National Stock Exchange of India

Circular

Department: Investigation	
Download Ref No: NSE/INVG/53453	Date: August 26, 2022
Circular Ref. No: 110/2022	

To All NSE Members

Sub: **Confirmatory Order in the matter of Trading of Alpesh Furiya and connected entities ahead of recommendations made by Pradeep Pandya, Anchor of various shows on CNBC Awaaz**

This is with reference to NSE circular No NSE/INVG/49824 dated October 04, 2021 referring to SEBI order no. WTM/MB/ISD/ISD_ISD/13676/2021-22 dated October 04, 2021.

SEBI now vide its Order no. WTM/SM/IVD/ISD_ISD/18586/2022-23 dated August 26, 2022, has hereby confirm the directions issued vide ex-parte ad-Interim Order dated October 04, 2021 subject to following modifications in the specific facts and circumstance of the present matter:

Mr. Pradeep Baijnath Pandya (AIIPP0780C) is allowed to liquidate his mutual fund holdings upto INR 1,00,000/- (One Lakh Rupees) per month to meet his day to day expenses.

The Order shall come into force with immediate effect.

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-Debarred Entities".

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. Rishabh Goyal (Extension: 25508), Mr. Anand Jangir (Extension: 22385)

National Stock Exchange of India
Direct No: 022-26598417/18 Fax: 022-26598195

For and on behalf of

National Stock Exchange of India Limited

Anand Jangir
Manager

Annexure:- Confirmatory Order in the matter of Trading of Alpesh Furiya and connected entities ahead of recommendations made by Pradeep Pandya, Anchor of various shows on CNBC Awaaz

SECURITIES AND EXCHANGE BOARD OF INDIA

CONFIRMATORY ORDER

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

In respect of:

Sr. No.	Name of the Entity	PAN
1	Alpesh Vasanji Furiya	AAAPF0855A
2	Alpesh Vasanji Furiya (HUF)	AALHA9417Q
3	Manish Vasanji Furiya	AAAPF0856D
4	Manish V. Furiya (HUF)	AALHM8457L
5	Alpa Alpesh Furiya	ADPPD4355B
6	Pradeep Baijnath Pandya	AIIPP0780C

IN THE MATTER OF TRADING OF MR. ALPESH FURIYA AND CONNECTED ENTITIES AHEAD OF RECOMMENDATIONS MADE BY MR. PRADEEP PANDYA, ANCHOR OF VARIOUS SHOWS ON CNBC AWAAZ

1. Securities and Exchange Board of India (hereinafter referred to as '**SEBI**'), upon receipt of a report from National Stock Exchange of India Ltd. (hereinafter referred to as '**NSE**'), conducted a preliminary examination into the trading pattern of Mr. Alpesh Vasanji Furiya (hereinafter referred to as '**Mr. Alpesh**'), his wife Alpa Alpesh Furiya (hereinafter referred to as '**Mrs. Alpa**'), his brother Manish Vasanji Furiya (hereinafter referred to as '**Mr. Manish**') and their respective HUFs namely, Alpesh Vasanji Furiya HUF (hereinafter referred to as '**Alpesh HUF**') and Manish V. Furiya HUF (hereinafter referred to as '**Manish HUF**'). The above entities are being hereinafter collectively referred to as

"**Alpesh Group**". The examination of the material pertaining to their trades for the period between November 01, 2019 to January 13, 2021 ('***Relevant Period***'), along with related/adjacent periods and their comparative analysis with the stock recommendations given by Mr. Pradeep Pandya (hereinafter referred to as '**Mr. Pandya**') on various shows on Business News channel CNBC Awaaz *prima facie* revealed that acts of trading of *Alpesh Group* were in violation of provisions of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as '**SEBI Act**') and various regulations including Securities and Exchange Board of India (Prohibition of Fraudulent and Unfair Trade Practices Relating to Securities Market) Regulations, 2003 (hereinafter referred to as '**PFUTP Regulations**') during the *Relevant Period.*

2. During the *Relevant Period*, Mr. Pandya was working as a host/co-host of various shows on a business TV Channel CNBC Awaaz such as the following:

   2.1. Pehla Sauda, which used to be broadcasted at 08:55 AM from Monday to Friday,

   2.2. Aakhri Sauda, which used to be broadcasted at 02.00 PM/02:30 PM from Monday to Friday,

   2.3. 10 Ke Dumdaar Trade, which used to be broadcasted at 10.00 AM from Monday to Friday.

   In all these shows, Mr. Pandya used to give certain stock recommendations under the tagline "*Pandya ka Funda*". At the same time, details available on certain social media websites viz. LinkedIn, Facebook, Twitter etc. show that Mr. Pandya has a strong social media presence (including 1,03,000 followers on Twitter) wherein he also used to give recommendations in derivative segment of securities market under the tagline "*Sasta Option*". The aforesaid facts indicate that Mr. Pandya had a strong presence amongst investor community during the *Relevant Period*.

3. During the *Relevant Period*, it was seen that Mr. Alpesh was also giving stock recommendations on his twitter handle (@AlpeshFuriya). He also used to appear on various shows of TV channel CNBC Awaaz as a guest/external expert. As per the details given by him in his twitter profile, he was associated with CNBC Awaaz for the last 13 years. He was also found to be associated with CNBC Bajar (hindi Business News channel of CNBC Awaaz group) and was also associated with ZEE Business during the *Relevant Period*. He is also the owner of Panorama Technicals (PAM Investments). As per details available in public domain, Mr. Alpesh/Panorama Technicals used to conduct seminars, workshops and also used to offer courses on technical analysis (both free and paid).

4. It was observed during the course of examination that Mr. Pandya and Mr. Alpesh were frequently in touch with each other throughout the *Relevant Period* by way of telephone calls, apart from being connected to each other on social media. It is found from the Call Data Records (in short '**CDRs**') of Mr. Alpesh and Mr. Pandya that they had as many as 381 calls between them during January 01, 2020 and December 31, 2020 through which they talked for more than 24 hours 35 minutes during these phone calls.

5. It was also noticed during the course of examination that Mr. Pandya was uniquely placed to have access, in advance, to the information pertaining to the stocks recommendations scheduled to be made under '*Pandya ka Funda*' and '*Sasta Option*'. This information along with his frequent interactions with Mr. Alpesh by way of various phone calls led to a *prima-facie* inference that Alpesh Group was equally aware of or was having advance access to the information about the stocks recommendations that Mr. Pandya was going to make at least

during the *Relevant Period* which, when telecasted, used to impact price/volume of such recommended scrip on the back of huge viewership of his shows on CNBC Awaaz as well as his large fan following on various social media websites. Therefore, the advance information related to the proposed stock recommendations of Mr. Pandya which were capable of creating perceptible impact on the market prices of those stocks after being recommended/telecasted by Mr. Pandya in his shows for the reasons mentioned above has to be treated as 'material and non-public' till the time the said stock recommendations were telecasted.

6. During the course of preliminary examination, SEBI noticed that Alpesh Group had multiple trades in the scrips that were recommended by Mr. Pandya on his shows and trades were also executed around the time his recommendations were to be aired on the show. It has also been noticed that Alpesh Group had followed a repeated and consistent pattern of trading, which was in synchronization with the recommendations made by Mr. Pandya on his shows on CNBC Awaaz. In a number of instances, SEBI *prima-facie* observed that Alpesh Group used to do trades using 'Buy Today Sell Tomorrow' strategy (in short 'BTST') ahead of the recommendations of Mr. Pandya by one day. In other words, Alpesh Group used to buy shares in those scrips (scheduled to be recommended next day) one trading day prior to the recommendation day and the sell-leg of those trades was executed around the time the recommendation of Mr. Pandya was telecasted on the channel. Similarly, for intraday trades, SEBI *prima-facie* noticed a repeated and consistent pattern of buying shares by Alpesh Group prior to telecast of the stock recommendation by Mr. Pandya on the show hosted/co-hosted by him and selling those shares around the telecast of the recommendations during market hours. At the same time, Alpesh Group, by their large trading positions in the scrips taken one day before (based on advance information), also used to

prima facie contribute to the increased investors interest in such scrips on which Buy recommendation was going to be given by Mr. Pandya on the next day.

7. It is *prima facie* observed in the course of examination that Alpesh Group, during the *Relevant Period*, had entered into BTST trades on a total no. of 376 instances, out of which, they made profitable trades on 331 occasion i.e. they were profitable on 88.03% of times. Out of these 376 trades, 226 BTST trades of Alpesh Group were *prima facie* observed to be undertaken in synchronization with the Buy Recommendations of Mr. Pandya in his shows, with an inconceivably high success rate of 98.67% i.e. 223 out of these 226 synchronized trades resulted into profit to Alpesh Group.

8. Similarly, Alpesh Group entered into Intraday trades on 1012 instances during the *Relevant Period*, out of which they made profit in 888 trades i.e. they were profitable on 87.75% of the intra-day trades executed by them during the said period. Out of these 1012 trades, 473 Intraday trades of Alpesh Group were *prima facie* found to be synchronized with the Buy Recommendations of Mr. Pandya with a 95.98% success rate i.e. 454 out of these 473 trades resulted into profit to Alpesh Group.

9. The frequent telephonic conversations, as noticed to have taken place between Mr. Alpesh and Mr. Pandya, when seen together with the peculiar trading pattern followed by the Alpesh Group coinciding with as well as *prima-facie* synchronizing with the stock recommendations of Mr. Pandya as has been statistically explained above, it was *prima-facie* observed by SEBI that Alpesh Group was possessing advance information about the stock recommendations of Mr. Pandya which they used to their advantage to earn gains unlawfully by indulging in such unfair trades by using such sensitive and non-public/unpublished information regarding such stock recommendations of Mr. Pandya.

10. Thus, from the preliminary examination of all the trades of Alpesh Group, which were observed to be having *prima-facie* strong nexus with the stock recommendations of Mr. Pandya, such trades were, *prima facie*, viewed and observed to be in violation of provisions of SEBI Act and PFUTP Regulations. It was therefore *prima facie* observed that Alpesh Group had generated unlawful gains to the tune of INR 8.40 Crores (i.e. INR 8,39,64,340.71) through such trades that were having a strong bearing with the stock recommendations given by Mr. Pandya through his shows broadcasted on the aforementioned channel.

11. In view of the above noted information unearthed during the course of examination of the trading activities indulged in by Alpesh Group and its close proximity with the recommendations being made by Mr. Pandya on shows hosted/co-hosted on CNBC Awaaz during the *Relevant Period*, an *ex-parte ad-Interim* Order dated October 04, 2021 (hereinafter referred to as '***Interim Order***') was passed in respect of Alpesh Group and Mr. Pandya (hereinafter collectively referred to as '***Entities***') wherein it was observed that the aforesaid acts of the following *Entities* are *prima-facie* in violation of the following provisions of law:

Name of the *Entity*	*Prima-facie* violation
Alpesh Vasanji Furiya	Section 12A(a), (b), (c) and (e) of SEBI Act and Regulations 3(a), (b), (c), (d) and Regulations 4(1), 4(2)(e) & (o) of PFUTP Regulations
Alpa Alpesh Furiya	
Manish Vasanji Furiya	
Alpesh Vasanji Furiya HUF	
Manish V Furiya HUF	
Pradeep Pandya	

12. In the light of the aforesaid *prima-facie* observations and looking at the urgency of the fact that such unlawful trading activities apparently based on advance knowledge of non-public information about the proposed stocks recommendations of Mr. Pandya need to be curbed immediately so as to protect

the interest of the investors, to prevent the aforesaid *Entities* from continuing to act in violations of the above provisions of law apart from the urgency to protect the integrity of securities market, *vide* an *Interim Order*, pending the completion of detailed enquiry/examination, the following directions were issued *inter alia*, restraining the *Entities* in the following manner:

12.1. *The aforesaid entities are restrained from buying, selling or dealing in securities, either directly or indirectly, in any manner whatsoever until further orders.*

12.2. *If the aforesaid entities have any open position in any exchange traded derivative contracts, as on the date of the order, they can close out / square off such open positions within 3 months from the date of order or at the expiry of such contracts, whichever is earlier. The said entities are permitted to settle the pay-in and pay-out obligations in respect of transactions, if any, which have taken place before the close of trading on the date of this order.*

12.3. *Mr. Pradeep Pandya and Mr. Alpesh Furiya shall cease and desist from undertaking, directly or indirectly, any activity related to giving investment advice, sell or buy recommendations, publishing of research reports etc., related to the securities market, through any media, physical or digital, till further directions.*

12.4. *Mr. Pradeep Pandya and Mr. Alpesh Furiya shall preserve the records of their various social media accounts maintained by them, directly or indirectly, till further directions.*

12.5. *The bank accounts of the aforesaid entities, to the extent of amount mentioned against their names in the table no. 35 at paragraph 118 above, are impounded. The entities are directed to open an escrow account with a nationalized/ scheduled bank, jointly and/ or severally, and deposit the impounded amount mentioned therein which has been, prima facie, found to be proceeds generated from the prima facie unfair trading activity, in this Order, within 15 days from the date of service of this Order. The escrow account/s shall be an interest bearing escrow account and shall create a lien in favour of SEBI. Further, the monies kept therein shall not be released without permission from SEBI.*

12.6. *The bank accounts of the aforesaid entities are frozen for debit till further directions/communications. The banks where these entities are holding bank accounts, jointly or severally, are directed to ensure that till further directions, except for compliance with direction at paragraph 130.5, no debits are made in* *the said bank accounts without the permission of SEBI. The banks are directed to ensure that all the above directions are strictly enforced. On production of proof of deposit of entire amount as mentioned in column no. 4 of table no. 35 at paragraph 118, by entities mentioned in column no. 2, in the escrow account, SEBI shall communicate to the banks to defreeze the accounts corresponding to the entities mentioned in column no. 2 of table no. 35. However, in case of entities in column no. 2 appearing more than once in the said column, such entity's bank account shall remain frozen till the entire amount mentioned in column no. 4 corresponding to his/ her name is fully deposited.*

12.7. *The aforesaid entities are directed to provide a full inventory of all assets held in their name, jointly or severally, whether movable or immovable, or any interest or investment or charge on any of such assets, including details of all bank accounts, demat accounts and mutual fund investments, immediately but not later than 5 working days from the date of receipt of this order.*

12.8. *The aforesaid entities are directed not to dispose of or alienate any assets, whether movable or immovable, or any interest or investment or charge on any of such assets held in their name, jointly or severally, including money lying in bank accounts except with the prior permission of SEBI until the impounded amount is deposited in the escrow account.*

12.9. *The Depositories are directed to ensure, that till further directions, no credits are made in the demat accounts of the aforesaid entities, held individually or jointly. The depositories are further directed to ensure that till further direction except for compliance of direction mentioned at paragraph 130.5, no debits are made in the demat accounts of the aforesaid entities, held individually or jointly.*

12.10. *The Registrar and Transfer Agents are also directed to ensure that till further directions, no credits are permitted and that except for compliance of direction at paragraph 130.5 the securities / mutual funds units held in the name of the aforesaid entities, jointly or severally, are not transferred / redeemed.*

13. Along with the abovementioned directions, the *Entities* were also provided with 21 days' time to submit their respective replies/objections, if any, to SEBI with respect to various observations/allegations made in the *Interim Order*.

14. It is noted that the *Interim Order* was served upon all the *Entities vide* separate emails dated October 04, 2021 as well as by Speed Post Acknowledgement Due and the proof of such delivery is available on record. Vide letter dated December

31, 2021, Alpesh Group submitted their common written reply and vide letter dated December 29, 2021, Mr. Pandya also submitted his written reply to SEBI.

15. In the interest of principles of Natural Justice, an opportunity of personal hearing was granted to the *Entities* on March 15, 2022 wherein Mr. Alpesh appeared with the Authorized Representative on behalf of Alpesh Group and Mr. Pandya appeared with his Authorized Representative. Both the Authorized Representatives reiterated the submissions made by Alpesh Group and Mr. Pandya vide their respective letters mentioned above. Certain queries were raised during the course of personal hearing which were replied by Mr. Pandya vide letter dated March 31, 2022 and by Alpesh Group vide letters dated March 31, 2022 (received on April 04, 2022).

16. In this regard, I note that Mr. Alpesh, in his reply to the *Interim Order*, has broadly made the following submissions *vide* letters dated December 31, 2021 and March 31, 2022: -

    16.1. Mr. Alpesh has admitted that he was taking investment decisions on behalf of all the entities of Alpesh Group. He also submitted that he is now responding on behalf of all the entities of Alpesh Group.

    16.2. Mr. Alpesh has submitted that by and large, his trading strategy has been intra-day trading and BTST. His Trading strategy was to trade only for small gains to the tune of 1% to 2% of gain in each trade. If the return looked more in percentage terms in any trade, that is because of the fact that the quantity traded was usually small.

    16.3. Due to Covid-19 induced lockdowns, all his discussions with other experts regarding market shifted from studio to on call. Due to this, the number of calls and average call durations went up as there were no opportunities for in- person meeting.

16.4. Mr. Alpesh has admitted knowing Mr. Pandya and has also admitted having discussions on many occasions about their perspectives about the securities market in general while maintaining high standards of ethics and a Chinese wall by not having any discussion about any specific scrips.

16.5. Mr. Alpesh denied having any advance knowledge of any of the recommendations of Mr. Pandya and claimed to have traded on the basis of his own analysis and judgment. He has attempted to explain as to why there would be some occasions when his trades overlapped the recommendations of Mr. Pandya or any other anchor for that matter by stating that the same was due to the fact that at any point of time in market, there are certain scrips which are volatile and break certain indicators triggering trades. As all the traders and anchors are following the same scrip, there may be overlap in terms of trades and recommendations of anchors.

16.6. Mr. Alpesh has contended that he could have never known the exact time of the telecast of the stock recommendation of Mr. Pandya on CNBC Awaaz as the exact telecast timings depended upon a number of factors such as breaking news' or telecast of other important development at those points in time.

16.7. Mr. Alpesh has further contended that the *Interim Order* fails to demonstrate that sell-leg of his trades was placed after the recommendation of Mr. Pandya was telecasted on the channel so as to get benefit out of such synchronization of trades with Mr. Pandya's recommendations.

16.8. He has also contended that both the legs of his trades were placed before the recommendation of Mr. Pandya was telecasted. Therefore, irrespective of Mr. Pandya making his recommendation or not, his trades would have been the same (i.e. at same price and volume) since, the trades were based on his own analysis and both the legs of his trades were placed before the telecast of stock recommendation by Mr. Pandya.

16.9. Mr. Alpesh has stated that the *Interim Order* has failed to bring out the exact time during which the particular recommendations made by Mr. Pandya on CNBC Awaaz were telecasted. Further, only after Mr. Pandya has completed recommending certain scrips, investors would be in a position to take a trading decision in the scrip recommended and then place their orders. However, his trades were placed before the recommendation was broadcasted.

16.10. Mr. Alpesh has also contended that the *Interim Order* has ignored the time lag of 15-30 seconds from the time of telecast to receiving the feed by the TV viewer, depending upon the speed of the internet/cable service provider. At the same time, it has also ignored the time taken by an investor in taking a decision and placing order on the basis of recommendation of Mr. Pandya, and that time will start only after recommendation of Mr. Pandya got over.

16.11. Mr. Alpesh has pointed out that the *Interim Order* has failed to cite a single instance of Alpesh Group placing the order after the commencement or completion of telecast of the recommendation by Mr. Pandya as both the legs of his trades were completed before the telecast of recommendation of Mr. Pandya. Unless it is demonstrated that Alpesh Group had always placed one leg of its transactions after the telecast of the stock recommendation made by Mr. Pandya was complete, there is no basis for drawing any adverse inference against them.

16.12. With regard to his sell orders, Mr. Alpesh has submitted that once order is placed, converting it into a trade is a function of multiple factors on the trading platform of the Stock Exchange, and the same are beyond his control. Therefore, once he placed the order, depending upon the depth of the market in a given scrip at that point of time, it was possible that his sell orders could have got executed even before the telecast of Mr. Pandya began.

16.13. In respect to the observations in table 11 on page 16 of the *Interim Order*, Mr. Alpesh has contended that he had placed a buy and a sell order in the scrip of NRB Bearing Ltd. (for short 'NRB') on April 20, 2021 in quick successions i.e. at 9:15:02 AM and 9:15:27 AM respectively. As per SEBI, the telecast of Mr. Pandya in the same scrip was around 09:25 AM. This difference in timing between his orders and Mr. Pandya's recommendations as well as the opposite trades in the same scrips shows that his trades were purely day trades and had no connection with the recommendations of Mr. Pandya.

16.14. Mr. Alpesh has explained the reasoning behind his trades in NRB by pointing out that there was a strong technical breakout in the stock which suggested that the stock had been Bottomed out. Further, he started buying the shares of NRB on April 17, 2020 at 01:00 PM in the afternoon and completed at 03:30 PM. While the day's low in the scrip of NRB was INR 59/-, majority of his buying happened between INR 66/- to INR 67/- and average buying price was INR 66.70/-. This means that most of the purchases of Mr. Alpesh took place about 13% above that day's low which shows that his buying in the scrip of NRB had no role in stock's movement from INR 59/- to INR 66/- and he was only following the trend.

16.15. Similar submissions have been made by Mr. Alpesh in respect to his trading in the scrip of TamilNadu Papers Ltd. (for short 'TNPL'). Further, Liquidity check suggests 65% of the stocks i.e. nearly 4.5 crores of the Total Equity issued of the scrip is available as free float. In such a situation, the assertion that only 1 lac shares i.e. 0.14% of the Total Equity issued and 5,000 shares i.e. 0.007% of the Total Equity issued could manipulate the price of the stock is not justifiable.

16.16. With respect to his trading in the scrip of Centrum Capital Limited (for short 'CCL'), Mr. Alpesh has pointed out that both buy Order as well as sell Order in the said scrip were placed and executed into trades before the recommendation by Mr. Pandya was telecasted.

16.17. Mr. Alpesh has argued against the allegation that there was an increased trading activity by other investors in the scrips owing to his trading activity and impending recommendation of Mr. Pandya by stating that the *Interim Order* has failed to segregate his trading volume from the total trading volume while making adverse inference on his trading activity. Therefore, drawing any adverse inference against him on the basis of increased volume which includes his volume as well, is unacceptable as such adverse observation would apply to any person trading on the exchange.

16.18. As regards observations at paragraph 47.3 and data at Table 19 of the *Interim Order*, Mr. Alpesh has stated that his buying of 16,218 shares of NRB between 01:00 PM and 01:15 PM on April 17, 2020 constituted merely 1.87% of total traded volume of 8,67,506 of market on that day. However, a skewed calculation of his trading during the abovementioned 15 minutes as a percentage of total market during that 15 minute is calculated. Even then, if his volume was 13.8% during those 15 minutes, the remaining volume of 86.2% during those 15 minutes has been ignored by SEBI.

16.19. Thus, the *Interim Order* unequivocally admits that the price and volume of the scrip increased significantly on the day before the recommendation was telecast. It is not the case in the *Interim Order* that the recommendation was known in advance to all who traded before the recommendation. In view of the same, the *Interim Order* has erred in attributing the said rise to the recommendation of Mr. Pandya.

16.20. With respect to his phone calls with Mr. Pandya, Mr. Alpesh has contended that while there were regular calls between him and Mr. Pandya, such calls have also been observed on Saturday as well. The duration of some of these calls were for about 7 minutes as well. Had the calls been about the impending recommendation as alleged, it defies any common sense or sound logic as to why the call duration is of 7 minutes and why so many times.

16.21. Further, the number of such calls was due to COVID induced lockdown. The frequency and duration of calls reduced as the COVID wave started receding. As CNBC team started working from its office, its internal communication got streamlined and the duplication of same conversation with many staff members of the team also minimized.

16.22. With respect to findings regarding Meghmani Organics Ltd. (for short 'MOL') that he had taken position in the scrip contrary to his recommendations on the show of Mr. Pandya, Mr. Alpesh has attempted to explain that while his own position was short term, his recommendation on the show was for the long term investor.

16.23. Mr. Alpesh has contended that, despite all the inherent challenges with BTST, he has been successful only because of his analysis skill and nothing else. He had exited the BTST position first in the morning instead of waiting for the stock to come on air. Several stocks have gone on to hit 20% circuit on the same day. Some stocks moved for two to three days in a row. But he had never waited.

16.24. Mr. Alpesh has also submitted that the recommendations of Mr. Pandya were based on publicly available information. Such information was accessible to the public on a non- discriminatory basis and was therefore a "generally available information". In view of the same, the recommendation to be made does not fall within the ambit of definition of "unpublished price sensitive information" under Regulation 2(1)(n) of SEBI (Prohibition of Insider Trading) Regulations, 2015. In view of the same, the *Interim Order* has erred in holding the recommendation to be given on the show hosted by Mr. Pandya were unpublished information.

16.25. Regarding the decline in his trades, mentioned at Table 36 at paragraph 119 and 120.1 of *Interim Order*, Mr. Alpesh has attempted to clear his position by giving the following reasons behind decline in his trades:

- Stock Exchanges had increased margins on trading in multiple steps. Due to this, brokers had put several restrictions on client exposure.
- By the end of February, news of second COVID wave started coming in, which increased the volatility and affected sentiments in the market. The impact lasted till end July.
- During second wave, several of his neighbors and close relatives took ill and he had to spend time helping them out. His mother-in-law passed away after several health complications on May 13, 2021. His wife being the only child of her parents', suffered from tremendous emotional issues and he had to organize their life back on track.
- Following the sad demise on his mother-in-law, his father-in-law started staying with him who suffers from mental illness and he had a tough time providing medical care to him.

16.26. As regards reduction in frequency of calls post June 2020, Mr. Alpesh has submitted that after relaxation of COVID induced lockdown, the calls got reduced and no other reason could be attributed to same.

16.27. Mr. Alpesh has also contended that the *Interim Order* has failed to bring out the data of total trading volume and price in various scrips both before and after the recommendation to bring out the impact of the stocks recommendation of Mr. Pandya on the price and volume of the shares of NRB, TNPL and CCL etc. At the same time, the *Interim Order*, while attempting to link the increased trading volume and price to the recommendation of Mr. Pandya, also admits that there was already a discernible increase in the price and volume of the recommended scrip even before the telecast of the recommendation.

16.28. Mr. Alpesh has also contended that he is a technical analyst with trading strategy aimed at a short-term gain of 1-2% on his investment. On the other hand, Mr. Pandya is a fundamental analyst who used to recommend stocks on CNBC with a medium-term investment perspective.

16.29. In the end, Mr. Alpesh has requested for defreezing an amount of INR 3,31,99,500/- + 36,57,124/- = Total INR 3,68,56,624/- paid towards Income Tax, interest, surcharge, education cess, Brokerage etc. representing the cost of earning INR 8,39,64,341/- towards profit which has been *prima-facie* found to be result of his unfair trades and which has been lying in escrow with a lien in favour of SEBI.

17. Similarly, vide his letters dated December 29, 2021 and March 31, 2022, Mr. Pandya submitted the following:

17.1. He has at the outset raised a preliminary contention stating that SEBI has failed to provide copies of some of the documents requested by him such as

NSE's letter dated December 10, 2020 and Report of Preliminary Investigation conducted by SEBI. Further, the documents provided by SEBI during inspection were not certified true copies of the documents referred to and relied upon by SEBI.

17.2. Mr. Pandya has reiterated his credentials by submitting that he has been a journalist for over 20 years with almost 16 years' association with CNBC Awaaz. His recommendations were always based upon the fundamentals of the stocks including the latest news. The technical inputs were taken from various analysts and experts. The recommendations by him were not for short term trades like BTST or Intra-day trades.

17.3. Mr. Pandya has attempted to explain the calls between him and Mr. Alpesh by stating that, while working from home, sometimes Mr. Alpesh used to share some charts with him and used to explain these charts on calls. These calls would be for a considerable amount of time. Some of the calls provided by Mr. Alpesh were recommended on Mr. Pandya's show and were proved to be correct.

17.4. During the *Relevant Period*, majority of phone calls i.e. 280 phone calls were initiated by Mr. Alpesh. The COVID-19 scenario forced all, including Mr. Alpesh and Mr. Pandya, to shift all such conversations over phone as Mr. Pandya was working from home.

17.5. Mr. Pandya has also contended that he had not benefitted, monetarily or otherwise, out of the trades of Alpesh Group. There is no allegation in the *Interim Order* stating the same.

17.6. Mr. Pandya has explained the procedure which used to be employed at his shows at CNBC Awaaz. He submitted that first, the research team of the channel used to collate all the publically available information regarding several stocks which includes (a) any announcements made on the stock exchanges (b) research reports, upgrades or downgrades by the broking firms (c) bulk and block deals on the exchanges, traded and delivery volumes (d) changes in the open interest and price in the derivative segment (e) buying and selling from foreign and domestic institutional investors and (f) technical calls from the external experts etc.

17.7. Thereafter, this collated information used to be shared with the anchors and the editorial team of the channel, when the anchors could choose the stocks which were to be recommended. Once the anchor/co-host had selected the stock, it was communicated to the production team and the graphic designing team. Thus, he was not the only one in knowledge of the stocks which were to be recommended.

17.8. In addition to the above, Mr. Pandya has claimed to have consulted with more than 30 experts, including the technical analysts like Mr. Alpesh. He has shown ignorance of the fact about Alpesh Group entities having traded in the shares discussed by Mr. Alpesh with Mr. Pandya or in the shows. As the analysts/experts participating in the shows had to give a disclaimer mandated by SEBI, which Mr. Alpesh had also given, Mr. Pandya had no reason to doubt integrity of Mr. Alpesh participating in the shows.

17.9. Mr. Pandya has submitted that he has acted in a *bona fide* manner and can explain each of the scrips mentioned in the Annexure A and Annexure B of the captioned order on reasons for recommendation. He has also denied sharing the recommendations with anybody and stated that he is not concerned with the trading in these scrips by Alpesh Group.

17.10. With regards to scrip of NRB, Mr. Pandya has submitted that there was a news article which stated that Society of Indian Automobile Manufacturers (for short 'SIAM') had sought GST rate cut on vehicles. Mr. Pandya was of the view that this news could potentially affect the price of NRB and thus, it was decided to recommend it on the next trading day. Further, he spoke to Mr. Alpesh at 11:15 AM and 12:15 PM on April 17, 2020 whereas this news came in late in the evening on April 17, 2020 at 19:35. He thereafter spoke to Mr. Alpesh on April 20, 2020 at 08:52 am regarding relaxations in COVID-19 lock down coming into effect from April 20, 2020.

17.11. Thus, Mr. Pandya has contended that the significant positive impact on the scrip had already occurred before his recommendation and the same cannot solely be attributed to him. A gap up in the scrip (i.e. positive difference between previous day closing price and the next day opening price) further indicates flow of significant market information after the closing of trade on previous day and before opening on current day. He has submitted that the other peer stocks of NRB had also seen similar gap ups on their opening on April 20, 2020.

17.12. Lastly, Mr. Pandya has also submitted that the target price given by him for NRB was INR 87/- and Alpesh Group had sold their holding on April 20, 2020 between INR 76.30-INR 77.70, as per *Interim Order*. This makes it clear that Alpesh Group used their own judgment to make trading decisions and their trades were not correlated to Mr. Pandya's recommendations.

17.13. With respect to TNPL, Mr. Pandya has stated that he had recommended it on April 28, 2020 because JK Paper Limited held a board meeting on that day to consider buy back of its shares leading to rise in price of this scrip on April 27 & 28, 2020. On April 28, 2020; when the board meeting of JK Papers Limited was about to take place, there was a frenzy among its peers. Due to this, he consulted with Mr. Alpesh through the call on 11:33:36 AM on April 28, 2020 on several stocks including paper stocks in order to recommend the same on his show to seek technical analysis of Mr. Alpesh. Upon receiving this, Mr. Pandya chose to recommend TNPL, since it was fundamentally more suitable than the other stocks.

17.14. Mr. Pandya has contended that while target price given by him was INR 125/-, Alpesh Group sold their holding on April 28, 2020 at an average of INR 103/- i.e. 22% lesser than the target price. This shows that Alpesh Group used their own judgment to make trading decisions and was not influenced by the recommendations of Mr. Pandya.

17.15. With respect to CCL, Mr. Pandya has admitted recommending it on January 11, 2021 (around 12:10 pm). However, Alpesh Group had executed BTST Trades wherein they had purchased shares at 15:16:29 on January 08, 2021 (Friday) and sold the shares on January 11, 2021 (Monday) between 09:15:05 to 11:30:34. A bare perusal of these trades confirm that Alpesh Group had sold shares prior to those shares were recommended by Mr. Pandya.

17.16. Mr. Pandya has also contended that all the information shared by him was in public domain already. The stocks were primarily chosen on the basis of news affecting a particular stock or sector. Most of these stocks were already in momentum because of the news. Therefore, it would be unfair to attribute any positive movement of price of those stocks to the recommendations made by him on the shows. SEBI has failed to take into account the increase in the trading volume and price of the scrips on account of various news items on those scrips or sectors. It has also not examined if these stocks were recommended through newspapers, website and apps of brokerage houses, business news channels and so on. In such a case, any increase in the price or volume cannot solely be attributed to him.

17.17. Mr. Pandya has also asserted that, as an anchor and analyst, it is his job to talk to several analysts, both on technical and fundamental side as well as both on sell side and buy side to understand the probable momentum in the scrip to recommend to the public. Mr. Alpesh is one amongst the many analysts he spoke to, during the period under examination.

17.18. Mr. Pandya has denied inducing any person to deal in securities with the objective of enhancing his brokerage or commission or income. He has submitted that he was paid fixed monthly remunerations by CNBC and he would have received no commission/compensation for recommending the stocks or upon their achieving the target recommended by him.

17.19. In the end, Mr. Pandya submitted that he had purchased a Flat in the Month of April, 2016 and had obtained a housing loan for which he is paying an EMI of INR 85,000 per month. In the absence of any source of income, he is unable to service the EMI for the housing loan and therefore requested to allow him to sell this flat and pay the housing loans. He has undertaken to deposit any surplus money in an escrow account after repaying the housing loan, if so directed.

17.20. He has also submitted that on account of *Interim Order*, he has been rendered unemployed and does not have any source of incomes. Thus, he has prayed for permitting him to liquidate his securities in order to meet his day to day expenses.

17.21. With respect to a query regarding his resuming office duties after lockdown related restrictions were loosened up, Mr. Pandya has submitted that he commenced 'working from home' from March 2020 onwards. In or around the end of May, 2020; the restrictions were gradually lifted and he started going to the office on alternate weeks or once in three weeks. However, the number of visits to the office varied as per the number of positive cases in the office, severity of COVID and therefore the schedule was constantly changing. Due to office being resumed, his coordination with Mr. Alpesh were streamlined and he started using the landline to call the experts, including Mr. Alpesh, for coordination. Therefore, from June 2020 onwards, there was a decline in the calls to and from Mr. Alpesh on his mobile number.

17.22. However, he has showed his inability of providing his attendance records due to his resignation from CNBC Awaaz.

CONSIDERATION OF ISSUES AND SUBMISSIONS

18. Before dwelling upon the *Interim Order* on the basis of the material available on record and the submissions made by the *Entities*, it is relevant here to set the facts straight by observing that the present proceedings are in the nature of confirmatory or revocation proceeding and the domain of the proceedings before me is very limited to the extent of assessing whether the *prima-facie* allegations of fraudulent and unfair trade practices mentioned in the *Interim Order* are refuted conclusively by the *Entities* and/or whether any relief is required to be granted to them from the directions already issued against them in the *Interim Order* on the basis of facts of the case and the additional evidences made available on record. I understand that a thorough examination/investigation in this matter is being conducted by the relevant department of SEBI, the outcome of which will decide further course of action and initiation of further proceedings in the matter as per applicable provisions of law.

19. At the preliminary stage, I find that Mr. Pandya has contended that he was not provided with **certified copies** of certain documents as well as the copies of NSE examination report dated December 10, 2020 and the preliminary examination report of SEBI. In this regard, first of all, it is not the case of any of

the *Entities* involved that the documents relied upon by SEBI and furnished to them to defend the *prima facie* observations in the *Interim order* contain inconsistencies and appear to be altered or false. In the light of this, such an objection that certified copies of relevant documents were not provided is merely a technical objection which doesn't materially affect the continuation of the proceedings in the present matter. Further, the examination report of NSE is a document that first triggered the preliminary examination by SEBI and since the preliminary examination of SEBI became the basis of passing the *Interim Order*, the NSE report has not been used as a documentary evidence while recording the observation in the *Interim Order*. Therefore, non-furnishing of such unrelated document would not be fatal at this stage of proceeding, hence the contention does not require any further deliberation.

20. With respect to the non-furnishing of SEBI's preliminary examination report, I understand that an inspection of documents was granted to Mr. Pandya and Alpesh Group on November 16, 2021 and December 15, 2021 respectively, during which, as per the legal position prevalent at the said point of time, the preliminary examination report of SEBI being an internal confidential document of SEBI, was not offered to them for inspection. Subsequently, the legal position with respect to Inspection was clarified *vide* Judgment dated February 17, 2022 of the Hon'ble Supreme Court of India in the matter of *T Takano vs. Securities and Exchange Board of India*. However, I find that neither any of the *Entities* in the present matter has ever pressed for copies of the said SEBI's preliminary examination report after delivery of the aforesaid judgment of Hon'ble Supreme Court nor has any entity pressed for the same during the course of personal hearing before me, that had taken place subsequent to the aforesaid Supreme Court Judgment. It is a basic principle of law that a relief that arise due to certain subsequent development, should be applied for or sought for at the first possible

opportunity by an entity. Given the fact that the *Entities* in the present matter have on two earlier opportunities, chosen not to press for copies of preliminary examination report of SEBI, such a request in post-hearing submission appears to be nothing but an attempt to delay the present confirmatory/revocation proceedings which is not proper and permissible at this stage.

21. In any case, I gather guidance from the following observation of the Hon'ble Supreme Court of India in M*anaging Director, ECIL, Hyderabad v. B. Karunakar* (1993) 4 SCC 727, wherein the following was noted:

"*Hence, in all cases where the enquiry officer's report is not furnished to the delinquent employee in the disciplinary proceedings, the Courts and Tribunals should cause the copy of the report to be furnished to the aggrieved employee if he has not already secured it before coming to the Court/Tribunal and* ***give the employee an opportunity to show how his or her case was prejudiced because of the non-supply of the report. If after hearing the parties, the Court/Tribunal comes to the conclusion that the non-supply of the report would have made no difference to the ultimate findings and the punishment given, the Court/Tribunal should not interfere with the order of punishment.***"

In this case too, the *Entities* in the present matter were required to show prejudice caused to them during the course of personal hearing due to non-furnishing of preliminary examination report. In this regard, I find that none of the *Entities* involved in the present matter has showed during the course of personal hearing the prejudice, if any, caused to them due to non-furnishing of preliminary examination report. Moreover, I also note from the perusal of preliminary examination report that the observations made therein have already been reproduced in the *Interim Order* prior to making *prima facie* allegations against the Entities. Further, all the materials that were relevant and used in preparation of the said preliminary examination report were provided to the *Entities* during the course of inspection of documents on November 16, 2021 and December 15,

2021. Therefore, I find no reason to provide preliminary examination report at such a late stage of the present proceedings pending detailed investigation by SEBI.

22. I have considered the oral and written submissions made by Alpesh Group and Mr. Pandya. It is *prima facie* observed in the *Interim Order* records that the trades executed by Alpesh Group were in synchronization with the recommendations given by Mr. Pandya on various shows hosted/co-hosted by him. It is also *prima-facie* observed in the *Interim Order* that in certain instances, investors' interest got generated in the scrip by the first leg of trades of Alpesh Group that was executed prior to recommendations made by Mr. Pandya, and such large purchases made by Alpesh Group in certain scrips prior to recommendations made by Mr. Pandya also generated interest of general public in the said scrips due to sudden rise of the trading volume in those scrips. As recorded in the *Interim Order*, the trading pattern of Alpesh Group did not appear to be above board completely during the *prima-facie* examination in the context of stock recommendations given by Mr. Pandya. Further examination of the Call Data Records (for short '**CDR'**) of Mr. Alpesh, Mr. Manish and Mr. Pandya showed that Alpesh Group was constantly in touch with Mr. Pandya prior to their trades and prior to recommendations of Mr. Pandya in relevant scrips. The said calls appeared to be more suspicious after it was observed in some instances of purchase of scrips by Alpesh Group that soon after the buy recommendations in those relevant scrips was made by Mr. Pandya on his show sell leg of trade of Alpesh Group had taken place. In view of the above narrated sequence of events, the *Interim Order* was passed in which, based on strong preponderance of probabilities, it was *prima-facie* observed that the unpublished advance information regarding impending stock recommendations to be made Mr. Pandya got communicated through him to Alpesh Group which took advance

buy positions in the relevant scrips and immediately squared off their trades in those scrips by selling all the shares which they were holding just around the time when Mr. Pandya's recommendation were to be broadcasted on his shows. The *Interim Order* has provided a long list of all the scrips where Mr. Pandya had broadcasted his recommendations to buy the shares and Alpesh Group had traded at the same time in those scrips, thereby making their trades look very suspicious as well as *prima-facie* synchronous with the stock recommendations of Mr. Pandya keeping in view, the additional evidence available to SEBI about constant phone calls between Alpesh Group and Mr. Pandya during the relevant period. In view of all the above chain of events and trading activities in numerous scrips, the *Entities* were *prima-facie* noticed to be in contravention of relevant provisions of PFUTP Regulations, 2003. Accordingly, certain interim directions quoted earlier in this order were passed in respect of the *Entities*, which I am not reproducing here for the sake of brevity.

23. I also note from the material available on record that the *Entities*, in terms of the directions given in the *Interim Order*, have deposited a sum of INR 8,39,64,340.71 in an interest bearing escrow account with a lien in favour of SEBI. Subsequent to such deposit of funds, the bank accounts of the *Entities* have been unfreezed and restored for all kind of transactions. In view of this, I note that apart from directing them to deposit the above stated amount in an escrow account, which they have complied with, they have also been restrained from buying, selling or otherwise dealing in the securities, either directly or indirectly, till further orders. Further, Mr. Alpesh and Mr. Pandya have been directed to cease and desist from undertaking any activity related to giving investment advice, buy/sell recommendations, publication of research reports etc., as well as to preserve the records of their various social media accounts.

24. I note that the *inter-se* connections amongst Alpesh Group entities and their corresponding connection with Mr. Pandya have been illustrated in details in the *Interim Order* at paras 12 to 18 with the help of diagrams and Tables showing their connections and call records. The same have been not disputed by any of the *Entities* and therefore, are not being reproduced in the present order for the sake of brevity.

25. Before moving further, I find it appropriate to segregate certain facts of the case as stated in the *Interim Order* which have also not been disputed by any of the *Entities*, and these undisputed/uncontroverted facts are highlighted hereunder:

    25.1. That Mr. Pandya used to recommend stocks on various shows on CNBC Awaaz under 'Pandya ka Funda' and Mr. Alpesh used to appear on his shows as an external expert. They were well known to each other due to their continuous association with each other and with CNBC Awaaz.

    25.2. The call records between Alpesh Group and Mr. Pandya have not been refuted. Both Mr. Alpesh and Mr. Pandya have admitted being frequently in contact with each other.

    25.3. The facts related to trade details mentioned at Annexure 2 of *Interim Order* and elsewhere have not been refuted by Alpesh Group.

    25.4. <u>All the trades of Alpesh Group were executed by Mr. Alpesh.</u>

26. First of all, I note that Mr. Alpesh has, in his reply, admitted that all the trades executed in the accounts of Alpesh Group were executed by him. In light of such admission, the requirement of connections of other Alpesh Group entities with Mr. Pandya has become moot and resultantly, it is not required to discuss essentially the direct role of any other Alpesh Group entities in the alleged fraudulent synchronized trading based on non-public information. Unless

specifically mentioned, all reference to his trades in this order shall also include trades done by him in the accounts of other Alpesh Group entities.

27. At the same time, I find that other Alpesh Group entities admittedly allowed Mr. Alpesh to use their accounts for trades which were *prima-facie* found to be in synchronization with the recommendations of scrip by Mr. Pandya in the shows hosted/cohosted by him. In this regard, I find it relevant to refer to the observation of the Hon'ble Securities Appellate Tribunal in its order dated September 15, 2020 in the matter of Pragnesh Vishnubhai Patel vs. SEBI, as follows:

"*We also find that admittedly the appellant allowed the another noticee Lalit Amritlal Shah to use his trading account and if his trading account was misused, the appellant himself is to be blamed and for this blunder, the appellant cannot escape the liability for violating the SEBI laws.*"

In view of the above observations, I find that in the absence of any other plausible justifications, other entities of Alpesh Group are equally accountable for the *prima-facie* violation of provision of SEBI Laws, including SEBI Act and PFUTP Regulations.

Keeping this in view, I now proceed to examine the submissions of Mr. Alpesh and Mr. Pandya in light of the facts and *prima-facie* assertions made in the *Interim Order*.

28. I note that both Mr. Alpesh and Mr. Pandya have extensively contended that there was no exchange of unpublished information between them which would have allowed Mr. Alpesh to take advantage thereof to trade in scrips recommended by Mr. Pandya on his shows on CNBC Awaaz.

29. Further, for the sake of convenience, I note that Mr. Alpesh has mainly raised the following points:

29.1. There is no way to know the exact time at which Mr. Pandya would have made his recommendations, as such timing was affected from numerous factors such as delay by graphic team, breaking news etc.

29.2. That his trades were based on his own studies and analysis. While there might be some overlapping of his trades with the recommendations of Mr. Pandya, the same is due to the fact that at any point of time, the number of stock breaking out of any technical barrier is limited, leading to all the traders concentrating their trades in those shares. At the same time, due to a big jump in volume in those scrips because of such concentration, the same shares feature on the radar of anchors such as Mr. Pandya leading him to recommend those scrips in his shows. However, such overlapping is coincidental and not because of some nefarious design.

29.3. In all the scrips discussed in the *Interim Order*, nowhere exact time of recommendation has been given. Moreover, the *Interim Order* has failed to take into account the time lag caused due to around 30 seconds of broadcasting gap between making of recommendation and broadcasting of such recommendations and also at least a few minutes' time lag between the completion of stock recommendations by Mr. Pandya and the time the investors take to analyze and decide if they should enter into trades based on such recommendations and then time taken for punching in the orders.

29.4. In none of the scrips discussed in the *Interim Order*, Mr. Alpesh had placed any part/leg of the order after the recommendation of Mr. Pandya was published. In fact, while trading in the scrip of CCL, both the legs of his orders were completely executed even before the recommendation of Mr. Pandya was broadcasted. Had he desired and intended to take advantage of recommendations of Mr. Pandya in the scrip, he would have placed at least one leg of his trades after recommendation of Mr. Pandya was broadcasted.

29.5. The stock recommendations made on the shows of Mr. Pandya were in the nature of medium to long term recommendations. However, his own trades in the same scrips were always in the nature of short term trades. Therefore, one person may have opposite views on different time frame. This doesn't amount to conflict of interest.

29.6. The total market float of all the scrips discussed was much higher than number of shares traded by him in those scrips. Therefore, it was not possible for him to manipulate scrip price using such small quantities when it is seen in light of free float available in the market.

29.7. He has attempted to explain reasoning behind all the trades discussed in the *Interim Order* by the help of technical breakouts on the basis of which he has stated to have traded in those scrips.

30. Similar contentions were also raised by Mr. Pandya in his submissions dated December 29, 2021 and March 31, 2022. Further, he has also attempted to distinguish and distance his recommendations from the trades of Alpesh Group by stating the following:

30.1. The recommendations made by him were for medium to longer duration having effective period of holding to be at least 3 to 6 months whereas, the trading strategy of Alpesh Group was intraday or BTST, both of which are very short term in nature.

30.2. The targets given by him for his scrips were far away from the sell price of Alpesh Group. This shows that trades of Alpesh Group were not inspired by the recommendations given by him and their trading in scrips were based on their own studies and strategies.

30.3. Such information regarding his recommendations was firstly, not UPSI under PIT Regulations, and secondly was known to a number of other persons involved in the show.

30.4. While appearing on his shows, Mr. Alpesh had given disclaimer that he had no interest in the scrips recommended by Mr. Pandya which Mr. Pandya believed to be true. He had no reason to doubt such disclaimer of Mr. Alpesh.

31. I find it relevant to mention at the start that both Mr. Alpesh and Mr. Pandya are well renowned personalities of securities market and the same gets validated from their large following on various social media platforms. A complete analysis, as given in the *Interim Order*, shows that generally the volume in the scrips under recommendation used to have a rise soon after recommendation on those scrips was made by Mr. Pandya. This shows that he is not only followed by a large crowd of general investors, but his recommendations are positively acted upon by such group of investors.

32. Similarly, large number of followers of Mr. Alpesh are also seen on social media and the same has been elaborated in the *Interim Order*. As the said observations of *Interim order* has not been refuted, I don't find it necessary to reiterate the same. Given the fact that he was called periodically as an expert by one of the largest Business News Channel in the Country, it is not difficult to infer that he was not only having a reputation, but also a large number of following amongst general public to attract them to TV shows wherein he used to appear.

33. It is an accepted fact that a large number of retail investors in the country do not have the privilege of purchasing professional advisory services on stock trading.

These large multitude of retail investors normally take their investment decisions in securities market without having in-depth understanding of the Market and rely substantially on the stock tips being provided by persons on different forums, viz: TV channels, social media etc., claiming expertise in dealings in securities market. The lure of earning higher returns and creating wealth in short time as well as the controlling the usage of their money in their own hands as compared to indirect investing through various channels such as Mutual Funds and Portfolio Management Services also push these retail investors to follow the advices of such experts who give their tips freely to the public based on their internal research and also many a times, to push their personal commercial agenda which is not known to others. SEBI is working a lot to educate these investors to deal in securities market with caution and through proper professional help. Over the period of time, SEBI has incorporate provisions such as regulations to deal with Investment Advisors, Portfolio Managers and Research Analyst. At the same time, SEBI conducts seminars throughout the country in order to educate common investors.

34. Such uneducated and gullible investors follow people like Mr. Pandya and Mr. Alpesh believing that they are experts and are giving genuine stock recommendations with bona fide intent to educate the public investors. Further, when such experts like Mr. Pandya and Mr. Alpesh collaborate and anchor/host shows to give stock tips on popular TV channels like CNBC Awaaz, which has wide viewership among investor community, the probability of a large chunk of investors who follow them as stock experts believing their recommendations to be true become very strong and the chances of these follower investors acting upon such stock recommendations given by Mr. Pandya and/or Mr. Alpesh becomes preponderantly very high as they have strong faith in the experience and professional competence of these expert anchors/hosts.

35. In such circumstances, it will not be an exaggeration to call both Mr. Alpesh and Mr. Pandya as the 'persons' who are having big influence over a large chunk of investors who are interested in investing in securities market. In such a scenario, the actions of either of them significantly affects the trading behavior of a large number of such investors. Therefore, it is highly expected of both of them to be fair and honest in their dealing and communicating with general public be it through TV shows or through social media and any slight deviation from such an avowed responsibility that they carry on their shoulders as influencers of the investors, is required to be viewed seriously as the same would adversely affect the interest of a large section of public investors. In any such case of deviation by these persons coming to the knowledge of SEBI, it is the duty of SEBI as a Regulator to examine such deviations to find out if the same falls within the category of fraudulent or unfair trade practices on their part. In any case persons like Mr. Pandya or Mr. Alpesh cannot afford to influence the minds of the innocent investors, who believe in their stocks tips, in order to earn extra profit in their own accounts by taking undue advantage of their own recommendations either by way of front-running trade practice or in any other manner.

36. As observed in the *Interim Order*, Mr. Alpesh and Mr. Pandya were constantly in touch with each other through numerous phone calls. Further, the orders of Alpesh Group in a number of scrips coincided with the broadcasting of recommendations of Mr. Pandya which created a strong suspicion in the mind of Regulator leading to the preliminary examination into the activities of both of them, the *prima-facie* results of which have been elaborated in-depth in the *Interim Order*.

37. Mr. Alpesh and Mr. Pandya have attempted to explain their frequent phone calls by stating that the same were regarding their official engagements and it was due

to the fact that the whole CNBC Awaaz office was working from home on account of COVID pandemic. One reason provided by Mr. Pandya was that he used to take technical inputs from Mr. Alpesh in the scrips that were placed before him by his research team. However, for the same to be presumed correct, the calls should have originated from Mr. Pandya to Mr. Alpesh as Mr. Pandya was the one claiming to be seeking advice of Mr. Alpesh. However, contrary to that, Mr. Pandya has himself admitted that most of the calls were made by Mr. Alpesh to him which itself is surprising, as the one giving advice is calling the one who was supposed to take advise. In fact, this appears more in line with the *prima-facie* allegation of SEBI that Mr. Alpesh used to gather information regarding recommendations to be made by Mr. Pandya on his shows.

38. Mr. Alpesh has contended that there is no evidence that the clock of CNBC Awaaz is exactly synchronized with exchange clock so as to establish that there is no time lag between trade data, which is taken as per the exchange clock, and recommendations of Mr. Pandya, the timing of which is taken from CNBC clock. However, as I understand, it is a practice that all the business news channels try to synchronize their clocks with exchange clocks as closely as possible. The same can be seen from the fact that the business news channels show clock on their shows at the time of opening or closing of the market wherein these clocks seem to be synchronized with the exchange clock even to the unit lesser than seconds. Therefore, I find no credence in this argument of Mr. Alpesh at this stage of the proceedings when detail examination/investigation is underway.

39. Mr. Alpesh has also contended that at no place in the *Interim Order*, the exact moment of time has been given as to when the recommendation of Mr. Pandya had exactly started and when such recommendation had ended. In this regard, I

note that the approximate timing of recommendation given by Mr. Pandya in respect of no less than 3 scrips has been illustrated in the *Interim Order*. Further, on a viewing of recommendations given by Mr. Pandya, as facilitated by way of QR code provided in the *Interim Order*, shows that Mr. Pandya used to elaborately discuss his recommendations on specific scrips along with all the information compiled by him/his research team. The whole broadcasting of recommendation on various scrips used to be covered over a period of time and broadcasting of recommendation of a particular stock could take a few minutes too. Therefore, it is not possible to pin point with precision at this stage the exact moment at which recommendation of a particular scrip had started or ended. Therefore, only an approximate time of such recommendation on a particular scrip was possible to given at preliminary examination stage, and the same has been duly mentioned in *Interim Order*.

40. At the same time, it is not necessary that investors would invest only after the recommendation has ended. An investor is free to trade in the recommended scrip at any point of time even during the time when the recommendation is being broadcasted and the show was going on. Therefore, I am of the view that the ending time of broadcasting of recommendation is not of much relevance in the present matter. However, this doesn't change the fact that trading pattern in a number of scrips, as highlighted in the *Interim Order*, are more than sufficient to give rise to *prima facie* suspicion that the behavior of Alpesh Group has been influenced by the advance knowledge of recommendations of Mr. Pandya.

41. Connected to the aforesaid, the submission of Mr. Alpesh that the time lag that would be there in taking investment decision by the investors after fully going through recommendations of Mr. Pandya has not been taken into consideration in the *Interim Order,* also doesn't seem to help the case of Mr. Alpesh in the facts

of present matter. It has already been discussed in this order as well as in *Interim Order* that Mr. Pandya is a public figure having a large following of people especially from the retail investing community as evident from his social media accounts and viewership of his shows. Going by the period of time over which Mr. Pandya has been giving his stock recommendations, and the track record of Mr. Pandya in providing predictions about the performances of various stocks over such period, it is not unfathomable that he was a well-known figure amongst general stock market investors. Further, a preliminary price volume analysis of the scrips recommended by him show notable jump in both price and volume in such scrips that coincided with the recommendations made about such scrips by Mr. Pandya. Such change in trading volume in the scrips recommended by Mr. Pandya, when observed in synchronization with the video version of his programme furnished through the QR code in the *Interim Order*, wherein recommendation was found to be made by Mr. Pandya, it is *prima facie* presumed that as soon as the broadcasting of recommendation by Mr. Pandya started, the investors following his advices rushed to buy those recommended scrips as soon as possible, irrespective of the target prices, believing that whatever the target he might give, will be achieved in due course. The aforesaid indicates that his followers truly believed that any delay on their part in order placing may cause their acquisition price to shoot up and reduce their profit; thereby pushing them to buy it as soon as the name of scrip being recommended by him was flashing on the screen.

42. As veterans of securities market, it is not exaggeration to presume that both Mr. Alpesh and Mr. Pandya were well aware of likely influence of their stocks recommendations on the investing mindset of those investors who were following them and their stock tips, being made by them on the shows hosted by Mr. Pandya. At this stage of the proceedings when further examination is

underway, nothing has been brought out to controvert or alter convincingly the aforesaid *prima facie* observation that the stocks recommendations made by Mr. Pandya on his show did have big influence on the investors. In view of same, *prima facie* it is observed from the trading records of Mr. Alpesh that his trading strategy was essentially aligned in such a way that the influence and impact of Mr. Pandya's stocks recommendations on the public mind was utilized to earn extra profit while at the same time, Mr. Alpesh is seen to have made a conscious attempt to keep his trading strategy not so brazen so that it would be easy for him to mask the same from the eyes of the Regulator or public.

43. I find from the scrips discussed in the *Interim Order* that Mr. Pandya used to recommend scrips which, even by his own submissions, used to have technical breakout in their charts. It is natural that such scrips would be bereft of any significant volume prior to such breakout. In such a scrip sudden surge in volume leads to price rise and subsequent technical breakout. I find from the scrips discussed in the *Interim Order* that Mr. Alpesh used to buy large quantity of such shares, which were noticed to have led to sudden rise in trading volume, thereby becoming a cause for creating interest amongst the investors in those scrips. This interest appears to have led to rise in buying interest by other investors also who, after looking at such rise in volume, believing it to have happened on the basis of some internal non-public news, started buying these scrips thereby further causing a surge in buying and leading to technical breakout in those scrips. Later on, after Mr. Pandya picked up such scrips for recommendation on his show, the same also led to another rise in price and volume of such scrip. The records strongly indicate that at this stage of surge in price and volume of such scrips, Mr. Alpesh, knowing well based on his advance non-public information that the impending recommendations on the show of Mr. Pandya might lead to further leap in the volume of those scrips, used to place

his sell orders just prior to recommendations of Mr. Pandya in a way, that his trade would coincide with price and volume rise caused by such recommendations, and consequently, he was able to successfully enhance the chance of him earning an assured/better profits due to sudden rise in price and volume of such scrips.

44. Mr. Alpesh has also argued that exact time of stock recommendations to be made by Mr. Pandya was not possible to predict in advance as broadcasting of such recommendations would depend upon a number of factors including any breaking news in between etc. Even presuming that to be true for a moment which may be true for any other show as well, it is astonishing to see as to how so many of the trade orders of Mr. Alpesh were placed in such a way that execution of major part of such orders would always coincide with rise in price volume of those scrips caused by and immediately after the broadcasting of recommendations of Mr. Pandya had started. I do not find any tangible defense from Mr. Alpesh in this regard.

45. Further, in any case, it is noticed during preliminary investigation/examination that the recommendation of Mr. Pandya used to start after 08:55 AM on his show '*Pehla Sauda*' and after 02:00 PM on his show '*Aakhri Sauda*'. In such a situation, I find from all the instances mentioned in the *Interim Order* that Mr. Alpesh used to place order just before the abovementioned time. In fact, I note that Mr. Alpesh always used to place Limit Sell order in his transactions. A Limit Sell Order is one wherein an entity pre-decides a sell price and inserts the same in system. In such a scenario, the trades get executed only when the particular price would arrive in the said scrip. For example, if a scrip is trading at INR 95 and a person places a Limit Sell order at INR 100, the order will get executed in the system when the price of the scrip will touch INR 100. The fact that Mr.

Alpesh always used to place Limit Sell Order in all the scrips mentioned in annexures of the *Interim Order prima-facie* shows that all these impugned orders were placed under the influence/knowledge of the fact of that Mr. Pandya was going to recommend the said scrip on his show and which could/would result in jump in scrip price and volume leading to a strong possibility of execution of his limit order. In such a scenario, the exact timing of broadcasting of recommendation by Mr. Pandya doesn't appear to be so relevant a point for Mr. Alpesh to rebut the *prima facie* observation made in the *Interim order*, more so when an investigation is ongoing wherein all these issues would be examined and analyzed in detail and the *Entities* will have sufficient opportunity to place all the rationale with supporting evidences before the Investigating Officer.

46. Another argument advanced by both Mr. Alpesh and Mr. Pandya is that while the recommendations of Mr. Pandya were for medium to long term investments, the trades of Mr. Alpesh were either intraday or BTST, both are short term strategies; hence the trades of Alpesh Group were contrary to the recommendations of Mr. Pandya. In this regard, I observe that the *Interim Order* does not proceed on the presumption that the trades of Alpesh Group were on the lines of the recommendations of Mr. Pandya i.e. following the same long term or medium term targets and timeline as per the advice given by Mr. Pandya in his recommendations, rather the *Interim Order* has proceeded on the premise that there appears to be a co-relation between the trades of Alpesh Group and the stock recommendations made by Mr. Pandya on his shows. In such a scenario, such a submission of Alpesh Group does not have credence enough as to dispel the observation recorded in the *Interim Order*. It is noticed that the *Interim Order* proceeded to make observation that the records *prima facie* show that based on the stock recommendations given by Mr. Pandya in his shows, there used to be impact on the price and volume on those recommended scrips and taking

advantage of the surge in the price and volume in those scrips pursuant to such recommendations, Alpesh Group used to trade in those scrips and as a result, made profit by selling those scrips which they had purchased prior to the recommendations based on their advance information about the impending recommendation by Mr. Pandya on such scrips. Before proceeding further, I find it pertinent to reiterate that a detailed fact finding exercise into the entire matter is ongoing and the instant proceeding is only to examine as to whether the *prima facie* observations made about the trades of Alpesh while passing the *Interim Order* have been dispelled conclusively by the *Entities* at this stage or not. In the absence of an affirmative answer to the above question, the submissions of the *Entities* made before me at this stage do not merit further consideration which will be duly examined during the detailed investigation.

47. As discussed at the starting of this order, the success rate of Alpesh Group in the scrips recommended by Mr. Pandya was more than 95% in both BTST trades or intraday trades i.e. they earned profit in 95% of those trades that were entered into the scrips recommended by Mr. Pandya. This has been viewed as unusual for a trader in normal circumstances to have timed his trades in a precise manner so as to coincide with Mr. Pandya's stock recommendations. As a consequence, the *Interim Order* has found it as a strong reason to suspect those trades, all the more when such precise timing is conspicuously missing in other BTST trades with respect to other scrips which were not part of the recommendation in the show of Mr. Pandya. Consequently, there was a significant gap in success rate of Alpesh Group between their trades in scrips recommended by Mr. Pandya and the trades executed by them in scrips that were not recommended by Mr. Pandya as can be seen from the following table: -

Table 1: Trades of Alpesh Group during Examination Period

Trade Type	Total Trades in scrips recommended by Mr. Pandya	Profitable trades in scrips recommended by Mr. Pandya	Percentage of profitable trades	Total Trades in scrips not recommended by Mr. Pandya	Profitable Trades out of	Percentage of profitable Trades
BTST	226	223	98.67	150	108	72
Intraday	473	454	95.98	539	434	80.52

As may be noticed from the table above, the success rate of Alpesh Group is seen to have fallen from an incredibly high of 98.67% to 72% when Mr. Alpesh makes BTST trades in those scrips which had no recommendation from the side of Mr. Pandya. Similarly, his success rate falls from almost 96% to 80.52% when he deals intraday in the scrips wherein no recommendation from Mr. Pandya is there.

48. Further, the trading of Alpesh Group, when seen in light of profit earned by them in the scrips recommended by Mr. Pandya *vis-à-vis* profit earned in the scrips wherein no recommendations by Mr. Pandya were found shows a stark difference which is more than sufficient to raise serious doubts in the trading pattern of Alpesh Group. I find it relevant to refer to Table 4 to Table 8 of the *Interim Order* which elaborated the profits earned by Alpesh Group by their trades during the *Relevant Period*. It is observed from the aforementioned Table that Mr. Alpesh had earned a profit of INR 6.74 Crores in his own account during the whole *Relevant Period*. Out of this INR 6.74 Crores, 79.3% of such profit (amounting to INR 5.35 Crores) was earned by him from his trades only in the scrips recommended by Mr. Pandya. Similar observations were also noted with respect to other entities of Alpesh Group in Tables 5-8 of the *Interim Order* wherein Alpesh HUF (91.80%), Mr. Manish (82.60%) Manish HUF (92.30%) and Mrs. Alpa (78.20%) earned most of their total profit respectively from trading (executed on their behalf by Mr. Alpesh) in the scrips recommended by

Mr. Pandya. Consolidating the said profits and comparing the same with profit of Alpesh Group from trades in scrip, where no recommendation of Mr. Pandya has been found, lead to the following data:

Table 2: Profit of Alpesh Group from all the trades

Trade Type	Total Proceeds (INR in Crores) earned by Alpesh Group	Total Proceeds (INR in Crores) earned by Alpesh Group in scrips recommended by Mr. Pandya	Percentage
BTST	5.41	4.80	88.72
Intraday	4.90	3.60	73.47
Total	10.31	8.40	81.47

The above table clearly shows that majority of profit of Alpesh Group during the *Relevant Period* was generated from trades in scrips wherein recommendations of Mr. Pandya were found to be there.

49. Additionally, it has also been observed that the average value of the trades of Alpesh Group in the scrips which were recommended by Mr. Pandya was around 3 times to the average value of trades in the scrips where no recommendations by Mr. Pandya was found. Corollary to this, the average profit of Alpesh Group in the scrips recommended by Mr. Pandya was noticed to be INR 2.4 lakhs as compared to profit of INR 0.3 lakhs (i.e. 8 times lower) in the scrips where no recommendations by Mr. Pandya were found.

50. Adding to the above-mentioned statistics, the fact that Mr. Alpesh and Mr. Pandya were in regular contact with each other during the whole period, gives a strong preponderance of probability that Mr. Alpesh and Mr. Pandya were both active in unfair trade practices on the basis of unpublished information regarding the impending stock recommendations of Mr. Pandya which, when published, used to have material and noticeable impact on both price and volume in those recommended scrips. Under the circumstances, the suspicions raised in the

Interim Order still remain entrenched on its ground. At the same time, it can't be ignored at this stage of the proceedings that a detailed investigation is ongoing with respect to the irregularities *prima facie* observed in the *Interim Order* pertaining to matching of trades by Alpesh Group in scrips which were part of the recommendations of Mr. Pandya in his shows on CNBC Awaaz.

51. The *Interim Order* nowhere records that Alpesh Group had traded only in those scrips which were part of the recommendation of Mr. Pandya. Therefore, considering the fact that matching percentage of having success rate is more than 95% confined to only those scrips, which were recommended by Mr. Pandya in his shows, the direction under the *Interim Order* were issued premising the above as a strong factor coupled with the close proximity of Mr. Pandya with Mr. Alpesh and frequent phone calls between them and the said facts have not been ever disputed by either of them.

52. One of the submissions of Mr. Alpesh and Mr. Pandya is that Mr. Pandya used to give his recommendations on the basis of public information and had never used any unpublished information regarding any company. And that none of the information used by him falls under the definition of 'Unpublished Price Sensitive Information' (in short 'UPSI'), as prescribed in SEBI (Prohibition of Insider Trading) Regulations, 2015. In this respect, it is not the case of SEBI that Mr. Pandya was using UPSI. The case of SEBI is that once Mr. Pandya used to select the scrips which he was planning to recommend on his show, such information regarding the names of such selected scrips and the corresponding target prices to be recommended, remained unpublished and sensitive till the show on TV was aired for the reason that upon telecast, it has been seen that there was usually a spurt in the prices as well volume in those scrips talked, discussed and recommended by Mr. Pandya. Under the circumstances, any

person taking advantage of an advance information, which had the proven potentiality to impact the price and volume of the scrips takes a favorable trade position in those scrip taking advantage of his early/prior information so as to earn extra but unlawful profit, such trades of him would *prima facie* qualify to be an unfair and fraudulent category of trade. In the instant matter, the *Interim Order* proceeds on the premises that Mr. Pandya was providing this unpublished information about his impending stock recommendations to Mr. Alpesh who, by using such advance information about the stocks that were going to be recommended by Mr. Pandya, was taking an advance position in those scrips. While this advance information was available with select group of persons inside CNBC Awaaz, the same doesn't become public information by virtue of such knowledge of a small set of persons involved in those TV shows. At the same time, it is noted in the *Interim Order* that SEBI examined phone calls of Mr. Alpesh and could not find him in constant contact with any other CNBC Awaaz employees to give rise to any preponderance of probability for him to have acquired such information from any other employee of CNBC Awaaz in any of the cases mentioned in Annexures A & B of *Interim Order*.

53. Mr. Alpesh has contended that his trading volume was negligible in comparison with free float of the scrips discussed in the *Interim Order*. However, the said contention is completely flawed as it is a well-known fact that at no point of time, the whole free float of any scrip will be traded in the market. The correct criteria to examine the impact of trades of a particular entity is by comparing its trading volume with the whole trading volume in a particular scrip on a particular day. In this regard, I find that the trading of Mr. Alpesh and Mr. Manish on April 17, 2020 in NRB was equivalent to 97% of total quantity traded in the said scrip on previous trading day and equivalent to 172% of average daily traded quantity in previous 10 trading days. Similarly, trading of Mr. Alpesh and Mr. Manish on

January 09, 2020 in Pricol was equivalent to 182% of total quantity traded on previous trading day and equivalent to 71% of average daily traded quantity in previous 10 trading days. Further, I find that Mr. Alpesh has himself mentioned that his trades on January 09, 2020 in Pricol was 20% of day's market volume. This shows that Mr. Alpesh used to trade heavily in the scrips which he apparently knew that Mr. Pandya was going to recommend on his shows. As already discussed, such huge trading volumes created by Alpesh Group prior to the show of Mr. Pandya used to attract other investors as well to trade in those scrips in large numbers leading to technical breakout in those scrips, which was then picked up by Mr. Pandya in his shows for recommendation.

54. However, I find that the submissions of Alpesh Group regarding their trading in the scrip of CCL Products Limited has a *prima-facie* merit, as it appears from the trade data reproduced in the *Interim Order* that both the buy and sell legs of the trade in this scrip was completed prior to recommendation of Mr. Pandya was broadcasted on CNBC Awaaz. However, excluding the trading of Alpesh in one scrip from *prima-facie* suspicion made in the *Interim Order* cannot *ipso facto* lead to demolish the entire presumption made out in the *Interim Order*, which records a sufficient number of scrips and instances wherein the trades of Alpesh Group have been noticed to have been glaringly coincided with Mr. Pandya's recommendations thereby making the alleged front running activities of Mr. Alpesh to be too obvious to be ignored by SEBI. Further, I am not inclined to accept that the synchronization in as many as 698 trades (226 BTST Trades+473 Intraday Trades- trades in CCL Products Ltd.) over a period of time was a mere coincidence when both of them (Mr. Pandya and Mr. Alpesh) have admitted to be continuously in contact with each other and used to discuss a lot on the issues relating to the market movement and undeniably, Mr. Alpesh also used to appear as a guest/external expert on the shows of CNBC Awaaz hosted by Mr. Pandya.

55. As stated earlier, the scope and ambit of the present proceedings are limited to examine as to whether or not, in the facts and circumstances of the matter, the directions issued vide the *Interim Order* deserve to remain in operation or the same require to be withdrawn or modified in any manner after considering the explanations offered and evidences, if any, produced by the *Entities.* While analysing the compelling facts and circumstances which led to the issuance of directions under the *Interim Order*, I have noted that there are certain crucial as well as undisputed facts based on which, the *prima facie* allegations of fraudulent and unfair trade practices have been made in the *Interim Order*, and these crucial facts have till date not been disputed by the *Entities*. The facts that Mr. Alpesh was continuously trading in the scrips recommended by Mr. Pandya during the *Relevant Period*, and the frequent telephonic conversations admittedly about stock market movements and stock analysis between Mr. Alpesh and Mr. Pandya have remained unassailed till date as they are matter of record and cannot be denied. In fact, the confirmation of Mr. Alpesh that all trades by Alpesh Group were placed by him only, removes any necessity to connect other entities of Alpesh Group with Mr. Pandya. The manner of trades executed by Mr. Alpesh and the peculiarities attached to those trades which again have been noticed in the present order to have remained concentrated at the time of broadcasting of recommendation of Mr. Pandya over a long period of time in a number of scrips detailed in Annexures to *Interim Order* creates a strong *prima-facie* case against Alpesh Group and Mr. Pandya that such trades were based on unpublished information pertaining to the would-be stock recommendations of Mr. Pandya in various scrips.

56. I note that *Interim Order* has observed at para 119 that the trading activities in the accounts of Alpesh Group had almost stopped subsequent to another *Interim Order* dated January 13, 2021, passed in respect to Mr. Hemant Ghai, another

anchor on CNBC Awaaz, who had allegedly employed similar *modus operandi* of facilitating front-running, although Mr. Alpesh has contended that trading activities were stopped *inter alia* due to 2nd COVID wave and his mother in law being ill. However, none of these contentions seems convincing. I don't find any reason to believe Mr. Alpesh stopping trading on the ground of second COVID wave when he was trading in full flow during the first COVID wave. Although a copy of death certificate of his mother-in-law has been produced; that does not give me any reason to differ with any of the prima *facie* suspicions raised in the *Interim Order*.

57. I also note that the *Interim Order* at para 123.7 has observed that NSE had sought KYC records of Mr. Alpesh in June 2020, which were provided to NSE in August 2020. Subsequently, it has been noticed that a part of trading activities of Alpesh Group was transferred to Alpesh HUF and Manish HUF accounts. The same was put to him during the course of personal hearing asking for the reasons of such transfer of part of trading activities to the accounts of HUF, to which the Alpesh Group has contended that post July 2020 also 67.83% of their trades were still in the main accounts viz. Mr. Alpesh, Mr. Manish and Mrs. Alpa's individual trading accounts. However, it is not the case of SEBI that the whole trading activity was shifted to HUF Accounts but only a part of such trading activities were transferred to HUF accounts which in fact gets established even from the data submitted by Alpesh Group. Further, I note from Tables 4 to 8 of the *Interim Order* that, in percentage terms, most of the transactions in HUF Account were done in synchronization with recommendations of Mr. Pandya. It has been contended by both Mr. Pandya and Mr. Alpesh that the number of their phone calls had reduced pursuant to resumption of work from office. However, neither Mr. Alpesh nor Mr. Pandya could provide any date from which the work from office started for either of them rendering such an argument

redundant and unhelpful. Thus, the *Entities* have not been successful in making out a case in their favour by making such an inadequate submission. In such a scenario wherein the *modus operandi* of trades of Alpesh Group continued even after July-August 2020, the apprehension raised by *Interim Order* in para 123.7 that they might have shifted their talks to some other mode of communication or through some other applications appears to have force and the same require thorough investigation.

58. In view of all the above observations, I don't find that either Alpesh Group or Mr. Pandya has been able to set-up a *prima-facie* case in their favour to convincingly dispel the observations made in the *Interim Order*. Therefore, in principle I find no reason to make any change in the directions issued in *Interim Order* or to revoke or alter the same at this stage pending completion of the investigation into the matter which is in progress.

59. While concluding his arguments, the Authorized Representative of Mr. Pandya has submitted that the name of Nisha Pandya, wife of Mr. Pandya, has appeared in chart 1 at Page 6 of *Interim Order* but no adverse observation has been made in the *Interim Order* against her. However, taking note of such appearance of her name in the *Interim Order*, her employment has been adversely affected and the channel, where she is working, has not been allowing her to visit office and she is "off air" since the date of *Interim Order*. While the employer-employee relationship between Ms. Nisha Pandya and her employer is a private contract and therefore is outside the domain of SEBI, I find it necessary to note that there has been no observation made against Nisha Pandya in *Interim Order* and the appearance of her name in the chart referred to above was not with respect to the trading activities of Alpesh Group or their connection with Nisha Pandya. I find her name has been mentioned in the said chart in the context of her being

the wife of Mr. Pandya only. Under the circumstances I find no evidence on file as of now to suggest that Nisha Pandya has played any role in the scheme of things or in the fraudulent trading activities as mentioned in the *Interim Order*. [DISCUSS]

60. Further, Mr. Pandya has sought relief that he be allowed to sell his flat which he has purchased on loan and for which he is paying EMI of INR 85,000 per month. This request has been made in the light of the fact that due to restriction imposed by the *Interim Order*, he is unable to earn through his primary source of income viz. anchoring and therefore, he may turn into a defaulter on such loan which will affect his credit score and his future prospects. In this regard, I find that the direction under para 130.8 of the *Interim Order* restraining the *Entities* from disposing of or alienating any assets was to remain in operation 'until the impounded amount is deposited in the escrow account'. I am given to understand that the impounded amount has been deposited by the *Entities* in the escrow account. **Therefore, the direction under para 130.8 is no longer in force.** In light of this, I find no reason to pass any direction with respect to the aforementioned prayer.

61. Further, Mr. Alpesh has sought a relief by way of defreezing/refunding of an amount of INR 3,68,56,624/- out of the INR 8,39,64,341/- deposited in the escrow account (which was impounded as profit from the *prima-facie* synchronized trading of Alpesh Group) by stating that the said amount has been paid as Income Tax.

62. In this regard, the entities of Alpesh Group have submitted that the tax paid on the profit earned and brokerage paid on the executed trades should be allowed to be offset from the amount arrived at as liable to be disgorged. In this regard,

I find it relevant to reproduce the Explanation to Section 11B, as inserted vide Securities Laws (Amendment) Act, 2014, which states as below:

"*Explanation. - For the removal of doubts, it is hereby declared that the power to issue directions under this section shall include and always be deemed to have been included the power to direct any person, who made profit or averted loss by indulging in any transaction or activity in contravention of the provisions of this Act or regulations made thereunder, to disgorge an amount equivalent to the wrongful gain made or loss averted by such contravention.*"

A perusal of the aforesaid explanation reveals that the factors to be taken into account while arriving at a disgorgement amount are: profit made or losses averted. Therefore, the submissions made above are not tenable. Even otherwise also, the very transactions executed were *prima-facie* unfair and the profits directed to be impounded were arising out of the *prima-facie* unlawful activity of the *Entities* and any effort by Alpesh Group entities to claim offsetting of the amount of tax paid thereon to tax authorities would in effect amount to giving away a portion of the profit that was earned out of an unlawful activity, which, I my view does not fall within the canons of law. Additionally, as noted above that the present proceedings have limited scope of considering as to whether in the facts of the matter, the directions issued vide the *Interim Order* require modification of any nature or not. I understand that the investigation is going on and any submission to permit set-off of the losses suffered by the entities while carrying out those unlawful trades, from the impounded amount, would amount to facilitating insuring/hedging of losses incurred by such entities by indulging in unlawful activities.

63. Further, it is well established by the Hon'ble SAT in its order dated September 20, 2021 in the matter of Janak Chimanlal Dave vs. SEBI that administrative expenses and brokerage charges are in the nature of business expenses and are

not legitimate expenses for the purpose of claiming deductions in order to arrive at the net profit. The issue contended above also came up for consideration before the Hon'ble SAT in the matter of Purshottam Budhwani vs SEBI, wherein the following has been held by the Hon'ble SAT in its order dated January 15, 2015:

"*This Tribunal also agrees with Ld. WTM regarding set-off of expenses of in perpetrating fraud from disgorgement amount and that these expenses have not been allowed and should not be allowed. Regarding set-off for income tax paid on unlawful gains, this Tribunal is of the view that same cannot be allowed and Appellant has the viable option of claiming refund of same, from income tax, authorities*"

64. In any case, I am of the view that the profit of the said trades has been *prima-facie* found to have been earned in violation of relevant provisions of PFUTP Regulations, as dealt with in detail in the *Interim Order*. Moreover, the impounding of the said profit vide the *Interim Order* has not yet reached its finality and the same is liable to amendment at the time of final adjudication. Therefore, this confirmatory proceeding is not the stage to grant the said relief. I find it relevant to mention here that the amount deposited in an interest bearing escrow account is subject to the final outcome of the proceedings in the matter. In any event, I find it relevant to refer to proviso to Section 37(1) of Income Tax Act, 1961 which says that an assessee cannot claim business expenditure out of the profit earned by virtue of an offence or an act prohibited by law. Having *prima facie* held that the profits earned by the Alpesh Group have been earned from *prima-facie* illegal trades, the refund, if any, of the tax paid on such unlawful gains, must be claimed from the Income Tax Authorities who are competent to examine such claims.

65. I also note that Mr. Pandya has requested to allow him to liquidate the securities held by him to meet his day to day expenses. However, he has not furnished an estimate of his actual requirement for day to day expenses. Nevertheless, it is relevant to mention here that Mr. Pandya has submitted that he had his income from anchoring the shows related to securities market, by giving advice, which has stopped in terms of directions of *Interim Order*. Therefore, the means of earning have been completely stopped for him. Further, the *prima-facie* profits calculated by the *Interim Order* have been duly deposited as per the instructions in the *Interim Order*. At the same time, it is not the case of SEBI that Mr. Pandya has himself done unfair trades in his own account. Mr. Pandya has rather submitted before me stating that he doesn't trade in securities directly and he may be allowed to liquidate his mutual fund holdings to meet his day to day expenses.

66. To sum up the entire proceedings, it is reiterated that the *Interim Order* has been passed keeping in view the urgency of the matter but pending further examination/investigation and a detailed fact findings exercised is ongoing. The *Interim Order* was passed after appreciating the facts and evidences that were available on record, appreciation of which strongly indicated the possibility of engaging in activities of fraudulent and unfair trade practices by certain *Entities* mentioned therein and accordingly to prevent further misuse and continuation of such fraudulent and unfair trade practices, it was thought fit and proper to issue certain directions by passing an *Interim Order*. I note that the *Entities* shall have opportunities and rights to adduce sufficient justifications with supporting evidences to dispute the observations *prima facie* made in the *Interim Order* before the fact finding authority during the investigation. They shall have all the opportunities to produce sufficient documents to demonstrate their innocence. At this stage, the test is *prima facie* to protect the interest of the securities market

and therefore, in the absence of any clinching facts or evidences from the end of the *Entities* to refute and rebut the *prima facie* facts and observations basis which the *Interim Order* was passed, I am of the view that at this stage, the matter does not warrant any interference under the instant proceedings.

67. As the *Interim Order* has been passed, based on the available material, pending examination/investigation in detail and considering the limited scope of the instant proceedings, it is neither the mandate nor it is desirable for me to make any conclusive observation that could impact or influence a fair investigation. Therefore, in my view it would be proper to leave the veracity of the transactions to be ascertained in detail, during the course of investigation which will reveal as to whether the synchronization in trades were mere accidental or deliberate coincidences or were executed under the influence of advance non-public information about the impending stocks recommendations (to be made by Mr. Pandya) possessed by the Alpesh Group by virtue of their close connection and continuous interactions between Mr. Pandya and Mr. Alpesh.

68. I have already observed that there is no denial to the existence of frequent telephonic calls between Mr. Alpesh and Mr. Pandya. However, they have contended that these calls had no bearing with the trades executed as these calls were made in the ordinary course of their professional relationship. In this regard, it is noted that in the *Interim Order*, CDRs of *Entities* have been relied to demonstrate frequent communication amongst them. The transcripts of these calls which could show as to what was actually discussed between them is not available on record. Thus, the investigation has to find out the truth behind these communications by other modes such as collecting other supporting evidences, through recording of statements of these *Entities*, confronting them with other incriminating materials/documents collected/recorded during the investigation

pertaining to *inter alia*, the reason for sudden transfer of trading activities from individual to HUF account, the reason and motive behind trading in the account of other entities of Alpesh Group by Mr. Alpesh etc. The fact remains that there had been frequent communications between Mr. Alpesh, Mr. Manish and Mr. Pandya and that the impugned trades with such peculiar pattern coinciding with the stock recommendations made by Mr. Pandya were executed during the *Relevant Period.* However, at the same time, considering the pleadings made by them citing certain genuine difficulties being faced by them due to the restraints imposed on them including the difficulties in meeting day-to-day expenses and loan instalments, and also considering the fact that the amount of allegedly unlawful gain has already been deposited in the escrow account, I find that although at this stage the directions issued in the *Interim Order* deserve to be confirmed on the merit of the case, certain modifications ought to be made to such directions while confirming them .

ORDER

69. In view of the foregoing paragraphs, pending conclusion of investigation, I, in exercise of the powers conferred upon me in terms of Section 19 of the SEBI Act, 1992, read with Sections 11, 11(4) and 11B(1) thereof, hereby confirm the directions issued *vide ex-parte ad-Interim Order* dated October 04, 2021 subject to following modifications <u>in the specific facts and circumstance of the present matter</u>:

    a. Mr. Pandya is allowed to liquidate his mutual fund holdings upto INR 1,00,000/- (One Lakh Rupees) per month to meet his day to day expenses.

    This Order shall come into force with immediate effect.

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

71. A copy of this Order shall be forwarded to the entities of Alpesh Group and Mr. Pandya, Stock Exchanges, Depositories, Registrar and Share Transfer Agents to ensure necessary compliance.

Sd/-

Date: August 26, 2022 **S. K. Mohanty**

Place: Mumbai **Whole Time Member**