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National Stock Exchange of India

Circular

Department: Investigation	
Download Ref No: NSE/INVG/55815	Date: February 28, 2023
Circular Ref. No: 58/2023	

To All NSE Members,

Sub: SEBI Order in the matter of Aptech Limited

SEBI vide its order no. WTM/SM/IVD/ID13/24252/2022-23 dated February 28, 2023, has hereby restrained following entities and further prohibited them from buying, selling or otherwise dealing in securities, directly or indirectly in any manner whatsoever for a period of 1 year from the date of this order.

Further, entities are restrained from buying, selling or otherwise dealing in the securities of Aptech Limited, directly or indirectly in any manner whatsoever for a period of 2 years from the date of this order.

Sr. no.	Name of Entity	PAN
1	Mr. Lashit Sanghvi	AAHPS6774J
2	Ms. Neha Lashit Sanghvi	ABWPS9204P

Further, all open positions, if any, of the entities debarred in the present Order, in the F&O segment of the stock exchanges, are permitted to be squared off, irrespective of the restraint/prohibition imposed by this Order.

The order comes 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 at the below mentioned link:

National Stock Exchange of India

https://www.nseindia.com/regulations/member-sebi-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. Ritik Bhriegu (Extension: 23020), Mr. Anand Jangir (Extension: 22385)
Direct No: 022-26598417/18 Fax: 022-26598195

For and on behalf of
National Stock Exchange of India Limited

Anand Jangir
Manager

ANNEXURE: SEBI Order in the matter of Aptech Limited

WTM/SM/IVD/ID13/24252/2022-23

SECURITIES AND EXCHANGE BOARD OF INDIA

ORDER

UNDER SECTION 11(1), 11(4), 11 (4A), 11B (1) AND 11B (2) OF THE SECURITIES AND EXCHANGE BOARD OF INDIA ACT, 1992 IN THE MATTER OF APTECH LIMITED

IN RESPECT OF:

Noticee No.	Name of the Noticee	PAN
1.	**Mr. Rakesh Jhunjhunwala ***	**ACPPJ9449M**
2.	**Ms. Rekha Jhunjhunwala ***	**AAEPJ2191B**
3.	**Mr. Rajeshkumar Jhunjhunwala ***	**AABPJ9214G**
4.	**Ms. Sushila Devi Gupta ***	**ADYPG7188E**
5.	**Ms. Sudha Gupta ***	**ACWPG5015D**
6.	**Mr. Lashit Sanghvi**	**AAHPS6774J**
7.	**Ms. Neha Lashit Sanghvi**	**ABWPS9204P**
8.	**Mr. Utpal Sheth ***	**AISPS7583C**
9.	**Ms. Ushma Sheth Sule ***	**BNFPS6095A**

(The present proceedings are limited to Noticee no. 6 (Mr. Lashit Sanghvi) and Noticee no. 7 (Ms. Neha Lashit Sanghvi) as the proceedings qua the rest of the Noticees have been Settled vide order dated July 14, 2021, passed under SEBI (Settlement Proceedings) Regulations, 2018. The numbers assigned to all the Noticees have been referred herein only for the sake of convenience and completion of the proceedings.)

(The Noticee no. 6 and Noticee no. 7 are individually referred to by their corresponding names/numbers and collectively referred to as "Noticees")

1. The present proceeding is emanating from a show cause notice dated October 01, 2020 (hereinafter referred to as **"SCN"**) arising out of an investigation conducted by Securities and Exchange Board of India ("**SEBI**") pertaining to the trading in the scrip of Aptech Limited

(hereinafter referred to as **"Aptech"** or the **"Company"**), for the period of March 14, 2016 to September 07, 2016 (hereinafter referred to as the "**investigation period**"). The said investigation was undertaken by SEBI so as to ascertain as to whether certain entities have traded in the scrip of the *Company* on the basis of unpublished price sensitive information hereinafter referred to as the "**UPSI")**, in contravention of the provisions of the Securities and Exchange Board of India Act, 1992 (hereinafter referred to as the "**SEBI Act, 1992**") and Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 2015 (hereinafter referred to as the "**PIT Regulations, 2015**").

2. Before proceeding further, the facts leading to the issuance of the SCN which are necessary for the purpose of adjudication of charges/allegations levelled in the SCN are narrated in brief as under.

i. The scrip of the *Company* is listed on National Stock Exchange of India Ltd. ("**NSE**") and BSE Ltd. ("**BSE**").

ii. On September 07, 2016, after market hours, the *Company* had made an announcement titled as: "*Aptech Forays Into Preschool Segment*", at 17:48:00 hrs on BSE and at 17:30:00 hrs on NSE.

iii. On the even day, a press release was also made by the *Company,* which *inter alia* read as:

…foray into preschool education….

….to set up 1000 preschools in India over the next years….

…actively supporting employment for over 10,000 women in the next two years…

iv. The *Company* at the relevant point of time, had Maya Entertainment Limited (hereinafter referred to as "**MEL**") as its wholly owned subsidiary. MEL was engaged in the business of courses in graphic animation, cinematics, skills and talent development etc. Pursuant to a meeting of its Board of Directors held on May 06, 2016, MEL had on the even day, amended the main object clause of its Memorandum of Association (**MoA**), with a view to expand its areas of operations connected with education in various fields through franchising mode. The MoA was amended by insertion of Clause 4D, which read as:

"To carry on the business of delivering Educational and training services in all areas in India and/or abroad and conduct educational training, assessment, certification and consulting programs relating to various education and career opportunities, namely, designing and development of fashion products & fashion accessories , playschool activities, pre-primary, primary, secondary and higher education, teaching, supplementary and preparatory classes, technical training, teachers' training, vocational training, online training, coaching, counselling, testing, certification, university admission services, administrative training, either directly or through franchising, joint venture or other arrangements,

franchise management in all kinds of education products, educational consultancy, human resource consultancy, management consultancy, placement services, public relation exercise, language courses and software consultancy including providing educational infrastructure, buy, provide, sell any items required by students, teachers, schools, institutes, centres, educational software and technology solutions, educational CD ROMs, publish books, magazines, notes, content, and other material in typed, cyclostyled, video, audio, web-based, internet or any other forms/medias and to hold seminars, courses, exhibitions, training programs and business conferences, to build e-commerce platforms/aggregation models for e-commerce/m-commerce/e-learning/multimedia/other technologies for education/education services/allied services and any other product or service and to work with NGOs, National Skill Development Corporation, Ministry of Human Resource Development, Government of India, Ministry of Skills Development and other Central and State government agencies for various skill and training programs and projects across the country in connection with the above objects by all means and methods in any medium now known or hereafter developed."

v. Vide an email dated January 28, 2020, the *Company* had informed SEBI *inter alia* as: "*We have to state that in order to make the main objects clause of the memorandum of association comprehensive and to include activities pertaining to preschool business, the need was felt to amend the main object Clause of MoA of MEL by adding new clause 4D"*

vi. Further, *Aptech*, through MEL, had entered into a strategic agreement to enter into preschool business with Montana International Preschool Pvt. Ltd. (hereinafter referred to as "**Montana**"), which (Montana) was engaged in the business of education.

vii. From the chronology of event submitted by the *Company* (vide letter dated July 24, 2017 letter dated January 03, 2020 and email dated February 10, 2020) as well as from the information submitted by Montana (vide its emails dated February 10, 2020 and February 27, 2020), it was noted that the *Company* had initiated discussions with Montana on February 17, 2016 and in pursuance of the said discussions, a non-disclosure agreement dated March 14, 2016 was executed between *Aptech* and Montana.

viii. After the announcement dated September 07, 2016 was made by *Aptech*, the price of its scrip moved from INR 159.15/ INR 159.50 (closing price on September 07, 2016) to INR175/INR 175.45 (closing price on September 08, 2016), i.e., an increase of 9.99% in one day.

ix. The *Noticee nos. 6* and *7* have executed purchase transactions in the scrip of *Aptech*, as per the following details:

Table no. 1: Trade details of Mr. Lashit Sanghvi

Date	BSE				NSE			
	Buy Qty.	Wt. Avg. Buy Price (in INR)	Sell Qty.	Wt. Avg. Sell Price (in INR)	Buy Qty.	Wt. Avg. Buy Price (in INR)	Sell Qty.	Wt. Avg. Sell Price (in INR)
19/08/2016	-	-	-	-	50000	114.31	-	-
07/09/2016	25000	157.56	-	-	75000	155.54	-	-
Total	**25000**	**157.56**	**-**	**-**	**125000**	**139.05**	**-**	**-**

Table no. 2: Trade details of Ms. Neha Lashit Sanghvi

Date	BSE				NSE			
	Buy Qty.	Wt. Avg. Buy Price (in INR)	Sell Qty.	Wt. Avg. Sell Price (in INR)	Buy Qty.	Wt. Avg. Buy Price (in INR)	Sell Qty.	Wt. Avg. Sell Price (in INR)
19/08/2016	-	-	-	-	50000	114.25	-	-
07/09/2016	25000	157.46	-	-	75000	155.65	-	-
Total	**25000**	**157.46**	**-**	**-**	**125000**	**139.09**	**-**	**-**

x. Mr. Rakesh Jhunjhunwala and *Noticee no. 6*, amongst others, are the co-founders of a company namely Alchemy Capital Management Pvt. Ltd. and both the said *Noticees* have acknowledged in their respective statements recorded during the investigation that they know each other since the years 1990/1995. Further, *Noticee no. 6* is the husband of the *Noticee no. 7*.

3. Based on the factual details unearthed during the investigation, a Show Cause Notice dated October 01, 2020 (hereinafter referred to as "**the SCN/Notice**") was issued to the *Noticees* alleging that:

i. The information pertaining to the *Company's* foray into pre-school segment envisaged business expansion and was an UPSI as per Regulation 2 (1) (n) (iv) of the PIT Regulations, 2015, before the announcement was made by the *Company* on the Exchange platforms.

ii. By virtue of execution of non-disclosure agreement dated March 14, 2016 between *Aptech* and Montana, the said UPSI came into existence on March 14, 2016 and it remained unpublished till September 07, 2016, when the information was disclosed to public. Consequently, the period from March 14, 2016 to September 07, 2016 was UPSI period i.e. the period during which the said information was not generally available.

iii. Mr. Rakesh Jhunjhunwala was the Chairman (Non-Executive) and Promoter of the *Company* (hereinafter referred to as "**Chairman of the *Company***") during the investigation period, and a 'connected person' in terms of Regulation 2 (1) (d) (i) of PIT Regulations, 2015.

iv. He was also one of the recipient of an email dated July 19, 2016 from Mr. Ketan Shah, Compliance Officer of the *Company*, with the subject matter: "*Quarterly Board Report by Ninad*". The quarterly Board Report referred in and attached to the said email *inter alia* included reference about: "*Agreement being finalized with Montana International Preschool and Day Care Center for entry into preschool market".*

v. As the information about the agreement with Montana was mentioned in the quarterly report of *Aptech* by means of a one liner reference without providing any background facts/brief about the matter, which indicates that the recipients of the said email (including the Chairman of the *Company*) were aware about the background information and context and importance of the said agreement. In view thereof, Mr. Rakesh Jhunjhunwala was in possession of and/or having access to the aforesaid UPSI.

vi. By virtue of being a 'connected person' and also being in possession of and/or having access to the UPSI, Mr. Rakesh Jhunjhunwala satisfies the conditions to be termed as 'insider' in terms of the Regulations 2 (1) (g) (i) and 2 (1) (g) (ii) of the PIT Regulations, 2015.

vii. Admittedly, *Noticee no. 6* was well known to Chairman (Non-Executive) and Promoter of the *Company* and a phone call was also observed to have been made by *Noticee no. 6* to him on August 16, 2016 during the UPSI period.

viii. Transactions in the shares of *Aptech* were executed by the *Noticee nos. 6* and *7* on August 19, 2016 and September 07, 2016.

ix. By virtue of the aforesaid, *Noticee no. 6* was in possession of/having access to UPSI from Chairman (Non-Executive) and Promoter of the *Company*, and was an 'insider' in terms of Regulation 2 (1) (g) (ii) of the PIT Regulations, 2015.

x. *Noticee no. 7* is the wife of *Noticee no. 6*, and in her letter addressed to SEBI during the investigation, she has admitted that the decision of trading in the shares of *Aptech* was taken by her and her husband, which indicates that the *Noticee no. 6* had shared/ discussed/ consulted/communicated the UPSI to the *Noticee no. 7* thereby giving rise to an underlying assumption that *Noticee no. 7* was also in possession of/having access to UPSI and resultantly was an 'insider', in terms of Regulation 2 (1) (g) (ii) of the PIT Regulations, 2015.

xi. The *Noticee nos. 6* and *7* have violated Section 12 A (d) & (e) of the SEBI Act, 1992 and read with Regulation 4 (1) of the PIT Regulations, 2015, as they have traded in the scrip of *Aptech* while in possession of UPSI and further, *Noticee no. 6* has additionally violated Regulation 3 (1) of the PIT Regulations, 2015 for sharing/communicating the UPSI related to *Aptech* to the *Noticee no. 7*.

xii. The SCN also alleges that the *Noticee no. 6* has made INR 49,872,76.05 and *Noticee no. 7* has made INR 49,848,85.90, as the wrongful notional gain, by trading in the scrip of the *Company* during the UPSI period.

4. The SCN, therefore, calls upon the *Noticee no. 6* and *7* to show cause as to why suitable directions under Section 11B (1) and 11(4) read with Section 11 (1) of the SEBI Act, 1992, including disgorgement of the unlawful gains, should not be issued against them and penalty under Sections 11(4A), and 11B(2) read with Section 15G of the SEBI Act, 1992 should not be issued/imposed on them for the afore-narrated violations as alleged.

5. It is noted from the records that as certain inadvertent error had crept in the SCN, a corrigendum dated December 18, 2020 to the SCN dated October 01, 2020 came to be issued. It is noted that the details of total number of shares of *Aptech* purchased by the *Noticee no. 6* and *7* were stated correctly in the relevant tables of the SCN and were reflected separately for both NSE and BSE, however, the narration of purchase of such shares, as recorded in Para no. 2.18 (1) and Para no. 2.19 (1) of the SCN had some small calculation error and by the aforesaid corrigendum, the said narration was rectified to state the accurate factual picture.

6. The records of the present matter show that the *Noticee no. 6* and *Noticee no. 7* vide their letters dated December 11, 2020, have filed their respective replies to the SCN. *Noticee no. 7* has adopted few of the submissions made by the *Noticee no. 6*, and has also made certain additional submissions on her behalf. Further, both of the *Noticees* have filed their respective replies dated January 08, 2021 in response to the Corrigendum to SCN dated December 18, 2020.

7. It is noted that the personal hearing of the *Noticees* in the present matter was held on September 06, 2022 wherein the Senior Counsel appearing for the *Noticees* made oral arguments to defend the *Noticees* from the charges made in the SCN. Further, vide letter dated September 12, 2022, post hearing written submissions have been filed on behalf of the *Noticees*.

8. In essence, the following submissions have been made in their replies, oral arguments and written submissions by the aforesaid two *Noticees:*

i. The delay in issuance of the SCN after four years of the alleged trades has severely prejudiced the ability of the *Noticees* to respond to the allegations adequately. *Noticee no. 6* cannot recall the purpose of which a call by him was made to the Chairman of the *Company* in the year 2016. Reliance has been placed on the findings of the Hon'ble Securities Appellate Tribunal (hereinafter referred to as the **"Hon'ble SAT")** passed in the matters of *Shri Ahok K. Chaudhary Vs. SEBI (date of decision: November 05, 2008)* and *ICICI Bank Ltd. Vs. SEBI (date of decision: July 08, 2020).*

ii. Copy of the investigation report has not been provided to the *Noticees.* In view of the significant delay in initiation of proceeding, all the documents need to be provided for inspection by SEBI. As held by the Hon'ble SAT in the matter of *Mayrose Capfin Pvt. Ltd. Vs. SEBI (date of decision: March 30, 2012)*, an adjudicatory body cannot base its decision on any material unless the delinquent has been apprised about such material. Such a principle has also been followed in other cases like *Pepsu Road Transport Corporation v. Lachhman Das Gupta (2001) 9 SCC 523, 524] etc.*

iii. Further, no clarification with respect to the computation of unlawful gains have been provided to the *Noticees* despite making specific requests in this regard.

iv. The calculation of wrongful notional gains is baseless and erroneous. Hon'ble SAT has also noted in the matter of *Somani Overseas Ltd and ors. Vs. SEBI (Appeal No 225 of 2014; date of decision: decided on June 23, 2016),* that there are no precise norms laid down by SEBI to justify the calculation of wrongful gains. SEBI ought to have demonstrated the manner of calculation of disgorgement amount based on cogent evidence.

v. There are discrepancies in the SCN dated October 01, 2020. The corrigendum has also been issued after a significant gap, that too only after the discrepancies were highlighted by the *Noticees* in their replies.

vi. The *Noticees* are experienced investors of securities market and the alleged trades were executed in course of the ordinary trading activities. The *Noticee no. 6* witnessed certain break out signals from the start of the year 2016 in the scrip of *Aptech* and due to other fundamental factors indicating expansion of business, the trading decision was taken. Other companies in the same business were having various problems with their operations and financials.

vii. The perusal of the SCN would reflect the following chain of events for the allegations made therein:

Table no. 3

Date (and Time)	Event
March 14, 2016	Non-disclosure agreement signed between Aptech and Montana
August 16, 2016; 12:27:33 hours - 12:28:33 hours	A line item in the call log of the Noticee, which indicates a call to the Chairman of the *Company* for about one minute.
August 19, 2016	Noticee buys 50,000 shares of Aptech
September 7, 2016	Noticee buys 75,000 shares of Aptech
September 7, 2016	Aptech stock price closes at INR 159.15 and INR 159.5 on BSE and NSE respectively
September 7, 2016; 17:30 hours	*Press release by Aptech on NSE* - "Aptech forays into pre-school segment"
September 7, 2016; 17:48 hours	*Press release by Aptech on BSE* - "Aptech forays into pre-school segment"

viii. *Noticee no. 6* has a professional relationship with Mr. Rakesh Jhunjhunwala since 1996 as both of them are co-promoters of a company. Besides the said relationship, the *Noticees* do not have any other relationship with the *Company* or its Promoters/Directors.

ix. The obligation to establish the possession of UPSI rests on SEBI. In the case of *Navneet Publications India Limited,* the Adjudicating Officer had dropped the charges of insider trading by observing that proving the possession of UPSI is essential to prove charges of insider trading.

x. In the present case, the whole charges are premised on the basis of a single phone call between *Noticee no. 6* and the Chairman of the *Company*. Such an inference is baseless and devoid of any substantive or direct proof.

xi. Levelling serious allegation merely on the association of *Noticee no. 6* with the Chairman of the *Company* is not sufficient. Further, it is wrong to infer that in a single phone call of one minute, UPSI was exchanged, making the *Noticee no. 6* as insider. Such an allegation is a mere conjecture and is not supported by any evidence.

xii. The said phone call was exchanged 72 hours prior to the first trade of *Noticee no. 6* and three weeks prior to the second trade of *Noticee no. 6*. The price of the scrip of the *Company* was infact higher than its price on the day when the said phone call was made. These facts cannot be taken as the sole basis to come to the conclusion that the *Noticee no. 6* was in possession of UPSI or had access to UPSI and therefore becomes an insider under Regulation 2 (1) (g) (ii) of the PIT Regulations. In light of the same, the charge of violation of Regulation 3 (1) for alleged communication of UPSI by *Noticee no. 6* to *Noticee* *no. 7* cannot be made and also, the *Noticees* cannot be alleged to have violated Regulation 4 (1) of the PIT Regulations, 2015.

xiii. There is no allegation that the charges of insider trading can be traced from the trading pattern of the *Noticee*. In this connection, reliance has been placed on the decision of the Hon'ble SAT passed in the matter of *Mrs. Chandrakala Vs. SEBI (date of decision January 31, 2012)* to support the aforesaid argument.

xiv. The allegation of communication of UPSI is fallacious due to the fact that the closing price of the scrip of the *Company* on August 19, 2016 was INR 93.95, whereas on August 19, 2016, when the *Noticee no. 6* executed first alleged trade, the closing price was INR 115.10. Had the intention on the part of the *Noticee nos. 6* to exploit the alleged UPSI, he would have acted on the same day to purchase the scrip of the *Company*.

xv. The trades of the two *Noticees* were as per the market sentiment surrounding the scrip of the *Company*. Further, during the investigation also, the *Noticee no. 6* has submitted *inter alia* as: "*I see chart, there was a break-out signal, there was also an appointment of new CEO during the period and I was very bullish on education sector in India which is highly unpenetrated. Me and my wife Neha are still holding these shares*". Vide his communication dated February 06, 2020, the *Noticee no. 6* has highlighted the various metrics used by him to assess different companies in the education sector. All the aforesaid commercial explanation and investment rationale ruled out any glaring irregularity in the trading pattern of the *Noticees*.

xvi. Further, the *Noticee* did not sell his holding even after declaration of the alleged UPSI and the same also shows that the alleged trades were executed as regular long term investment. The value of the alleged trades is insignificant when compared to the networth and overall portfolio at the relevant time.

xvii. The onus to prove the charges of insider trading lies on SEBI and SEBI has not discharged the burden of proof by offering sufficient evidence to show that the *Noticee no. 6* was indeed in possession of or had access to UPSI, so as to be classified as an insider under Regulation 2 (1) (g) (ii) of the PIT Regulations, 2015.

xviii. As the charge of insider trading is a serious one, the preponderance of probabilities required to prove the same are also higher. Reliance has been placed on the decision of the Hon'ble SAT passed in the matter of *Dilip S. Pendse Vs. SEBI (date of decision: November 19, 20009)* to support the said argument. In an Adjudication Order dated May 18, 2018, passed in the matter of *Emami Limited and others*, the Adjudicating Officer has also laid down similar reasoning with respect to the requirement of higher degree of preponderance of probabilities.

xix. The Hon'ble Supreme Court of India has held in the matter of *SEBI Vs. Kishore R Ajmera & Ors. [(2016) 6 SCC 368]*, when circumstantial evidence has been used to establish a charge, the test would be that what inferential process that a reasonable prudent man would adopt to arrive at a conclusion. The inference or conclusion must not be a distant probability but one that is reasonable and legitimately arrived at on a consideration of the totality of all the material available. In light of the decision of the Hon'ble Supreme Court in the matter of *Kanhaiyalal Baldevbhai Patel Vs. SEBI [2017 (4) RCR (Civil) 660]* and the decision of the Hon'ble SAT passed in the matter of *Utsav Pathak Vs. SEBI (date of decision: June 12, 2020)*, the threshold for arriving at a conclusion has been explicitly referred to as an "irresistible inference". Therefore, for the charges of insider trading, clear and convincing circumstantial must be relied upon leading to an irresistible inference of unlawful conduct.

xx. Similarly, the decision of the District Court for the Southern District of New York in the matter of *United States of America Vs. Raj Rajaratnam*, sets out numerous factors that needs to be considered by an authority when arriving at an irresistible inference on a charge of insider trading, by holding as: "*Moreover, several other Courts of Appeals have sustained insider trading considering such factors as "(1) access to information; (2) relationship between the tipper and the tippee; (3) timing of contract between the tipper and the tippee; (4) timing of the trades; (5) pattern of the trades; and (6) attempts to conceal either the trades or the relationship between the tipper and the tippee"*

xxi. In the present case, none of the aforesaid factors are present and SEBI has tied the case solely on the phone log to prove that UPSI was communicated and there is no direct evidence available on record nor any cogent evidence leading to a reasonable inference regarding the contents of the phone call are present. Further, there is no glaring irregularity in the trading pattern of the *Noticees* nor the *Noticees* have attempted to conceal the trades. The standard of proof for proving charges of insider trading has been laid down by the Hon'ble Supreme Court in the matter of *Balram Garg Vs. SEBI (2022 SCC Online 472)*

xxii. Reliance has also been placed on the orders of SEBI dated April 19, 2021 in the matter of *Sabero Organics Gujarat Limited* and order dated December 02, 2016 passed in the matter of *Navneet Publications Limited*, and order of Hon'ble SAT in the matter of *Ameen Khwaja Vs. SEBI*, so as to contend that to establish charges of insider trading, higher degree of proof is required.

xxiii. In the order passed in respect of Reliance Petroinvestments Limited in the matter of *Indian Petrochemicals Corporation Limited*, SEBI has exonerated the entities in absence of any evidence to show access to the UPSI.

xxiv. The allegations are made merely on surmises and SEBI has not adduced even any circumstantial evidence. Reliance has been placed on the order of Adjudicating Officer, passed in the matter of *A Vellayan & Ors.* to support the said submission.

xxv. Further reliance has also been placed on the following orders/judgments:

- Order of the Hon'ble SAT in the matter of *Sterlite Industries (India) Limited Vs. SEBI [Order dated October 22, 2001 in Appeal no. 20 of 2001]*, wherein it was held as:

"Mere conjunctures and surmises are not adequate to hold a person guilty of such a serious offence. The extent of proof required to hold the delinquent guilty has been explained by the Hon 'ble Supreme Court of India in Bank of India vs. Devgala Surya Narayana1. The Court held:

"strict rules of evidence are not applicable to departmental enquiry proceedings. The only requirement of law is that the allegation against the delinquent officer must be established by such evidence acting upon which a reasonable person acting reasonably and objectively may arrive, at a finding upholding the gravamen of the charges against the delinquent officer. Mere conjuncture or surmise cannot sustain the finding of guilt even in departmental enquiry proceeding."

- Judgment of Unites States Court of Appeals for the Third Circuit in the matter of *Securities Exchange Commission v. Jay Goldinger [106 F.3d 409(1997)]*, wherein it was held *inter alia* as:

...Nonetheless, the district court determined that the SEC failed to offer sufficient evidence of any direct disclosure by Goldinger, noting "<u>there is a vast difference between circumstantial evidence and pure speculation.</u> "... We agree with the district court. The SEC evidence is weak and speculative. Furthermore, <u>the inference of more direct tipping is unreasonable because it involves too many inferred steps and amounts to no more than conjecture.</u> Therefore, summary judgment is justified. Although reasonable inferences must be drawn in the SEC's favor, <u>the SEC cannot merely provide circumstantial evidence to show the possibility of illegal trading The SEC's evidence and reasonable inferences from that evidence must be sufficient to allow a reasonable jury could find it met its burden of persuasion at trial.</u> This it failed to do." (emphasis supplied)

- Court of Appeals of Alberta (Canada) in *Walton v. Alberta (Securities Commission)* as *inter alia* held as:

"67. *The Commission gave detailed reasons, in nine bulleted sub-paragraphs, for reaching this conclusion (reasons, para. 574). Some of the factors relied on /first, end of the second and third bullets J amount to nothing more than evidence of opportunity, and could only support speculation and not justifiable inferences. They merely confirmed that there was an "opportunity" for information about the material fact to have passed between Holtbx and Landsiedel. Without more, this is inconclusive."*

"82. In summary, a reviewing court must always be mindful of the standard of review. That standard is particularly deferential with respect to findings of fact. Examining each piece of circumstantial evidence separately, and concluding that it is possibly benign, is not an appropriate approach; the entire body of the evidence must be considered together: R. *v J.M.H., 2011 SCC 45 at para. 31, [2011] 3 SC*R *197. However, the finding that Holtby encouraged Landsiedel is unreasonable, and it is not one that was available on this entire record, having regard to the facts*

[1] AIR 1999 SC 2407

and the law. There were only two pieces of evidence that might support an inference of encouraging. The first was the evidence of the meeting at the golf course, in which some vague, generic statements were made about Eveready. The second was the fact that Landsiedel purchased a significant number of shares during the relevant period. However, as just discussed, when all the evidence is considered together it was unreasonable to think that the charge of encouraging had been proven on a balance of probabilities, much less to the standard of clear and cogent evidence the Commission established for itself."

xxvi. In view of the above points of defence, the allegation of *Noticee no. 6* being in possession are not made out and therefore, as a consequence, the charge of communication of UPSI by the *Noticee no. 6* to the *Noticee no. 7* is also not made out.

xxvii. The *Noticee no. 6* is not having any relationship with the *Company*.

xxviii. The SCN fails to demonstrate as to how the underlying Announcement was a material event, and to establish materiality, SEBI needs to demonstrate that the concerned information will materially impact the price of the security, if published. Further, as the purchases are alleged to be violative, SEBI needs to demonstrate that the said information would have a positive impact on the price of the scrip. The announcement viz. 'Aptech forays into pre-school business' has simply been assumed to be envisaging business expansion and SEBI has failed to demonstrate that such information to be a material event. The said decision was taken by the *Company* only in ordinary course of its business.

xxix. The letter dated August 08, 2018 issued by *Aptech* (Annexure A to the SCN) suggests that the *Company* did not deem the agreement with Montana to be a material contract and the Announcement was made by the *Company* only as a good corporate governance gesture. The said letter suggests that the agreement with Montana was one of the large no. of initiatives undertaken by the *Company* to boost its business and it also stated that neither any investment was proposed nor made by the *Company* in Montana at the time of execution of the concerned agreement. Further, in the appeal before the Hon'ble SAT filed against the AO order dated April 28, 2021, the *Company* has disputed the alleged information to be UPSI.

xxx. Further, the said disclosure was not based on materiality because based on the threshold as per the policy on determination of materiality of events in *Aptech*, the agreement with Montana did not constitute a material event.

xxxi. The formula used for computing unlawful gains is not supported by any reasoning and as the *Noticees* are still holding the shares, the question of directing disgorgement of purported unlawful gains does not arise.

xxxii. As the trades were executed more than 4 years ago, there is no emergent situation or impending danger to exercise powers under Section 11 and 11B of the SEBI Act, 1992.

Further, as no violation has been made out, no penalty deserves to be imposed. Reliance has been placed on the judgment of the Hon'ble Supreme Court in the matter of *Siddharth Chaturvedi* v. *SEBI [Civil Appeal No. 14730 of 2015]*.

xxxiii. No satisfactory explanation has been provided to justify issuance of Corrigendum to the SCN and issuance of such Corrigendum bolsters the argument of the *Noticees* to show serious lapses in the process.

9. I note that the personal hearing of the *Noticee nos. 6* and *7* in the matter was first fixed for Deemeber 28, 2021, however, based on the request made on behalf of the said *Noticees*, the hearing got adjourned to June 23, 2022, which also got adjourned to September 06, 2022 due to certain administrative exigencies. On the said date, both the *Noticee nos. 6* and *7* were rerpresented by Mr. Janak Dwarkadas, Senior Advocate, who made oral arguments on behalf of the *Noticees.*

10. I have considered the allegations levelled against the *Noticees* in the SCN, written reply received from the *Noticees*, submissions made by the *Noticees* during the personal hearing, the post hearing written submissions and the material available on record. Before dealing with the submissions made by the *Noticees*, it would be appropriate to refer to the relevant provisions of law pertaining to the matter, extracts whereof are reproduced below:

SEBI Act, 1992

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

12A. No person shall directly or indirectly—

(d) engage in insider trading;

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

PIT Regulations

Regulation 2(1)(d)(i): connected person" means,-

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

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

(a) an immediate relative of connected persons specified in clause (i);

Regulation 2(1)(f):

Immediate relative means a spouse of a person, and includes parent, sibling, and child of such person or of the spouse, any of whom is either dependent financially on such person, or consults such person in taking decision relating to trading in securities.

Note: *It is intended that the immediate relatives of a 'Connected person' too become connected persons for the purposes of these Regulations.*

Regulation 2(1)(g):

"insider" means any person who is:

i) a connected person; or

ii) in possession of or having access to unpublished price sensitive information;

NOTE: *Since "generally available information" is defined, it is intended that anyone in possession of or having access to unpublished price sensitive information should be considered an "insider" regardless of how one came in possession of or had access to such information…"*

Regulation 2(1)(l): *trading means and includes subscribing, buying, selling, dealing, or agreeing to subscribe, buy, sell, deal in any securities, and 'trade' shall be construed accordingly.*

Note: *Under the parliamentary mandate, since the Section 12A (e) and Section 15G of the Act employs the term 'dealing in securities', it is intended to widely define the term 'trading' to include dealing. Such a construction is intended to curb the activities based on unpublished price sensitive information which are strictly not buying, selling or subscribing, such as pledging, etc. when in possession of UPSI.*

Regulation 2(1)(n)(iv): *'unpublished price sensitive information' means any information, relating to a company or its securities, directly or indirectly, that is not generally available which upon becoming generally available, is likely to materially affect the price of the securities and shall, ordinarily including but not restricted to, information relating to the following:*

…

(iv) mergers, de-mergers, acquisitions, delistings, disposals and expansion of business and such other transactions.

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

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

11. Before proceeding to deal with the present case on its merits, I would first deal with the contention of delay in issuance of the SCN, as raised by the *Noticees*. It has been contended that since the SCN has been issued after 4 years of the alleged transactions, the same has prejudiced their ability to respond to the allegations made in the said SCN. In this connection, I observe that the investigation in the present matter got triggered due to an alert generated by National Stock Exchange pursuant to which an Investigating Authority got appointed on March 01, 2017, and the investigation for the trading activities for the period from March 14, 2016 to September 07, 2016 was undertaken. In order to arrive at a concrete fact finding on the alleged violations, SEBI called for information/explanations from various sources including the *Company,* stock exchanges, banks etc., and based on the analysis of such information, the need to collect further information arose. For illustration, after examining the bank account statement of a suspected entity, the need to ascertain the counter parties (transferor or transferees of the funds) arose, which was further sought from the respective banks. The detailed analysis of the bank account statements, trading details, off-market transfers, corporate announcements made by the *Company* and other information pertaining to the *Company* were analysed during the investigation. Apart from the above, certain data/information was also sought from the *Noticees* and other suspected entities, and such entities had on numerous occasions, sought time for furnishing the requisite information/data and moreover, statements of certain persons were also recorded during the investigation. The records before me show that till January, 2020, the *Company* was in communication with SEBI providing the information/explanations, as sought by SEBI.

12. After meticulously analysing all the information and data sets so gathered, the investigation in the present matter was concluded in February, 2020 and accordingly, the SCN came to be issued in October, 2020. At this stage, it may not be out of place to mention here that the country had also faced with imposition of 'Lockdown' in March 22, 2020 on account COVID pandemic. Considering the sizeable information and data metrics which were required to be analysed with a fine tooth comb so as to arrive at an actionable report to allege the serious charge of insider trading, there does not seem to be any inordinate delay which could have

caused any possible prejudice to the capabilities of the *Noticees* to defend their case. It is also seen from the records that the *Noticees* have filed comprehensive reply dealing with each and every aspersion cast on them and have also provided a detailed explanation to defend their decision to execute the trades, as alleged in the SCN. At this stage, I refer to the order of the Hon'ble Securities Appellate Tribunal passed in the matter of *Top Class Capital Markets Private Limited Vs. SEBI (Appeal no. 31 of 2020, date of decision: March 08, 2022)* wherein while dealing with a similar argument of delay, the Hon'ble Tribunal has *inter alia* held as: "*The appellant has relied in number of cases to buttress its case of delay causing prejudice in those cases. However, since the delay has caused prejudice in those cases, the plea of the appellant therein was accepted by this Tribunal.*"

13. In addition to the above it is also noted that no provision under the SEBI Act, 1992 or the PIT Regulations, 2015 prescribes any specific time limit for the proceedings under the securities laws. Moreover, whether or not, delay in any particular case is fatal to the said case would depend on the peculiarity of the conspectus of the facts of such case only, as held by the Hon'ble Securities Appellate Tribunal in the matter of *Ravi Mohan & Ors. v. SEBI (SAT Appeal No. 97 of 2014 decided on December 16, 2015).* In exact words, the Hon'ble Tribunal has observed as:

"....................Based on decision of this Tribunal in case of HB Stockholdings Ltd. vs. SEBI (Appeal no. 114 of 2012 decided on 27.08.2013) it is contended on behalf of the appellants that in view of the delay of more than 8 years in issuing the show cause notice, the impugned order is liable to be quashed and set aside. There is no merit in this contention, because, this Tribunal while setting aside the decision of SEBI on merits has clearly held in para 20 of the order, that delay itself may not be fatal in each and every case. Moreover, the Apex Court in case of Collector of Central Excise, New Delhi vs. Bhagsons Paint Industry (India) reported in 2003 (158) ELT 129 (S.C) has held that if there no statutory bar for adjudicating the matter beyond a particular date, the Tribunal cannot set aside the adjudication order merely on the ground that the adjudication order is passed after a lapse of several years from the date of issuing notice................."

14. Further, the Hon'ble SAT in the case of *Sundershan Walia Vs. SEBI* decided on 14.10.2016 held as under:

> *"………………As such, there is no provision in the SEBI Act, which may have the effect of prohibiting SEBI from taking action beyond a particular period of time in a given case. However, it goes without saying that the regulator should always make an endeavour to take prompt action against the defaulting companies to render speedy and timely justice. In the present case, however, action was taken immediately after SEBI came to know about the violations. Therefore, delay, in itself, cannot defeat the ends of justice in the facts and circumstances of the case in hand……………."*

15. It is a settled position of law that in the absence of any specific provision providing any definite timeline for initiation or completion of a proceeding, taking shelter under the garb of delay without demonstrating substantial prejudice having been caused, such a plea on the ground of delay would mere be a technical objection. In this respect, while dealing with the contention

that the alleged trades are of the year 2009 and that the notice was issued only in the year 2013, the Hon'ble Tribunal has held in the matter of *Rajendra Aggarwal vs SEBI (Appeal No 552/2019, date of decision: September 17, 2021)* as:

> *"On issue of delay, we find that the show cause notice was issued in the year 2013 and the trades were executed in 2009. The investigation was against a large number of entities which apparently took time and ultimately notices were issued to 35 entities. Consequently, we do not find any inordinate delay in the issuance of the show cause notice nor do we find any merit in the contention that there was an inordinate delay in the delivery of the impugned order after the last date of hearing by the AO. We are of the opinion that after the conclusion of the arguments the data of 35 entities was required to be analysed and collated which took time and, therefore, we do not see any reason to vitiate the judgment only on the ground of delay in delivering the order. In any case, such delay in the delivery of the judgment does not cause any prejudice to the appellants."*

16. In view of the above, I am of the view that contention of the *Noticees* on the issue of delay does not sustain in the facts of the present case.

17. I note that the *Noticee no. 6* has further asserted that due to the lapse of time, he is not in a position to recall the purpose of the call exchanged in the year 2016 and has also contended that merely one phone call is not sufficient to allege the communication of UPSI. In this connection, a careful perusal of the SCN would reveal that the SCN has asserted the exchange of phone call for the purpose of establishing the presence of a connection and possible communication channel between the two persons and no specific insinuation has been made based on the said call, which the *Noticee no. 6* is required to dispel as the SCN does not allege that the UPSI was communicated through that particular exchange of call. Therefore, the prejudice that has been sought to be created is misplaced in the facts of the present case. Under the circumstances, I observe that the contention of delay as raised by the *Noticees* does not require any favourable acceptance and the same is thus rejected.

18. I note that the next preliminary contention that has been taken by the *Noticees* in their written reply is non-supply of all the documents including the copy of the investigation report. In this connection, I observe that the essential ingredients of the investigation report which have formed the basis to make allegations against the *Noticees* have already been incorporated in the show cause notice and in compliance with the principles of natural justice, inspection of documents relied upon in the proceedings have also been granted. Furthermore, it is also relevant to note here that in the post hearing written submissions, the request for seeking copy of the investigation report has not been made on behalf of the *Noticees.*

19. At this stage, I deem fit to refer to the another judgment of the Hon'ble Supreme Court of India, passed in *SLP (Civil) No. 15149 of 2021 in the matter of Kavi Arora vs. SEBI*, wherein the Hon'ble Court has *inter alia* observed as:

" 35.*As held by this Court in T. Takano (supra), it would be fundamentally contrary to the principles of natural justice if the relevant material were not disclosed to the noticee.*
36. In T. Takano (supra), this Court approved and followed the law laid down in Natwar Singh(supra) and reiterated that the Adjudicating Authority had the duty to disclose the materials that had been relied upon during the stage of adjudication. It is also true that the Adjudicating Authority cannot exercise unfettered discretion to redact documents necessary for the noticee to defend his case.

20. Therefore, in light of the fact that all the documents relied upon in the present proceedings have been furnished to the *Noticees*, there does not appear to be any strength in the said preliminary contention of the *Noticees.*

21. It is noted that the *Noticees* have also attempted to make an argument that the issuance of Corrigendum to the SCN reflects that the investigation process has some lapses. In this connection, as observed earlier, the Corrigendum to the SCN was issued merely because there was a typographical error in the number of shares as recorded in the narration part of the SCN. It is also noted that the relevant tabular presentations containing the number of shares have recorded the correct situation which is not disputed by the *Noticees.* Nevertheless, it is an undisputed fact that the said error stood rectified by issuance of the aforesaid Corrigendum. Under the circumstances, I observe that commission of an immaterial error which has been subsequently rectified will not dilute the allegations made in the SCN, thus leading me to deal with the merits of the present case.

22. After carefully perusing the contents of the SCN, its annexure, the replies filed by the *Noticee nos. 6* and *7,* as well as the provisions of the applicable law quoted above, it is observed that in order to adjudge the allegations levelled in the SCN against the *Noticee nos. 6* and *7*, the following questions need to be answered:

i. *Whether the information pertaining to the disclosure made by the Company viz., "Aptech Forays Into Preschool Segment" was a price sensitive information?*

ii. *If yes, what was the period during which such information remained unpublished?*

iii. *Whether the Noticee nos. 6 and 7 were insiders of the Company?*

iv. *If yes, whether the trades executed by the Noticee no. 6 and 7 in the scrip of the Company, were done while in possession of/ having access to the UPSI*

23. I shall now quest to unearth the answer to the above issues from the material available on record.

24. A perusal of the replies and submissions made by the two *Noticees* in the present matter indicates that no dispute has been raised to the factual position governing the alleged UPSI, viz.,

amendment of object clause of MEL, execution of agreement between MEL and Montana International Preschool Pvt. Ltd., and the disclosure of such alliance on the stock exchange platform by *Aptech*. I observe that the two *Noticees* have argued that the said information was not at all a price sensitive information and to support the said argument, the *Noticees* have relied upon the letter dated August 08, 2018, wherein the *Company* while replying during the investigation, has *inter alia* stated that the execution of agreement between MEL And Montana was not a material event in terms of the policy on determination of materiality, and the disclosure on the stock exchange was made as part of good governance practice. It has further been contended by the *Noticees* that the same stand has been taken by the *Company* before the Hon'ble SAT in an appeal filed against the order of AO.

25. I have carefully considered the arguments of the *Noticees* which essentially attempt to uproot the basis of the present proceedings by projecting that the alleged UPSI was not price sensitive information. In order to test the strength of the said argument, I must lay my hands on the definition of UPSI which has already been reproduced in the earlier part of the order, and thus need no reiteration.

26. A perusal of the definition of UPSI would show that "expansion of business" finds a categorical place in the said definition. It is observed that the letter dated August 08, 2018 of the *Company* opens up by asserting as: "*Aptech being in the vocational skills business for almost three decades, was looking at expansion into Pre school business in the year 2015-16*". The letter further expresses that, certain already established Pre-School business houses were finding it difficult to tie up with *Aptech* on its proposed terms and conditions and therefore, it (*Aptech*) was looking to have a "tie up with a small upcoming unit with Pre-school content and pedagogy and with whom there would be a possibility of growing together". The further reading of the said letter reveals that emphasis has been laid on the weak financials of Montana (paid up capital of INR 1 Lakh and loss of INR 76 Lakh from total turnover of INR 44 Lakh for 2014-15) presumably to defend the stand of the *Company* that the said information was not price sensitive.

27. As elucidated above, the contents of the aforesaid letter indicate that *Aptech* which was having vast experience of vocational training, was exploring to enter the territory of play schools, and the efforts to "expand" its business in the said field is writ large from the fact that it had already attempted to negotiate with some established players from the field of Pre-schools. Insofar as the issue of classification of the information as being Price sensitive or not is concerned, I observe that it would be the nature of alliance that is formed between *Aptech*/its subsidiary and Montana, which would be the paramount factor to decide whether such alliance is leading to business expansion and consequently classifying such information to be price sensitive. Even though, much emphasis has been laid on the fact as to how small a company Montana was at the relevant time (only 10 Pre-schools in and around Mumbai and financials as stated above), however, in my considerate view, the litmus test to colour the information as price

sensitive or otherwise would not be the financials of Montana but the underlying agreement and the project of expansion of business thereof.

28. I refer to the Press Release dated September 07, 2016, which underscores that how the strategic alliance termed as "Montana International Preschool powered by Aptech", is intending to set up 1000 preschool in India over next two years. The Executive Director of *Aptech*, Mr. Anuj Kacker, while launching the said alliance has *inter alia* stated that the Preschool education market in India is of INR 16,000 Crore and with 23% CAGR, it is the fastest growing segment in education landscape. The Press Release also projected that in next two years, the alliance will be supporting employment of 10,000 women.

29. When the aforesaid factors that have been highlighted in the Press Release are seen from the lens of the definition of UPSI, one cannot have an *iota* of doubt that the information pertaining to the said alliance and foraying into Pre-school education was not a Price Sensitive Information. When a projection to open 1,000 centres and to generate employment for over 10,000 women is made, the information pertaining to such an alliance would squarely fall within the purview of "business expansion" and shall consequently qualify to be a Price Sensitive Information. I may also add here that the definition of UPSI as laid down under Regulation 2 (1) (n) of the PIT Regulations enlists any information relating to a company or its securities, directly or indirectly, that is "likely to materially affect" the price of the securities. Going by the said definition, one has to assess the potential that the information carries to materially impact the price of the scrip of Aptech, and in the present case, it was seen that the closing price of the scrip on BSE /NSE moved from INR 159.15/ INR 159.50 (closing price on 07/09/2016) to INR 175 / INR 175.45 (closing price on 08/09/2016), i.e., showing an increase of 9.99% in 1 day, after the Press Release was disclosed on the platform of the stock exchange. This movement in market price of the scrip pursuant to the press release itself reinforces the fact that the said information was indeed price sensitive.

30. Before moving further, it is worth recording that the SCN categorically alleged the above event of strategic alliance of *Aptech* with Montana as an expansion of business. In this respect, I seek reference and reliance on the findings made by the Hon'ble Supreme Court of India in the matter of *SEBI Vs Abhijit Rajan (Civil Appeal No 563 of 2020- DOD- 19.09.2022)*

> *"Before we proceed to find an answer to the above questions in the context of the present appeal we must take note of one important fact namely, that the price sensitivity of an information has a correlation directly to the materiality of the impact that it can have on the price of the securities of the company. An information may materially affect the price of the security of a company either positively or negatively. The impact may be beneficial or adverse. The information should have the potential either to catapult the price of the securities of the company to a higher level or to make it plunge. The effect can be bullish or bearish. But the effect should be material and not completely insignificant." The Hon'ble Supreme Court has further held that the explanation under the regulation creates a deeming fiction and by virtue of being mentioned in the*

explanation, the listed items become a price sensitive information. In view of the above, expansion of business certainly falls within the ambit of regulation 2(1) (n) (iv) of the PIT Regulations."

31. It is noted that the *Noticee nos. 6* and *7* have contended that the *Company* did not disclose the alleged information as UPSI and thus no case is made against them. Insofar as the said contention is concerned, I have already made elaborate findings in the preceding paragraphs to suggest as to how the said information falls under the definition of UPSI. I have also noted that the price of the scrip was materially affected upon disclosure of information so much so that it got locked in an upper circuit of 9.99%. Further, whether an information is UPSI or not, would depend on the nature of information per se, within the definition of UPSI under the PIT Regulations, and not on the decision of the *Company* to treat the said information as material or not, for the purpose of disclosure. It is also of relevance to state here that all the grounds taken by the *Company* with respect to the nature of information have already been assessed in a separate statutory proceedings and the Ld. Adjudicating Officer has, vide his order dated April 28, 2021, rejected all such arguments and imposed a penalty of INR 1 Crore for the failure of the *Company* to close the trading window when the expansion plan to foray into Pre-school business was launched. It has further been brought to my notice that vide its order dated January 04, 2023, the Hon'ble SAT has dismissed the appeal filed by the *Company* against the aforesaid order by categorically upholding that the piece of information, i.e., Aptech forays into pre-school segment was a UPSI in terms of Regulation 2 (1) (n) of the PIT Regulations. Under the circumstance, I hold that the alleged information pertaining to *Aptech* foraying into Pre-school business was indeed a Price-sensitive Information.

32. Insofar as the period for which such information remained unpublished, I note from the SCN that the discussion with Montana had commenced on February 17, 2016, however, the date of Non-Disclosure Agreement (NDA), i.e., March 14, 2016 has been taken as the date when the UPSI came into existence, which remained unpublished till the time the Press Release/Corporate Announcement was made on September 07, 2016. I observe that no factual dispute whatsoever has been raised by the *Noticees* with respect to the said UPSI period. Thus, I hold that the price sensitive information viz., *Aptech* foraying into Pre-school business remained unpublished till the Press Release was issued by the *Company*, and in view thereof, I have no hesitation in holding that the period commencing from March 14, 2016 to the period i.e. September 07, 2016 when the information got disseminated or shared with public at large, becomes the period during which the said price sensitive information remained unpublished and hence the above period is the UPSI period for the instant matter.

33. The next issue that begs merits is the most crucial aspect of the present case, i.e., whether the *Noticee no. 6* was an insider of the *Company* being in possession of/having access to the UPSI.

34. It is noted from the SCN that an email dated July 19, 2016 was issued by the Compliance Officer of the *Company* with reference to the quarterly Board Report. The attachment to the said

email included a one liner reference to the impending agreement with Montana, which reads as: "*Agreement being finalized with Montana International Preschool and Day Care Center for entry into preschool market*". In this respect, it is observed that the making of a very brief reference without sufficient information relating to the background of the impending agreement itself is sufficient to demonstrate that the recipients of the said email were well aware about the complete background based on which such a reference has emanated. The perusal of the SCN further indicates that the said email was addressed to as many as 12 persons including Chairman of the *Company* with whom the *Noticee no. 6* is admittedly a co-founder of another company and is also admittedly having very long association and further has not disputed to have exchange of communication during the UPSI period.

35. The *Noticee no. 6* has denied having any access to the UPSI by asserting that he had a professional relationship with the Chairman of the *Company* since the year 1996 and has further contended that the obligation to establish the possession of the UPSI rests on SEBI. It has also been contended that the mere allegation of having association with the Chairman is not sufficient and that there has been a time gap of 72 hours in the alleged phone call exchanged by him with Mr. Rakesh Jhunjhunwala before the execution of the alleged trades. It has also been contended that the price of the scrip of *Aptech* on the day of the said phone call was INR 93.95 and on the day when trades were executed, the price had increased to INR 115.10.

36. Insofar as the averment made in the SCN with respect to the phone call is concerned, I have already observed in the present order that the same has been referred to and relied upon only to further compound the allegation that the *Noticee no. 6* was having frequent communications with a person who has been observed to be in possession of the UPSI but the SCN nowhere specifically alleges communication of the UPSI through the said phone call only. Further, it is observed that there is no dispute to the fact that the said phone call was made on August 16, 2016, i.e., well before the trades executed by the *Noticee nos. 6* and *7* in the scrip of *Aptech* on August 19, 2016 and September 07, 2016. Thus, an overall appreciation of the factual conspectus along with the close association between the *Noticee no. 6* and Mr. Rakesh Jhunjhunwala shows that the probability of communication of UPSI to the *Noticee no. 6* cannot be ruled out completely. At this stage, I remind myself that the instant proceeding is a civil proceeding and the standard of proof in this case would be preponderance of probability. Under the circumstances, the scope and expectation of the present proceedings are to see as to whether based on appreciation of materials available on record, it would be appropriate from a mind-set of a normal prudent person applying the principles of preponderance of probability that the happening of the alleged acts are probable or not.

37. Accordingly, in view of the limited purpose of making reference to the phone call in the SCN as discussed above, and in light of the fact that the relationship, association and frequent communications of the *Noticee no. 6* with the Chairman of the *Company* have not been disputed

otherwise; the aforesaid contentions and defence raised by the *Noticee no. 6* pertaining to the timing, duration, price of the scrip after or before the call, etc., are rejected *in limine*.

38. Moving forward to deal with the contention of the *Noticees* that the trades in the accounts of the *Noticee no. 6* and *7* have been executed on August 19, 2016 and September 07, 2016, (on August 19, 2016, 50,000 shares each were bought in the accounts of both the said *Noticees,* whereas on September 07, 2016, 1 Lakh shares each were bought), it is noted that the *Noticee no. 6* has attributed the said purchases made by him and his wife to their technical as well as fundamental analysis of the scrip of *Aptech.* It has been submitted that there was a "break-out signal" and further that there had been appointment of new CEO in *Aptech* and it was expanding its collaborations. Further, a bullish inclination of the *Noticee no. 6* towards the education sector in India has been portrayed, by projecting that the other companies in Education sector did not match the investment criteria of the *Noticee no. 6* due to the following issues in the said companies:

Table no. 4

Sr. No.	Name of the company	Rationale of not investing
1.	Treehouse education	Non-transparency, depletion of cash, revenues and profits
2.	Educomp	Redflags by auditors on accuracy of financial statements, huge debt pile ups
3.	Everonn Education	Siphoning of funds charge against the promoters, CBI cases against them, serious management issues
4.	Core Education	Business collapsed in 2015 and suspended from trading.

39. As noted above, the *Noticee no. 6* has attempted to demonstrate as to what made him pick up the shares of *Aptech* and in order to substantiate the same, the *Noticee* has highlighted few positive attributes of *Aptech* and has also indicated the negative factors of other companies purportedly in the same industry of "education". I may hasten to add here that as per the stand of the *Company*, it was in the field of "vocational skills" and was trying to enter into the field of "education" in the year 2015-16, which indicates that till the time the Press Release was issued by *Aptech* on September 07, 2016, there was nothing in public domain strong enough to have enticed investor or the *Noticees* in particular to invest in its scrip by being bullish on education sector. Nevertheless, I shall examine the explanations furnished by the *Noticee no. 6* in this regard.

40. Insofar as the other companies mentioned in the table above are concerned, I observe that the *Noticee no. 6* being faced with the charge of insider trading in the scrip of 'Aptech Limited', is under an obligation first to explain and substantiate his claim that the alleged trades

were not executed while in possession of/having access to the UPSI. In the proceedings like the present one, it is difficult to accept that the *Noticee* picked up stake in company which was planning to foray into Pre-school education because the other companies which were already into education business were having some or the other issues/challenges. At the outset itself, the *Noticee* is trying to put up before me a comparison of Aptech with incomparables to present his trades in the scrip of Aptech during the UPSI period as a research based trading, but fails to impress me as the comparison itself is faulty and misleading. Without prejudice to the aforesaid observation, I observe that the explanations furnished by the *Noticee no. 6*, are clearly an after-thought exercise, where random news associated with different companies (including *Aptech*) have been quoted to defend his trades. To elaborate further, I note that the *Noticee no. 6* has attributed appointment *per se* of a new CEO in *Aptech* as one of the driving factor of his investment. However, as per his own submission, the said CEO was appointed on July 01, 2016, whereas the trades of the *Noticee nos. 6* and *7* have been executed on August 19, 2016 and September 07, 2016. The said time gap of more than 45 days from the news of appointment of the CEO leaves no scope for any correlation of the investment with the said news so as to believe that the appointment was really a triggering point for the investment in the scrip of the *Company*. Similarly, the launch of *Aptech* Computer to empower students in Fiji also took place on May 25, 2016 and the tie up with Geojit BNP Paribas to train 10,000 banking and finance professionals also happened in July, 2016.

41. The explanation pertaining to the other companies named by the *Noticee no. 6* (where he did not make investment) in his defence to counter the alleged trading in the script of *Aptech,* also does not hold any water and rather, the said explanation tilts the preponderance of probabilities in support of the SCN. As may be seen from the explanation tabulated above, the *Noticee no. 6* has not provided the details of the dates of the events for the respective companies (mentioned at Serial no. 1-3 of the Table) to show that the said events were contemporary to his investment made in Aptech in the year 2016. To dig further, I note that for not making investment in the company, i.e., Everonn Education, the *Noticee no. 6* has cited reasons that the promoters were having CBI cases against them. Strangely however, from the news articles available on the internet, it is noted that the promoters of the said company were facing CBI cases since the year 2011, rendering it as a completely unrelated factor for an investment decision in the year 2016. Further, the *Noticee no. 6* has himself stated that business of another company viz., Core Education collapsed in the year 2015, thus making the said explanation also as a misplaced defence to justify his purchase of the shares of *Aptech Limited* in the year 2016. Under the circumstances, I find that the explanations furnished on behalf of the *Noticees* that their trades in the scrip of *Aptech* were emanating from *bonafide* fundamental and technical analysis, are not worthy of acceptance.

42. I note that the *Noticees* have laid much emphasis on the judgment of the Hon'ble Supreme Court in the matter of *Balram Garg (supra)* and have contended that the standard of proof, to prove the charges of insider trading is high and merely by proving a case on preponderance of probabilities is not sufficient. It has also been contended that merely one phone call between the *Noticee no. 6* and the Chairman of the *Company* is not sufficient to draw an inference, as there is no glaring irregularity in the trading pattern. After carefully pondering on the submissions so made and also perusing the judgment in the matter of *Balram Garg (supra),* I am of the considerate view that the said case is factually distinguishable from the present case, as unlike the said case of *Balram Garg*, there is no dispute raised with respect to the relationship of the *Noticee no. 6* with alleged insider (Chairman of the *Company*). Further, in view of the ratio laid down in the aforesaid case by the Hon'ble Supreme Court, there are foundational facts of relationship of the *Noticee no. 6* with the Chairman of the *Company* which are observed to be strong enough to raise the presumption against the *Noticees* of possessing the UPSI and having engaged in insider trading in the scrip. I further observe that the *Noticee no. 6* has attempted but has failed to rebut the said presumption by providing any acceptable explanation. Furthermore, the trading pattern of the *Noticee no. 6* and *7* is identical as both of them have purchased 50,000 shares of Aptech Limited each on August 19, 2016 and further, 1,00,000 shares each have been purchased by them on September 07, 2016. In this respect, though the *Noticees* have furnished explanation to trade in the shares of *Aptech* however, no plausible justification with supporting evidences has been put forth explaining the event that triggered the further purchase of additional 1,00,000 shares by each of the two *Noticees* after August 19, 2016 and just before the announcement of the UPSI.

43. At this stage, I note from the SCN that announcement of the PSI under reference was made by the *Company* on September 07, 2016, after market hours and on the next day, i.e., September 08, 2016, the price of the scrip increased by a 10% mark. Having noted the close association of the *Noticee no. 6* with the Chairman of the *Company*, the undisputed communication between the two and the trading pattern in the scrip of *Aptech*, leads me to a compelling observation that the allegations made in the SCN are not made on any surmises and conjectures, and are infact based on evidences, cogent enough to draw sufficient inferences pertaining to the receipt of UPSI. I observe that in terms of the ratio laid down by the Hon'ble Securities Appellate Tribunal in the matter of *Ameen Khwaja Vs. SEBI (supra),* wherein also, while dealing with the contention of the appellant that whether he was in possession of UPSI, the burden to proof the same rests on SEBI, the Hon'ble Tribunal has *inter alia* held that

44. *The burden of proof of having reasonable expectation of having access to the UPSI is initially no doubt on respondent SEBI. Once the respondent SEBI place material/probabilities then onus to prove shifts to the other side i.e. the appellants to prove otherwise. Since, admittedly, respondent SEBI is required to establish the facts on preponderance of probability and not*

beyond reasonable doubt, the similar standard of proof would apply to the appellants to shift the onus.

45. Having been guided by the above findings, it is observed that in the instant matter, the proximity of the *Noticee no. 6* with Mr. Jhunjhunwala which is not disputed factually, is a factor sufficient enough for SEBI to discharge its burden to show reasonable expectation of having access to the UPSI and the *Noticee no. 6* has not been able to prove otherwise. It is observed that the *Noticees* have relied upon a few other orders of SEBI like the one passed in the matter of *Indian Petrochemicals Corporation Ltd.* etc., so as to buttress the argument that there should be access to the UPSI to charge a person with insider trading charges. It is also noted that reliance has been placed on the judgment of District Court for the Southern District of New York passed in the matter of *United States of America Vs. Raj Rajaratnam,* wherein the following factors were highlighted for establishing charges of insider trading:

"*Moreover, several other Courts of Appeals have sustained insider trading considering such factors as "(1) access to information; (2) relationship between the tipper and the tippee; (3) timing of contract between the tipper and the tippee; (4) timing of the trades; (5) pattern of the trades; and (6) attempts to conceal either the trades or the relationship between the tipper and the tippee"*

46. After carefully considering the factual conspectus of the present case in terms of the guiding principle as elucidated above, I observe that the materials available on record are sufficient enough to record the probability of reasonable access of the information to the *Noticee no. 6* by virtue of his relationship with the Chairman of the *Company*. Further there has been a proven communication channel showing the timing of telephonic contact between the aforesaid two persons (*Noticee no. 6* and the Chairman of the *Company)* before the trades; also the timing of the trades are completely against the *Noticees,* as immediately before the disclosure of the UPSI, trades containing large number of shares were executed; and lastly, the connection of the aforesaid two persons as well as the trades executed during the UPSI period are undisputed facts in this case, hence there is no scope available to the *Noticees* to conceal either of their connection with the Chairman of the *Company,* or the communications with him or the trades executed in the scrip of Aptech during the UPSI period.

47. In view of the above findings, I am of the view that there are sufficient evidences, which based on preponderance of probabilities would strongly indicate that the *Noticee no. 6* was having access to the UPSI. Further, the *Noticee no. 7* being the wife of the *Noticee no. 6,* and in terms of her letter dated December 18, 2018 addressed to SEBI during the course of investigation, where it has been stated that the decision to purchase the shares in her account was taken by the *Noticee no. 6,* was also in possession of and traded under the influence of the afore-said UPSI of the *Company.*

48. Thus, in the totality of the facts and circumstances, the present case has sufficient foundational facts so as to indicate that the *Noticee no. 6* was having access to/in possession of

the UPSI, and as stated above, the said inferences are strengthened from the trading pattern of these two *Noticees* which glaringly shows that large number of shares were purchased before the public announcement was made, by virtue of which the UPSI came to the public domain, impacting the price of the scrip by 10%. I observe that the *Noticees* have cited various judicial decisions like *Dilip S. Pendse Vs. SEBI*, to contend that higher degree of proof is required to prove the charges of insider trading and mere proximity of relationship would not suffice. I observe that the reliance placed on the said judgments do not come to the rescue of the *Noticees* as the present case has sufficient material to indicate that the *Noticees* were having the access to the UPSI and moreover, the buy trades in large volumes that were executed in the scrip of the *Company* on the day of announcement of the UPSI, is also a testimony to the fact that the trades were executed by the *Noticees* in the scrip of *Aptech Limited*, having access to the said UPSI and while in possession of the same. Under the circumstances, I am of the view that the preponderance of probabilities that emerge from the material available on record, have been successful in demolishing the claims of the *Noticees* that they have made *bonafide* investments in such shares.

49. I refer to the further findings of the Hon'ble SAT as rendered in the matter of *Top Class Capital Markets Private Limited (supra)*, wherein while dealing with the numerous judgments like *Dilip S. Pendse vs. SEBI Appeal no. 80 of 2009 dated November 19, 2009,* the Hon'ble Tribunal has *inter alia* held as: "*In our view, when a person can be called as insider and whether has traded when in possession of such UPSI is essentially a question of fact to be determined in the facts and circumstances of the each case by applying the standard of preponderance of probability albeit in higher scales.*"

50. To sum up the present proceedings, I observe that the *Noticee no. 6* was undisputedly having frequent communication with the Chairman of the *Company* (Mr. Rakesh), who was the Chairman (Non-Executive) and Promoter of the *Company*. Being the recipient of the email dated July 19 2016 (containing the Board report which mentions that the agreement with Montana is being finalised), and Mr. Rakesh was undisputedly in possession of the UPSI. Therefore, the overall facts and circumstances of the case which also include the phone call made by the aforementioned *Noticee no. 6* to his long-time associate Mr. Rakesh Jhunjhunwala (Chairman of the *Company*) are sufficient to show that the *Noticee no. 6* was having frequent communication with Mr. Rakesh.

51. I observe that the Note to Regulation 2 (1) (g) of the PIT Regulations, 2015 envisages that the onus to prove possession of a UPSI by a particular person lies on SEBI, which such a person can rebut by demonstrating that he was not in possession of or was not having access to the UPSI or that he has not traded when in possession of such UPSI. In the present case, as elucidated in my findings recorded above, it has emerged that due to his long association with the Chairman of the *Company*, and based on other materials, it can be safely concluded that *Noticee no. 6* was having the access to the UPSI through Mr. Rakesh Jhunjhunwala. Further, all his

explanations which were largely based on either attacking the SCN on legal aspects or defending his trades in the name of fundamental/technical analysis, have been found to be grossly wanting and completely devoid of any merit. Under the circumstances, I observe that the allegation in the SCN about the *Noticee no. 6* being an insider in terms of regulation 2 (1) (g) (ii) of the PIT Regulations, 2015 stands established.

52. I further note that the *Noticee no. 7* has vide her letter dated December 18, 2018, has stated *inter* alia as: *I bought shares of Aptech Ltd as an investment…the decision to buy were taken by me and my husband Mr. Lashit Sanghvi …The mode of placing order was telephonic and done by me or my husband."* The aforesaid assertion made by the *Noticee no. 7* that the trading decision as well as the execution of trades in the scrip of *Aptech* have been done "jointly with her husband" leaves no scope to doubt but to accept and hold the allegations levelled in the SCN that the *Noticee no. 6* has communicated the UPSI to his wife, i.e., *Noticee no. 7*

53. Further, the *Noticee no. 7*, wife of the *Noticee no. 6* has admitted that the decision to trade in the scrip of the *Company* in her account was made by her husband, which again brings her into the definition of insider in terms of the Regulation 2 (1) (g) (ii) of the PIT Regulations, 2015 by having access to/possession of UPSI through the *Noticee no. 6*.

54. I observe that the Section 12 A (d) and (e) of the SEBI Act, 1992 and the Regulation 4 (1) of the PIT Regulations, 2015 prohibit an insider to trade in securities when in possession/having access of any UPSI. Further, the Regulation 3 (1) of the PIT Regulations, 2015 bars any insider to communicate or allow access to any UPSI pertaining to any listed company. In the present case, as already held by me above, the *Noticee no. 6* was an insider of the *Company* and the decision to trade in the account of his wife, *Noticee no. 7,* was also admittedly taken in consultation with him. Thus, in the totality of the circumstances, the trades executed by the *Noticee nos. 6* and *7,* in the scrip of Aptech Limited were clearly in the nature of insider trading.

55. Having held that the trades executed by the *Noticee no. 6* and *7* are in the nature of insider trading and in violation of aforesaid provisions of law, any profit/notional profit that accrued to the *Noticees* because of such unlawful activity has to be declared as unlawful profit and the same needs to be stripped off from the *Noticees*. Therefore, the next task in the present proceeding for me is to calculate the amount of notional profits that accrued to the *Noticees* by virtue of their acts of insider trading.

56. It is further noted that to arrive at the calculation of such notional profits, the SCN considers that the alleged UPSI was disclosed to the public on September 07, 2016 (after market hours) and therefore, the closing price of the scrip of Aptech Limited on the very next day, i.e., September 08, 2016 has been considered for calculating the wrongful notional gains. The closing price of the scrip Aptech Ltd. on September 08, 2016 was INR 175.05 and INR 175.45 on BSE

and NSE respectively, and the SCN used the following formula to arrive at the amount of unlawful gains:

Computation of Unlawful/ wrongful gains = *(No. of shares bought while in possession of UPSI X Closing Price on the next day of UPSI becoming public) – (No. of shares bought while in possession of UPSI X weighted average purchase price)*

T**he weighted average Buy Price is calculated as:** *Buy Value / Buy Quantity and buy price is rounded off to two digits.*

57. Based on the aforesaid formula, the SCN calculates the unlawful notional gains that accrued to the benefits of the *Noticees* as:

Table no. 5

	Mr. Lashit Lallubhai Sanghvi					
Sr No	**Exchange**	**Buy Qty**	**Wt Avg Buy Price**	**Buy Value (in INR)**	**Sell Qty**	**Unlawful / wrongful Notional Gains made (in INR)**
	BSE	25000	157.56	3939074.10	0	437175.90
	NSE	125000	139.05	17381149.85	0	4550100.15
	Total wrongful notional gains					**4987276.05**
	Ms. Neha Sanghvi					
	BSE	25000	157.46	3936546.15	0	439703.85
	NSE	125000	139.09	17386067.95	0	4545182.05
	Total wrongful notional gains					**4984885.90**

58. I note that the *Noticees* have contended that the calculation of unlawful notional gains as made in the SCN is baseless and reliance has been placed on the judgment of the Hon'ble SAT passed in the matter of *Somani Overseas Ltd and ors. Vs. SEBI (supra).* As regards the aforesaid contention, I observe that the *Noticees* have not been able to raise any factual dispute with respect to the calculation made in the SCN/SSCN. The only submission that the *Noticees* have made is that the calculation of unlawful profit is baseless. It has also been contended that the *Noticees* are

still holding the shares, therefore, the question of disgorgement does not arise. As regards the calculation of notional profit, I observe that in the present case, the *Noticees* have purchased the shares during the UPSI period and for the purpose of calculation of notional gains, the SCN has taken the closing price of the shares of Aptech Limited on the day when the price sensitive information was made public. I see no reason to doubt the said approach to calculate the notional profits that accrued to the *Noticees*. Further, insofar as the contention that disgorgement cannot be directed in the absence of any actual selling of shares, I refer to and rely upon the following judgments, which supports the case of SEBI to disgorge even the notional profits:

(i) *SEC Vs. A Shapiro, 494 F. 2d 1301*, wherein it has been held by the US Court of Appeal that the reach of disgorgement would include not only actual profit received but even "paper" profits.

(ii) *Dushyant N. Dalal Vs. SEBI 2010 SCC Online SAT 328*- In the said matter, the calculation of notional profits for cornering shares under IPO allotment process was calculated by considering by taking the closing price of the shares on the first day of listing and deducting the issue price from the same. The Hon'ble SAT has upheld the said formula for calculating the disgorgement amount by *inter alia* observing as: "*The whole time member in the impugned order has worked out the notional gain with reference to the closing price of the shares on the first day of listing and deducted the issue price therefrom. As at present advised, we can think of no better way of calculating the notional gain made by the appellants. Even if there is a better method of calculating the notional gains, we do not think that the method adopted by the whole time member is in any way arbitrary or unfair calling for our interference. Surely the appellants cornered the shares through illegal means and they cannot be heard to say that notional profits should not be worked out merely because they continue to hold some of them. They cannot be allowed to unjustly enrich themselves. We, therefore, reject this argument of the appellants as well." (underline supplied)*

59. Thus, in the light of the aforesaid orders, both the arguments advanced by the *Noticees* resisting any directions of disgorgement on the plea that they are still holding the shares, as well as the objecting to the calculation of notional unlawful gains, get adequately answered. In the present case, the information was made public on September 07, 2016 and therefore, the SCN has rightly taken the closing price of the scrip on the next trading day, i.e., September 08, 2016 for the purpose of calculation of unlawful gains. Under the circumstances, I find no strength in the arguments made by the *Noticees* in this regard nor do I find any reason to deviate from the aforesaid formula to calculate the amount of disgorgement from the *Noticees*. At this stage, I refer to the observations of Hon'ble SAT passed in the matter of *Reliance Industries Vs. SEBI (Appeal no.120/2017, Date of decision: November 05, 2020)* wherein Hon'ble SAT have observed *inter alia* that disgorgement is an equitable remedy.

60. I further note that in the present proceedings, the *Noticees* have also been called upon to show cause as to why monetary penalty for the violation of provisions of SEBI Act, 1992 and

PIT Regulations, 2015 be not imposed on them under Section 11 (4A), 11B (2) read with Section 15G of the SEBI Act, 1992 and PIT Regulations, 2015. I note that the *Noticees* have defended that contemplation, by asserting that no violation of law has taken place which will call for imposition of any monetary penalty.

61. At the outset, I note that the powers conferred under Section 11B(2) is without prejudice to the power to issue directions under Sections 11(1), 11(4A) and 11B(1) of the SEBI Act, 1992. The provision of Section 15G reads as follows:

Penalty for insider trading.

15G. *If any insider who, —*

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

ii. communicates any unpublished price-sensitive information to any person, with or without his request for such information except as required in the ordinary course of business or under any law; or

iii. counsels, or procures for any other person to deal in any securities of any body corporate on the basis of unpublished price-sensitive information, shall be liable to a penalty which shall not be less than ten lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher.

62. I have already elucidated in the present order as to how the acts of *Noticee no. 6* in communicating the UPSI to the *Noticee no. 7* as well as the acts of both the *Noticee nos. 6* and *7* to execute the trades in the scrip of Aptech Limited during the UPSI period were in the nature of insider trading, leading to accrual of notional gains to both the *Noticees*. Thus, in my considerate view, as the charges of a serious offence such as insider trading have been substantially established against the *Noticees,* the said charges certainly attract levy of penalty under Section 15G of the SEBI Act, 1992.

63. Further, the Section 15J of the SEBI Act, 1992 lays down the factors that need to be considered while adjudging the quantum of penalty under the provisions of SEBI Act, 1992, and the said provision reads as:

Factors to be taken into account while adjudging quantum of penalty.

15J. While adjudging quantum of penalty under 15-I or section 11 or section 11B, the Board or the adjudicating officer shall have due regard to the following factors, namely :—

(a) the amount of disproportionate gain or unfair advantage, wherever quantifiable, made as a result of the default;

(b) the amount of loss caused to an investor or group of investors as a result of the default;

(c) the repetitive nature of the default.

Explanation.—For the removal of doubts, it is clarified that the power to adjudge the quantum of penalty under sections 15A to 15E, clauses (b) and (c) of section 15F, 15G, 15H and 15HA shall be and shall always be deemed to have been exercised under the provisions of this section.

64. In the present case, I have already quantified the amounts of notional unlawful gains that accrued to the *Noticees* due to their unscrupulous acts of insider trading, and it is further noted that the trades in the nature of insider trading were executed by the *Noticees* on two days.

65. In view of the aforesaid facts and circumstances of the case, I, in exercise of the powers conferred upon me under Section 19 read with Sections 11(1), 11(4), 11(4A), 11B(1) and11B(2) and further read with Section 15G of the SEBI Act, 1992 and SEBI (Procedure for Holding Inquiry and Imposing Penalties) Rules, 1995, hereby issue the following directions and impose the following penalty:

i. The *Noticee nos. 6* and *7* are restrained from accessing the securities market and further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly in any manner whatsoever for a period of 1 year from the date of this order.

ii. The *Noticee nos. 6* and *7* are restrained from buying, selling or otherwise dealing in the securities of Aptech Limited, directly or indirectly in any manner whatsoever for a period of 2 years from the date of this order.

iii. The *Noticee nos. 6* and *7* shall disgorge the amount of notional profits of INR 4987276.05 and INR 4984885.90, respectively, along with simple interest @ 9%per annum from September 07, 2016 till the date of actual payment. The aforesaid amounts along with interest shall be remitted to Investor Protection and Education Fund (IPEF) as referred to in Section 11(5) of the SEBI Act, 1992, within 45 (forty five) days from the date of this order and intimation may be forwarded to "Division Chief, Enforcement Department-1, DRA-4, Securities and Exchange Board of India, SEBI Bhavan, Plot No. C4-A, "G" Block, Bandra Kurla Complex, Bandra (E), Mumbai-400 051".

iv. The *Noticee nos. 6* and *7* are further directed to pay a penalty as detailed below within 45 (forty five) days from the date of service of this order by way of crossed demand draft drawn in favour of "SEBI–Penalties remittable to Government of India", payable at Mumbai, or the online payment facility available on the website of SEBI: www.sebi.gov.inon the following path, by clicking on the payment link /ENFORCEMENT → Orders → Orders of Chairman/Members → PAYNOW or at the linkhttps://siportal.sebi.gov.in/intermediary/AOPaymentGateway.html.

Entity	Provisions of law violated	Penalty levied under section	Quantum of penalty payable (in INR)
Mr. Lashit Lallubhai Sanghvi	Section 12A (d) & (e) of SEBI Act, 1992 read with Regulation 4 (1) of PIT Regulations, 2015 Regulation 3 (1) of PIT Regulations, 2015	15G	15,000,00
Ms. Neha Sanghvi	Section 12A (d) & (e) of SEBI Act, 1992 read with Regulation 4 (1) of PIT Regulations, 2015	15G	10,000,00

v. The *Noticee nos. 6* and *7* are directed to provide a full inventory of all assets held in his name, individually or jointly, 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, within 15 days from the date of receipt of this order.

66. It is clarified that during the period of restraint, the existing holding of securities, including the units of mutual funds shall remain under freeze in respect of the aforesaid debarred *Noticee nos. 6* and *7*.

67. The obligation of the aforesaid debarred *Noticee nos. 6* and *7*, in respect of settlement of securities, if any, purchased or sold in the cash segment of the recognized stock exchange(s), as existing on the date of this Order, can take place irrespective of the restraint/prohibition imposed by this Order only, in respect of pending unsettled transactions, if any. Further, all open positions, if any, of the *Noticees* debarred in the present Order, in the F&O segment of the stock

exchanges, are permitted to be squared off, irrespective of the restraint/prohibition imposed by this Order.

68. The Order shall come into force with the immediate effect.

69. A copy of this Order shall be forwarded to all the *Noticees*, all the recognized Stock Exchange, depositories and registrar and transfer agents for ensuring compliance with the above directions.

-Sd-

DATE: FEBRUARY 28, 2023 **S. K. MOHANTY**

PLACE: MUMBAI **WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA