value (Rs)**		**Date of Funds Payment to Broker**	**Funds Paid to Broker (Rs)**	**Source of Funds**
28.11.2017	64,765	86,78,510		28.11.2017	1,80,00,000	**Own Funds** – Rs 2,15,00,000
29.11.2017	94,235	1,26,47,587		29.11.2017	35,00,000	
Total	**1,59,000**	**2,13,26,097**		**Total**	**2,15,00,000**	**2,15,00,000**

53.3. <u>Sudha Mahendra Agrawal (Noticee No. 3):</u>

From Trade Logs				**From Bank Account Statement**		
Trade Date	**Trade Qty**	**Trade Value (Rs)**		**Date of Funds Payment to Broker**	**Funds Paid to Broker (Rs)**	**Source of Funds**
01.12.2017	1,25,000	1,69,43,750		01.12.2017	2,15,00,000	**Own Funds –** Rs 49,00,000 **From Mahendra Tulsiram Agrawal** – Rs 1,21,00,000
				6.12.2017	(45,00,000)*	
Total	1,25,000	1,69,43,750		**Total**	**1,70,00,000**	**1,70,00,000**

**received back from Broker Kotak securities*

(b). Rs 1,21,00,000 was transferred by Noticee No. 6 to the bank account of Noticee No. 3 on December 1, 2017. Noticee No. 3, transferred Rs

1,70,00,000 to the broker Kotak Securities including Rs 1,21,00,000, received from Noticee No. 6, for her trade on December 1, 2017.

53.4. <u>Pushpadevi Tulsiram Agrawal (Noticee No. 4):</u>

<table>
<tr><th colspan="3">From Trade Logs</th><th></th><th colspan="3">From Bank Account Statement</th></tr>
<tr><th>Trade Date</th><th>Trade Qty</th><th>Trade Value (Rs)</th><th></th><th>Date of Funds Payment to Broker</th><th>Funds Paid to Broker (Rs)</th><th>Source of Funds</th></tr>
<tr><td rowspan="2">04.12.2017</td><td rowspan="2">1,00,000</td><td rowspan="2">1,37,49,293.05</td><td rowspan="3"></td><td>29.11.2017</td><td>2,13,00,000</td><td rowspan="2">From Sudha Mahendra Agrawal – Rs 1,58,00,000</td></tr>
<tr><td>6.12.2017</td><td>(75,00,000)*</td></tr>
<tr><td>Total</td><td>1,00,000</td><td>1,37,49,293.05</td><td>Total</td><td>1,38,00,000</td><td>1,58,00,000</td></tr>
</table>

**received back from Broker Kotak securities*

(c). Noticee No. 3 transferred Rs. 1,58,00,000/- to Noticee No. 4 during the UPSI period before her trade in the scrip of the Company.

54. I note that SCN has observed that during the UPSI Period, Rs. 40,00,000 was transferred by Noticee No. 5 to the bank account of Noticee no. 2 on November 30, 2017 and Noticee No. 2 transferred Rs. 4,57,00,000 to the broker, Kotak Securities, including Rs. 40,00,000, which was received from Noticee No. 5 for her trades during November 22, 2017 – November 30, 2017. Further, Rs. 1,21,00,000 was transferred by Noticee No. 6 to the bank account of Noticee No. 3 on December 1, 2017 and Noticee No. 3, transferred Rs. 1,70,00,000 to the broker Kotak Securities including Rs. 1,21,00,000, received from Noticee No. 6, for her trade on December 01, 2017. Noticee No. 3 transferred Rs. 2,13,00,000.00 to Noticee No. 4 during the UPSI period before her trade in the scrip of the Company. In this regard, I note that the Noticees no. 2,3,4,5 and 6 have not denied the exchange of funds but have merely stated that the funds were transferred in normal course of things and were returned with passage of time. It is also contended that the mere fact that funds have been transferred cannot be the basis to assume that UPSI has been communicated. I note that vide email dated December 23, 2020, Noticee No. 5 had informed SEBI that he had provided a loan of Rs. 40,00,000 to Noticee No. 2 and in support of the

contention provided a copy of a promissory note received from Noticee No. 2, who had promised to pay back the sum of Rs. 40,00,000 by April 30, 2018. On examination of the bank account statement of Noticee No. 2, it was observed that only Rs. 9,00,000 was returned to Noticee No. 5 by April 30, 2018.

55. In this regard, I note that Noticee No. 3, 4 and 6 have not provided any documentary proof like any loan agreement which may suggest as to how and why the funds were exchanged between the Noticees and any documentary proof in support of the fact that the purported fund exchange was in normal course of things. I also note that Noticee No. 5 have provided a promissory note in support of transfer of Rs. 40,00,000.00 to Noticee No. 2, however after perusal of the promissory note, I note that as per the promissory note the loan amount was to be returned on or before April 30, 2018 by Noticee No. 2 to Noticee No. 5. However, upon the examination of bank statements of both the Noticees, it is observed that only Rs. 9,00,000.00 had been transferred by April 30, 2018. In this regard, the chronology of events in the present matter can be taken note of which is as under:

S.No.	Date	Event
1.	30.09.2017	End of July-September quarter
2.	10.11.2017	Resignation of M/s. Devadiya & Associates, previous auditor of the Company.
3.	13.11.2017	Board meeting of the Company *inter alia* approving: (i) First interim dividend on equity shares for FY 2017-18 at the rate of 10% per fully paid up equity share of ₹ 2/- each. (₹. 0.20 per share); (ii) Appointment of M/s. Shailesh & Co. as new auditor.
4.	22.11.2017	Noticee no. 2 purchased 1,00,000 shares of the Company.
5.	23.11.2017	Noticee No. 2 purchased 56,630 shares of the Company.
6.	27.11.2017	Noticee No. 2 purchased 43,370 shares of the Company.

7.	28.11.2017	Noticee No. 3 transferred Rs. 1.58 crore to the bank account of Noticee No. 4.
8.		Noticee No. 1 purchased 64,765 shares of the Company.
9.	29.11.2017	Noticee No. 1 purchased 94,235 shares of the Company.
10.	30.11.2017	Noticee No. 5 transferred Rs. 40 lakh to the bank account of Noticee No. 2.
11.		Noticee No. 2 purchased 1,35,000 shares of the Company.
12.	01.12.2017	Noticee No. 6 transferred Rs. 1.21 crore to the bank account of Noticee no. 3.
13.		Noticee No. 3 purchased 1,25,000 shares of the Company.
14.	04.12.2017	Noticee No. 4 purchased 1,00,000 shares of the Company.
15.	05.12.2017	Noticee No. 5 informed the proposal for 2nd interim dividend to Noticee No. 1, promoter and managing director of Noticee No. 1, and then took it to the board as an agenda.
16.		The Company informed the stock exchange about the board meeting to be held on 14.12.2017 inter alia to consider unaudited financial results for the quarter ended on September 30, 2017 and declaration of 2nd interim dividend.
17.	14.12.2017	Board meeting of the Company was held approving unaudited financial results for the quarter ended on September 30, 2017 and declaring 2nd interim dividend.

56. Aforesaid table shows that funds were being transferred amongst the noticees during the same period when the noticees were undertaking the trades in the shares of the Company. Therefore, it can be reasonably inferred that the funds were transferred for the purpose of trading only and the furnishing of promissory note by Noticee No. 5 Is only to term the fund transaction as lending transaction. Further, the contention of Noticee No. 2, 3, 4, 5 and 6 that they have received or/and provided the funds to other Noticees and from other Noticees in normal course of things and which has already been refunded by the passage of time, and the same cannot be the basis to assume that they have received or

communicated the alleged UPSI, is not tenable, as these Noticees have not produced any proof in support of their contention.

57. I also note that the Noticees have contended that the fact that residential addresses of the Noticees No. 1 and 2, and Noticee No. 3, 4 and 6 being same and within the same vicinity of each other cannot be the basis of assumption of alleged communication of UPSI. In this regard, I note that although it may be true that close vicinity of the houses may not be the basis for proving the alleged communication of UPSI, however from these facts it can be reasonably inferred that there is higher probability for the communication of UPSI. It is given that any communication between the family members who are residing within close proximity of each other would seldom be in any written form. Moreover, Noticee No. 1 and 2, and Noticee No. 3 and 6 are spouses. Any communication between spouses and other family members would rarely be in any written form especially when no family estrangement has been brought to the notice of SEBI. Further, in terms of Section 122 of the Indian Evidence Act, 1872 disclosure of communication made during marriage between the spouses is not allowed as evidence except in certain circumstances specified under the Section.

58. I also note that any communication of UPSI is itself a violation under PIT Regulations, 2015. Given the likely close relationships between the Noticees, there is no scope for irrefutable proof of violation or collecting direct evidence of communication of UPSI, since UPSI would not be overtly communicated and instead every communication would be covertly done, without leaving behind any evidentiary communication trail like emails, messages, letters etc. For instance, closely related individuals such as husband and wife, father or son or daughter, father in law or son in law or daughter in law etc. may share the information on one to one basis in closed premises without any e-mail, letter and message exchanged between them and there is likely to be no witness to provide the evidence for the same. Further, even in the absence of blood relationship, the individuals may also be closely related by virtue of their business relations, social circle, friendships, office colleagues etc. In such cases, the communication could only be private conversations in the backdrop of social events like office parties, meetings at clubs, sports events etc. and such communication would leave no

trace. The PIT Regulations, 2015 specifically provide for prohibition of communication of UPSI and trading on the basis of UPSI, in order to ensure a level-playing field for trading in the securities market as the trading in securities with the advantage of having asymmetrical access to UPSI erodes investors' confidence in the market who does not have access to such UPSI and the integrity of price discovery.

59. Therefore, in view of the above discussion and owing to various facts like close relationship between the Noticees, part of promoter/promoter group, being connected persons in terms of Regulation 2(1)(d)(i) of PIT Regulations, 2015, trading behavior of the Noticees No. 1, 2, 3 and 4 and funds transferred between the Noticees during the UPSI period, on the higher preponderance of probability, it can be reasonably inferred that Noticee No. 1, 5 have communicated the UPSI to Noticee No. 2, 4 and 6 who in turn have communicated the UPSI to Noticee No. 3 and thus, Noticee No. 1, 5 and 6 have communicated the UPSI and thereby have violated Regulation 3(1) of PIT Regulations, 2015.

60. I note that the Noticees have contended that an approach of presuming communication of information would fall foul of the explicit ruling of the decision of Hon'ble Supreme Court in Chintalapati Srinivasa Raju vs SEBI (2018) 7 SCC 443. In this regard, I note that Hon'ble Supreme Court in Chintalapati (supra) case had observed that "*a reasonable expectation to be in the know of things can only be based on reasonable inference drawn from foundational facts".* I find that in the present case, such foundational facts are: Noticees are promoter of the Company holding 65% shares, Noticee No. 1 is the managing director of the Company, Noticee no. 5 is the executive director of the Company, all Noticees are family members having fund transfers amongst them, Noticee no. 1 and 5 being part of the board meeting held on November 13, 2017 and December 14, 2017 wherein 1st and 2nd interim dividend were approved, respectively, trading pattern of the Noticees and fund transfers between the Noticees during the relevant time which give rise to reasonable inference that Noticees were in possession of UPSI when they traded in the scrip of the Company and Noticee no. 1, 5 and 6 were aware of UPSI when they communicated UPSI to other Noticees.

61. I note that the Noticees have relied upon the decision of Hon'ble SAT in Chandrakala matter (*supra*) which has been followed by the Hon'ble SAT in the Manoj Gaur's matter (*supra*) to contend that a person can be held guilty of insider trading if he/she has traded on the basis of UPSI. In this regard, I note that facts and circumstances of the present case, as discussed above, shows that Noticee No. 1, 2, 3 and 4 were in possession of UPSI when they traded in the scrip of the Company from November 22, 2017 to December 04, 2017. As held in the cases relied upon by the Noticees and by virtue of Note appended to Regulation 4(1), once a person is found to have traded when in possession of UPSI his/her trades are considered to be motivated/on the basis of UPSI in their possession. Thereafter, as per the decisions relied upon the Noticees, the burden is on such person to show that his/her trades were not on the basis of UPSI and for this purpose he can rely upon any circumstance which he/she wants. Here it is worth to mention that Chandrakala and Manoj Gaur, are the decisions in respect of SEBI (PIT) Regulations, 1992 (*since repealed*). Present case is under PIT Regulations, 2015 whereunder the Note to Regulation 4(1) says that reasons for which insider traded or the purposes for which he applied proceeds are irrelevant. If insider does not have other circumstances to show than trades have to be treated on the basis of UPSI. In such a scenario, the only recourse available to an insider is to prove that despite his trades on the basis of UPSI his case falls under the general defences provided under the proviso to Regulation 4(1). The list of general defences provided is inclusive and enumerative and not exhaustive of the general defences which can be taken by the insider. In the present case, Noticees have not shown either that their trades were not on the basis of UPSI or that there case falls under any of the listed general defences or other similar circumstances. On the other hand, SCN on the basis of cogent circumstantial evidence which leads to high preponderance of probabilities, as required in terms of the decision of the Hon'ble SAT in Dilip S Pendse matter (*supra*) relied upon by the Noticees, has demonstrated that these Noticees have traded on the basis of UPSI. In view of this, I find that violations alleged against the Noticees in the SCN are in accordance with ratios of the aforesaid decisions of Hon'ble SAT relied upon by the Noticees.

62. In view of the aforesaid discussions, I find that Noticee No.1 to 4 have violated Section 12A(d) and (e) of the SEBI Act, 1992 and Regulation 4(1) of the PIT Regulations, 2015 by trading in the shares of the Company when in possession of UPS. Further, I find that Noticee No. 1, 5 and 6, have violated Section 12A(e) of the SEBI Act, 1992 and Regulation 3(1) of PIT Regulations, 2015 by communicating UPSI to other noticees.

D. <u>Unlawful gains:</u>

63. It is submitted by Noticees that the intent of issuing a direction for disgorgement of ill-gotten gains is not punitive but remedial and for issuing a direction in nature of disgorgement, it is essential to form an opinion that the amount directed to be disgorged should be an "ill-gotten gain”. Further, Noticee No. 1 and 5 have submitted that firstly there has been no wrongful gain by the Noticees, as alleged in the SCN and even after assuming whilst denying, it is submitted that the method of computation employed in the SCN is erroneous. It is submitted that SCN observed that the alleged notional wrongful gain was computed on the basis of the closing price of the scrip of the Company on December 15, 2017 (the day after the Board Meeting took place) i.e. Rs. 143.05. However, the Company’s corporate announcement dated 5th December, 2017 intimating the agenda of the Board Meeting on 14th December, 2017, provided inter-alia as follows:

> *“Note: Trading Window shall remain closed from December 5, 2017 to December 16, 2017 (both days inclusive) on account of above Board Meeting. Accordingly, Promoters, Directors and Designated Employees have been advised not to deal in securities of the company from December 5, 2017 to December 16, 2017 (both days inclusive).”*

64. Accordingly, it is submitted that the Noticees being a promoter and director of the Company could not have and has not traded between December 5, 2017 and December 16, 2017 and could only have traded on or after December 17, 2017 i.e. once the trading window reopened. It is contended that the alleged notional wrongful gains can never be computed on the basis of the closing price on December 15, 2017, as the Noticee could never have traded on that day.

65. In this regard, regarding the contention of the Noticees that direction of disgorgement is remedial it is essential to form an opinion that the amount directed to be disgorged should be an "ill-gotten gain". I note that as discussed above, Noticees have been found to be in violation of Regulation 4(1) of PIT Regulations, 2015. Thus, any gains made, either actual or notional, made on the basis of trading in violation of securities laws, are ill-gotten gains, in terms of Explanation to Section 11B of SEBI Act, 1992. Therefore, the Noticees are liable to disgorge the aforesaid ill-gotten gains.

66. I note that SCN has observed that since the Company made the announcement on BSE regarding the approved financial results for the quarter ended September 30, 2017 and 2nd Interim Dividend on December 14, 2017 at 22:12 PM, the closing price of the scrip of the Company on December 15, 2017 i.e. Rs. 143.05, has been used for computation of the alleged wrongful notional gains. The wrongful notional gains have been calculated as follows:

Promoter Name	**PAN**	**Date of Trade**	**Gross Buy (Quantity) (A)**	**Value (Rs) (B)**	**Notional Sale price based on Closing price of December 15, 2017 (Close Price Rs 143.05) (C)**	**Notional gains (Rs) (D = C – B)**
NAMRATA SANDEEP AGRAWAL	ABTPN6298B	22.11.2017	1,00,000	1,36,96,786	Rs 143.05 * 335000 = Rs 4,79,21,750	Rs 24,05,503
		23.11.2017	56,630	77,01,132.20		
		27.11.2017	43,370	58,65,792.50		
		30.11.2017	1,35,000	1,82,52,537		
Total			**3,35,000**	**4,55,16,247**	**4,79,21,750**	
PUSHPADEVI AGRAWAL	ABAPA7804R	04.12.2017	1,00,000	1,37,49,293.05	143.05*100000 = 14305000	Rs 5,55,706.95
Total			**1,00,000**	**1,37,49,293.05**	**1,43,05,000**	
SANDEEP TULSIRAM AGRAWAL	ABBPA8827F	28.11.2017	64,765	86,78,510	143.05*159000= **2,27,44,950**	Rs 14,18,853
		29.11.2017	94,235	1,26,47,587		

Promoter Name	PAN	Date of Trade	Gross Buy (Quantity) (A)	Value (Rs) (B)	Notional Sale price based on Closing price of December 15, 2017 (Close Price Rs 143.05) (C)	Notional gains (Rs) (D = C – B)
Total			**1,59,000**	**2,13,26,097**	**2,27,44,950**	
SUDHA MAHENDRA AGRAWAL	ACRPA9590N	01.12.2017	1,25,000	1,69,43,750	143.05*125000= **1,78,81,250**	Rs 9,37,500

Unlawful gain= {No. of shares bought while in possession of UPSI X Closing price on the day UPSI becoming public or the closing price on the following trading day, depending upon the timing of notification of UPSI to stock exchange} –{No. of shares bought while in possession of UPSI X weighted average purchases price}.

67. It is contended by Noticee No. 1 that for the calculation of wrongful gains closing price of the scrip on December 15, 2017 is taken into consideration which is erroneous as the Noticee could not have traded on December 15, 2017 during the closure of trading window. In this regard, I note that closing price has been taken based on the publication of the information on BSE and it is immaterial whether the trading window was closed during that time.

68. In view of the aforesaid findings and observations, I am of the view that by trading in the scrip of the Company on the basis of UPSI during the UPSI period, Noticees No. 1, 2, 3 and 4 have violated Regulation 4(1) of PIT Regulations, 2015 and Section 12A(d) and (e) of SEBI Act, 1992 and for communicating the UPSI, Noticee Nos. 1, 5 and 6 have violated Regulation 3(1) of PIT Regulations, 2015 and Section 12A(e) of SEBI Act, 1992. In view of the violation of the provisions of the PIT Regulations, 2015 and SEBI Act, 1992 by the Noticees, as noted above, I find that the Noticees are liable for issuance of appropriate directions for debarment from accessing the securities market and dealing in securities. Further, I find that directions under Section 11B (1) of the SEBI Act, 1992 for disgorgement be issued against Noticee No. 1 for Rs. 14,18,853.00

against Noticee No. 2 for Rs. 24,05,503.00 against Noticee No. 3 for Rs. 9,37,500.00 and against Noticee No. 4 for Rs. 5,55,706.95, as the amounts towards ill-gotten gains. Further, I note that violations committed by the Noticees also renders them liable for imposition of penalty under Section 15G of SEBI Act, 1992, which provide as under:

> **"Penalty for insider trading.**
>
> 15G. If any insider who, —
>
> (i) either on his own behalf or on behalf of any other person, deals in securities of a body corporate listed on any stock exchange on the basis of any unpublished price sensitive information; or
>
> (ii) communicates any unpublished price-sensitive information to any person, with or without his request for such information except as required in the ordinary course of business or under any law; or
>
> (iii) counsels, or procures for any other person to deal in any securities of any body corporate on the basis of unpublished price-sensitive information,
>
> shall be liable to a penalty which shall not be less than ten lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher."

69. I note that in terms of Section 15J of the SEBI Act, 1992, while determining the quantum of penalty under Section 15J of SEBI Act, 1992, Board is required to have due regard to the following factors, namely: -

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

70. In the instant case, I find that for the notional unlawful gains made by Noticee No.1, 2, 3 and 4, for their impugned trades during UPSI appropriate directions of

disgorgement of unlawful gains made along with penal interest are being issued. I note that the SCN does not bring out any loss caused to any specific investor or a group of investors, as a result of violations committed by Noticees. I note that there is no material available on record to indicate that the violations committed by Noticee No. 1 to 6 are repetitive in nature. Further, Noticees are also being debarred under present order.

Directions and monetary penalties:

71. In view of the above, I, in exercise of the powers conferred upon me under Sections 11(1), 11(4), 11(4A), 11B(1) and 11B(2) of SEBI Act, 1992 read with Section 19 of the SEBI Act, 1992 and the Rules, hereby direct as under:

(i) The Noticee No. 1, 2, 3 and 4 are directed to disgorge the amount as indicated in the following table against their respective names within 45 days from receipt of this order:

Noticee No.	Name of the Noticee	Wrongful gain (in Rs.)
1	Sandeep Tulsiram Agrawal	14,18,853
2	Namrata Sandeep Agrawal	24,05,503
3	Sudha Mahendra Agrawal	9,37,500
4	Pushpadevi Tulsiram Agrawal	5,55,706.95

The aforesaid disgorgement amounts amount shall be remitted by the Noticees along with the interest at the rate of 12% per annum from December 15, 2017 till the date of actual payment, to Investor Protection and Education Fund (IPEF) referred to in Section 11(5) of the SEBI Act, 1992.

(ii) Noticees are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities (including units of mutual funds), directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of one (1) year, from the date of this order;

(iii) Noticees are restrained from buying, selling or dealing in the securities of the Company i.e. Kushal Ltd., directly or indirectly, in any manner whatsoever, for a period of two (2) years, from the date of this order;

(iv) Noticees are hereby imposed with penalty, as indicated in the table below, under Section 15G of the SEBI Act, 1992, and are directed to pay their respective penalties within a period of forty-five (45) days, from the date of receipt of this order:

Noticee No.	Name of the Noticee	Penalty
1	Sandeep Tulsiram Agrawal	50 lakhs
2	Namrata Sandeep Agrawal	30 lakhs
3	Sudha Mahendra Agrawal	30 lakhs
4	Pushpadevi Tulsiram Agrawal	30 lakhs
5.	Manoj Tulsiram Agrawal	20 lakhs
6.	Mahendra Tulsiram Agrawal	20 lakhs

The Noticees shall remit/pay the aforesaid amount of penalties either by way of Demand Draft in favour of "SEBI - Penalties Remittable to Government of India", payable at Mumbai, or through online payment facility available on the website of SEBI, i.e. www.sebi.gov.in on the following path, by clicking on the payment link: ENFORCEMENT -> Orders -> Orders of Chairman/ Members -> PAY NOW. In case of any difficulties in online payment of penalties, the said Noticees may contact the support at portalhelp@sebi.gov.in. The demand draft or the details/ confirmation of e-payment should be sent to "The Division Chief, IVD-ID1, Securities and Exchange Board of India, SEBI Bhavan II, Plot no. C-7, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai -400 051" and also to e-mail id: - tad@sebi.gov.in in the format as given in table below:

Case Name	

Name of Payee	
Date of Payment	
Amount Paid	
Transaction No.	
Payment is made for: (like penalties/ disgorgement/ recovery/ settlement amount/ legal charges along with order details)	

(v) The restraints/ prohibition imposed in paras 71 (ii) and (iii), on the respective Noticees, shall run, concurrently. The obligation of the Noticees restrained/ prohibited by this Order, in respect of settlement of securities, if any, purchased or sold in the cash segment of the recognized stock exchange(s), as existing on the date of this Order, are allowed to be discharged irrespective of the restraint/ prohibition imposed by this Order. Further, all open positions, if any, of the Noticees, restrained/ prohibited in the present Order, in the F & O segment of the recognized stock exchange(s), are permitted to be squared off, irrespective of the restraint/prohibition imposed by this Order.

72. This order comes into force with immediate effect.

73. A copy of this Order shall be served on the Noticees, recognized Stock Exchanges, Depositories, Registrar and Share Transfer Agents of Mutual Funds to ensure compliance with the above directions.

ANANTA BARUA
WHOLE TIME MEMBER
SECURITIES AND EXCHANGE BOARD OF INDIA

Date: July 29, 2022
Place: Mumbai