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National Stock Exchange of India
Circular

Department: Investigation	
Download Ref No: NSE/INVG/57169	**Date: June 19, 2023**
Circular Ref. No: 152/2023	

To All NSE Members

Sub: **SEBI Order in the matter of Shilpi Cable Technologies Limited**

SEBI vide its order no. WTM/SM/IVD/ID7/27507/2023-24 dated June 19, 2023, has directed that below mentioned entities are prohibited from buying, selling or otherwise dealing in securities market directly or indirectly, in any manner, whatsoever, for a period of one (1) year, from the date of the SEBI order.

Sr No.	Name of the Entity	PAN
1	Mr. Dinesh Gupta	AAAPG4180D
2	Dinesh Gupta HUF	AACHD9271Q
3	Mr. Rajesh Gupta	AAAPG7884Q
4	Rajesh Gupta HUF	AAGHR4685G
5	Mrs. Nirmala Gupta	AAKPG7659K
6	Ajay Fincap Consultants Pvt. Ltd.	AAMCA5253G

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 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 link: https://www.nseindia.com/regulations/member-sebi-debarred-entities

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

National Stock Exchange of India

In case of any further queries, members are requested to email us at dl-invsg-all@nse.co.in

For and on behalf of

National Stock Exchange of India Limited

Sandesh Sawant
Senior Manager

National Stock Exchange of India

ANNEXURE: SEBI Order in the matter of Shilpi Cable Technologies Limited

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 SHILPI CABLE TECHNOLOGIES LTD.

IN RESPECT OF:

Noticee No.	Name of the Noticee	PAN
1.	**Mr. Dinesh Gupta**	**AAAPG4180D**
2.	**Dinesh Gupta HUF**	**AACHD9271Q**
3.	**Mr. Rajesh Gupta**	**AAAPG7884Q**
4.	**Rajesh Gupta HUF**	**AAGHR4685G**
5.	**Mrs. Nirmala Gupta**	**AAKPG7659K**
6.	**Ajay Fincap Consultants Pvt. Ltd.**	**AAMCA5253G**

(The aforesaid entities are referred to by their corresponding names/numbers and collectively referred to as "Noticees")

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1. The present proceeding is emanating from a show cause notice dated March 31, 2022 (hereinafter referred to as **"SCN"**) arising out of an investigation conducted by Securities and Exchange Board of India (hereinafter referred to as "**SEBI**") into the trading in the scrip of Shilpi Cable Technologies Limited (hereinafter referred to as ***"SCTL"*** or the **"*Company*"**), for the period of March 08, 2017 to May 11, 2017 (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, 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. Shorn of unnecessary details, the facts relevant and necessary for the purpose of adjudication of charges levelled in the SCN are narrated in brief as under.

i. The scrip of the *Company* was listed on the National Stock Exchange of India Ltd. (hereinafter referred to as "**NSE**") and BSE Ltd. (hereinafter referred to as "**BSE**").

ii. On April 30, 2017, at around 14:41:14 hours, a disclosure dated April 29, 2017 made by the *Company* under Regulation 30 of the SEBI (Listing Obligations and Disclosure Requirements), 2015 (hereinafter referred to as the "**LODR Regulations**"), was disseminated on BSE. The said disclosure read as under:

"*a petition has been filed against the company under Section 8 & 9 of the Insolvency and Bankruptcy Code, 2016 (IBC 2016) by an overseas Bank claiming to be operational creditor against the company, before the Hon'ble National Company Law Tribunal (NCLT), New Delhi, which is disputed as per our company. The company is taking legal recourse in this matter. The matter is listed for hearing at NCLT on May 04, 2017.*"

iii. Another similar disclosure was disseminated on NSE on May 02, 2017 at 08:40:00 hours, i.e., before the opening of trading hours.

iv. Before the filing of the aforesaid petition under IBC, a demand notice dated March 08, 2017 was issued on behalf of the petitioner, Macquarie Bank Ltd., seeking payment of USD 3.01 Million (equivalent to approximately INR 19.55 Crore). The said demand notice was received by the SCTL on March 10, 2017.

v. One of the promoters of SCTL namely, Shilpi Communication Pvt. Ltd. (hereinafter referred to as "**Shilpi Communication**") was holding its 2.41 Crore shares, amounting to 74.77% of the total paid up capital of SCTL. Mr. Mukesh Kumar Gupta and Mr. Manish

Goel, who were the Promoters-Directors of SCTL, were also the Promoters-Directors of Shilpi Communication along with one Mr. Vishal Goel. Out of the aforementioned shares held by Shilpi Communication, a total of 64 Lakh shares of SCTL (19.82% of the total paid up capital of SCT) were transferred to the *Noticee nos. 1* to *4* on May 02, 2012 in such a manner that each of them got 16 Lakh shares of SCTL.

vi. In terms of the disclosure dated May 04, 2012 made under Regulations 13 (4), 13 (4A) and 13 (6) of SEBI PIT Regulations, 2015, the said 64 Lakh shares of SCTL were transferred against the total consideration amount of INR 12.80 Crore, thereby shares were sold at a price of INR 20 per share, though the market price of the shares of SCTL on May 02, 2012 was INR 11.29. Thus, the said sale of shares was executed at a premium of INR 77.15% of the market price.

vii. The bank account statements of the *Noticee nos. 1* (Dinesh Gupta)*, 2* (Dinesh Gupta HUF)*, 3* (Rajesh Gupta) and *4* (Rajesh Gupta HUF) indicate that payment of INR 3.20 Crore by each of the above *Noticees* was made to Shilpi Communication, partly in May, 2014 and remaining amount in July, 2014, i.e., after a period of two years from the transfer of the said shares, which was made through off-market mode. Further, for the delayed payment, neither any contractual document was executed indicating any timelines for making such delayed payment, nor any interest was charged.

viii. Further, a company namely, BDR Builders and Developers Private Limited (hereinafter referred to as "**BDR**"), wherein both the *Noticee nos. 1* (Dinesh Gupta) and *3* (Rajesh Gupta) were Promoter Directors, had extended large amount of loans during the period October 12, 2015 to December 23, 2015 to SCTL as well as to Shilpi Cable Private Limited (another Promoter company of SCTL; hereinafter referred to as "**SCPL/Shilpi Cable**") and against the said loans, shares of the *Company* were purportedly pledged. The details of the said loans and the pledge of shares of SCTL would be discussed in the later part of this order.

ix. In the statement dated March 18, 2021 of the *Noticee no. 1* (Dinesh Gupta) recorded during the investigation, he *inter alia* stated that he knew the Directors of SCTL viz., Mr. Mukesh Gupta and Mr. Manish Goel in relation to the financial transaction of extending loans to them or their connected entities. He further stated that the loans so extended by BDR to SCTL and Shilpi Cable were initially being repaid, however, from the end of the year 2016, there were certain issues regarding payment of interest. It has further been stated that BDR had followed up with Mr. Mukesh Gupta and Mr. Manish Goel for delay in payment of interest and subsequently, the said two Directors of SCTL had proposed for extension of the loan period.

x. The *Noticee no. 1* (Dinesh Gupta) also stated that Mr. Mukesh Gupta and Mr. Manish Goel had visited the office of BDR on a few occasions.

xi. The *Noticee no. 3* in his statement dated March 09, 2021 made during the investigation, *inter alia* stated that he had visited the office of SCTL twice during the end of the year 2016 in relation to the recovery of the loan extended by his company, BDR and had discussions with Mr. Mukesh Gupta and Mr. Manish Goel.

xii. The *Noticee no. 1* (Rajesh Gupta) vide his email dated July 26, 2020 has informed that BDR had filed an application to initiate Corporate Insolvency Resolution Process against SCTL and SCPL on October 25, 2017 and October 28, 2017, respectively. BDR has filed its claim before the Resolution professional.

xiii. Mr. Shreyansh Gupta, son of *Noticee no. 1 (*Dinesh Gupta), vide his letter dated November 28, 2020 has submitted that he was appointed as a Nominee Director in Shilpi Cable from January 04, 2016 to May 19, 2017. He further submitted that he was appointed as a Director in order to safeguard the loans provided by BDR to Shilpi Cable. Mr. Shreyansh

Gupta was also a Director in Shilpi Agro Private Limited, wherein another Director was Mr. Vishal Goel, son of Mr. Mukesh Kumar Gupta, the Promoter-Director of SCTL. The said Mr. Vishal Goel was also one of the Promoters of SCTL and Director at Shilpi Communication since March, 2004.

xiv. Mr. Shreyansh Gupta in his statement dated November 09, 2021, *inter alia* stated that he never attended any Board meeting of Shilpi Cable nor was involved in any day to day affairs. He also stated that he did not discharge any duty in Shilpi Cable and was not even aware of the functions that he would be discharging as a Director. He stated that he gave his consent for appointment as a Director and got appointed as one, on the request of his father (*Noticee no. 1*- Dinesh Gupta) and his uncle (*Noticee no. 3*- Rajesh Gupta) and resigned also on the request of the said two *Noticees*.

xv. In terms of the disclosure dated June 02, 2012 made to BSE by the *Company*, Mr. Anand Gupta, the Trustee of SCTL Securities Trust (a Trust created for the sole benefit of SCTL) was issued 52,17,374 shares of SCTL pursuant to the sanctioning of the scheme of amalgamation of Shilpi Cabletronics Private Limited with SCTL.

xvi. The *Noticee no. 1* (Dinesh Gupta) in his reply dated March 18, 2021 has *inter alia* stated the said Mr. Anand Gupta is his elder brother. Further, in terms of the information furnished by the RTA of SCTL, the email id in its records of both Mr. Anand Gupta and Mr. Rajesh Gupta (*Noticee no. 3*) is same, i.e. rajeshXXX@gmail.com[1].

xvii. Further, Mr. Anand Gupta has vide his email dated November 08, 2021 *inter alia* stated that the *Noticee no. 1* (Dinesh Gupta) had made him the trustee of SCTL Securities Trust and he was acting on the advice of *Noticee no. 1* (Dinesh Gupta) only and does not have much knowledge about the Trusteeship.

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[1] *Email id and mobile numbers have been masked to maintain privacy*

xviii. The *Noticee no. 1* (Dinesh Gupta) vide his email dated November 12, 2021, has *inter alia* stated that during one of the casual conversations held in the year 2012, he was informed that an independent person was being searched for by the Shilpi group for assigning Trusteeship of the said Trust and it was enquired from him (*Noticee no. 1*- Dinesh Gupta) as to whether he would take up the said position. The *Noticee no. 1* (Dinesh Gupta) refused the said proposal and stated that he can discuss the same with Mr. Anand and after Mr. Anand gave his consent, he (Mr. Anand Gupta) came to be appointed as the Trustee of the said Trust.

xix. The *Noticee no. 5* (Mrs. Nirmala Gupta), mother of the *Noticee nos. 1* (Dinesh Gupta) and *3* (Rajesh Gupta) vide her letter dated September 02, 2021 *inter alia* stated that her trading account was opened on the advice of her sons and the said account was being managed by them only.

xx. Ajay Fincap Consultants Private Limited (*Noticee no. 6*) had also traded in the scrip of SCTL during the relevant period. The said company had Mr. Ajay Kumar Singh and Mr. Bechu Singh as its Directors and both of them were also Directors in certain other companies wherein *Noticee nos. 1*(Dinesh Gupta)*, 3* (Rajesh Gupta) or their family members were Directors. Further, in his statement dated March 18, 2021, the *Noticee no. 1* (Dinesh Gupta) has *inter alia* stated that Mr. Ajay Kumar Singh and Mr. Bechu Singh are small time contractors who were engaged by BDR for different assignments. Mr. Ajay Singh vide his letter dated September 15, 2021 *inter alia* stated that he personally knows *Noticee nos. 1* (Dinesh Gupta) and *3* (Rajesh Gupta) as well as their family members and also had some financial dealings with them. He also stated that he became a shareholder of BDR in the year 2010 as he knows the said company and its Directors. Further, Mr. Shreyansh Gupta has also *inter alia* stated in his statement that Mr. Ajay Kumar Singh and Mr. Bechu Singh are known to his father (*Noticee no. 1*- Dinesh Gupta). In terms of the

UCC details and KYC documents of the *Noticee no. 6* (Ajay Fincap Consultants Private Limited), the mobile number is mentioned as 98XXX315XX and the email id is mentioned as rajeshXXX@gmail.com and the said contact details belong to the *Noticee no. 3* (Rajesh Gupta) as well.

xxi. Further, Mr. Ajay Kumar Singh, in his reply dated September 15, 2021 has *inter alia* submitted that the *Noticee no. 4 (*Rajesh Gupta HUF*)* is the major shareholder of Ajay Fincap Consultants Private Limited and on request of the management of the said company, the email id of the *Noticee no. 3* was mentioned in the demat accounts.

xxii. Further, the *Noticee no. 6* (Ajay Fincap Consultants Pvt. Ltd.) transferred an amount of INR 73.40 Lakh to the *Noticee no. 5* (Mrs. Nirmala Gupta) on April 19, 2017. Mr. Ajay Kumar Singh in his reply dated September 15, 2021 has stated that the *Noticee no. 6* (Ajay Fincap Consultants Pvt. Ltd.) had purchased shares of BDR Buildtech Private Limited from the *Noticee no. 5* (Mrs. Nirmala Gupta) and the said amount was transferred as part sale consideration. However, no documentary evidence in support of the same has been furnished.

xxiii. The trading data of *Noticee nos. 1* (Dinesh Gupta)*, 2* (Dinesh Gupta HUF)*, 3* (Rajesh Gupta)*, 5* (Mrs. Nirmala Gupta) and *6* (Ajay Fincap Consultants Pvt. Ltd.) indicates that they have sold large quantities of shares of SCTL during the period of March 10, 2017 to April 30, 2017, details of which would be shared in the later part of this order.

3. Based on the aforesaid factual details, the SCN makes the following allegations against the *Noticees:*

i. As the payment of consideration of the purchase of shares of SCTL in off-market transactions was not made within the timeline specified under SCRA, *Noticee nos. 1, 2, 3* and *4* have violated Section 16 of the Securities Contract (Regulations) Act, 1956 (hereinafter referred to as "**SCRA**") read with SEBI Notification G.S.R 219 (E) dated March 02, 2000, Section 13 and Section 18 of SCRA read with Section 2(i) of SCRA.

ii. The demand notice dated March 08, 2017 issued to SCTL by and on behalf of Macquaire Bank was a material event in terms of Regulation 2 (1) (n) (vi) of the PIT Regulations, and was thus an unpublished price sensitive information (hereinafter referred to as "**UPSI**").

iii. Mr. Mukesh Gupta and Mr. Manish Goel, being the Promoters-Directors of the *Company* as well as being in possession of the aforesaid UPSI were insiders of the *Company* in terms of Regulation 2 (1) (g) (i) read with Regulation 2 (1) (d) of the PIT Regulations and Regulation 2 (1) (g) (ii) of the PIT Regulations.

iv. By virtue of the loan transactions between BDR and SCTL & Shilpi Cable; appointment of Mr. Shreyansh Gupta as Director of Shilpi Cable; appointment of Mr. Anand Gupta as Trustee of SCTL Securities Trust; and as acknowledged by the *Noticee nos. 1* and *3*, the said two *Noticees* were having frequent communications with the Promoter Directors of SCTL viz., Mr. Mukesh Gupta and Mr. Manish Goel, hence the *Noticee nos. 1* and *3* became connected persons in terms of the Regulation 2 (1) (d) (i) and are insiders of the *Company* in terms of Regulation 2 (1) (g) (i) of the PIT Regulations having received the UPSI from the Promoter/Director of SCTL.

v. Further, the *Noticee no. 5* being the mother of the *Noticee nos. 1* and *3* is also alleged to be a connected person in terms of Regulation 2(1)(d)(ii)(a) and an insider of the *Company* in terms of Regulation 2 (1) (g) (i) of the PIT Regulations.

vi. As the *Noticee no. 6* and its Directors were having frequent communications with the *Noticee nos. 1* and *3* and further due to the fact that the *Noticee no. 3* was controlling the investment/trading decision of the *Noticee no. 6*, and as *Noticee no. 3* is alleged to be an insider, the *Noticee no. 6* is also alleged to be a connected person in terms of Regulation 2

(1) (d) (i) and an insider of the *Company* in terms of Regulation 2 (1) (g) (i) of the PIT Regulations.

vii. The *Noticee nos. 1, 2, 3, 5* and *6* have traded in the scrip of the *Company* while in possession of/having access to the UPSI, and thus have violated Section 12A (d) and (e) of the SEBI Act, 1992 read with the Regulation 4 (1) of the PIT Regulations.

viii. By indulging in insider trading, the *Noticee nos. 1, 2, 3, 5* and *6* have unlawfully avoided losses of INR 2,82,98,920.90; INR 7,56,63,904.70; INR 6,90,98,714.70; INR 8,97,67,727.90; and INR 13,119,865.00, respectively.

4. It is noted from the records that the SCN was served upon the *Noticees* and in response to the same, all the *Noticees* have filed their separate replies.

5. It is observed that *Noticee no. 1* and *Noticee no. 2*, vide their letter dated April 28, 2022 filed a common reply to the SCN. The submissions made by the said *Noticees* are being summarised herein below:

i. The notification dated March 02, 2000 indicates that it *inter alia* exempts spot delivery contracts from its rigors. The definition of "spot delivery contract" as laid down under SCRA reflects that only in the case of physical delivery of securities, it is required that payment of the consideration is done on the same day of execution of the contract, or on the next day.

ii. There does not appear to be any requirement for making payment of consideration on the same day or on the next day, in case of an electronic transfer of shares from the DP account of one entity to the other.

iii. The said distinction has been created by the legislature in its wisdom, as in the case of demat transfer, the date of transfer is duly recorded in the Depositories' records.

iv. In the present case, shares have been transferred from the DP account of the *Company* to the account of the *Noticee*, therefore, there was no mandatory requirement of making payment of consideration on the same day or the next day. Thus, there is no violation of the provisions of the SCRA, SEBI Act, or the above said notification.

v. The receipt of the notice from Macquarie Bank does not fall under the events enlisted under the definition of UPSI nor the said information falls in the list of material events as stated in the Listing agreement.

vi. Further, the *Noticee no. 1* was already aware of the financial condition of the *Company* as it (*Company*) had already committed default (in September, 2016) of the repayment of dues of the *Noticee*/his related entity.

vii. It is a matter of record that no UPSI was shared with the *Noticee* nor there are any circumstances under which it can be presumed/inferred that the *Noticee* held such information alleged to be UPSI.

viii. The response dated September 01, 2018 of the *Company* to the letter dated August 31, 2018 (issued by SEBI seeking certain information from the *Company* during the investigation) provides the detail of all persons including promoter/directors etc., and the name of the *Noticee* is not mentioned in the said list.

ix. Further, in terms of the Code of Conduct for reporting and regulating trading by insiders of the *Company,* the *Noticee* is not a connected person, as there was no contact between the *Noticee* and the *Company* that allows the *Noticee,* direct or indirect access to the UPSI; there is no reason to expect that the *Noticee* was reasonably expected to have access to the UPSI; and the *Noticee* does not fall in any of the categories as specified in Clause 5 (v) (ii) of the said Code of Conduct.

x. It is a matter of record that during the alleged UPSI period on account of default of repayment of loans granted by the *Noticee*/their related entity, the *Company* was in default, and therefore, no presumption can be drawn pertaining to sharing of information. On the contrary, the relationship with the *Company* was hostile and *Noticee* was exerting reasonable pressure for recovery of the amounts extended as loans and the same is evident from the facts narrated in the SCN recording that after initial payment, there was default in paying the interest w.e.f October, 2016. The SCN has also recorded about the extension of the loan as well as dishonouring of the cheques issued by SCTL during the UPSI period.

xi. The Amended Loan Cum Guarantee deed recorded the details of the four cheques (totalling INR 20 Crore) issued by SCTL in favour of BDR Limited. Three cheques were dishonoured due to the reason "payment stopped by the drawer" and one got dishonoured due to the reason: "exceeds arrangement". As the cheques were dishonoured, the Directors of SCTL became liable for proceedings under the law including criminal proceedings. Thus, it is illogical to assume that the UPSI was communicated by the Directors.

xii. BDR had also filed a petition under Section 7 of IBC against SCTL on the basis of the outstanding amount of INR 22.60 Crore (approx.) The said petition *inter alia* mentioned that a pledge of 84,34,748 shares of SCTL has been created and BDR is holding the said shares of SCTL as a security of the debt and interest thereto.

xiii. The initial loan agreement dated January 05, 2016 entered between BDR and SCTL also recorded that against the loan of INR 20 Crore extended by BDR to SCTL, 1,04,34,748 shares of SCTL held by SCTL Securities Trust are given as security.

xiv. BDR did not exercise the option of sale of such shares which it could have easily carried out through the Trustee of SCTL Securities Trust. The same shows that the *Noticees* did not have knowledge of the alleged UPSI of the demand notice issued by Macquarie Bank, otherwise instead of extending the loans of BDR on May 01, 2017, BDR would have sold the shares of SCTL.

xv. The hostility between the *Noticee nos. 1* and *3* with the Directors of SCTL is apparent from the letter dated September 11, 2017 of SCTL issued by Mr. Manish Goel and the letter dated September 14, 2017 written by SCTL to Mr. Anand Gupta, Trustee of SCTL Securities Trust wherein SCTL disputed the pledge of shares in favour of BDR.

xvi. In response to the said letter, Mr. Anand Gupta had vide his letter dated September 28, 2017 called upon BDR to desist from selling any of the pledged shares to avoid any complications. The same shows that the UPSI was not shared with the *Noticees*.

xvii. The receipt of a demand notice under Sections 8 and 9 of the IBC cannot be considered to be a UPSI nor as a material event as per the terms of Listing Agreement, moreso when SCTL had denied the eligibility of Macquaire Bank to file a petition under IBC. Further, the period of March 10, 2017 to April 30, 2017 cannot be considered as a UPSI period, as alleged.

xviii. No connection with the insiders could be derived merely due to the purchase of shares in off-market from the insiders that too after 5 years of such transaction.

xix. The shares were purchased in off-market transactions on a deferred payment basis and no unfair gain was derived from such transaction. Different factors were considered to purchase the shares on premium from the market prices such as- sale of a large number of shares; liquidity on the stock exchange; and allotment price of INR 69 per share at the time of IPO during April 2011.

xx. The share price was fixed at the time of purchase and documents in support viz., Certificate of accounts dated April 01, 2013 signed by the Director of Shilpi Communication and a copy of the balance sheet of Shilpi Communication Private Limited showing outstanding of the consideration have already been filed during the investigation.

xxi. The timelines of payments were agreed between the parties and payments were made accordingly during May, 2014 and July, 2014. [Between the period of 20/05/2014 to 19/07/2014]

xxii. Sale of shares at a premium to the market price is sufficient to prove that the same was a commercial transaction and it will not lead to show any kind of association of the *Noticees* with the Directors.

xxiii. With respect to the security of 1,04,34,748 shares against the loan of INR 20 Crore, no right was created in favour of BDR and the loan agreement dated January 05, 2016 stipulated a mechanism for selling the shares by SCTL Securities Trust where Mr. Anand Gupta was the Trustee.

xxiv. There was no reason to mention about the pledge of shares by SCTL Securities Trust in its Demat account due to the aforesaid stipulation in the loan agreement. Further, BDR was not required to make any disclosure and the *Noticees* are not aware if SCTL Securities Trust made any such disclosure.

xxv. Not even a single share was sold during the UPSI period on the instance of BDR, which dilutes the allegation that the *Noticee no. 1* was having inside information through BDR. Had there been such a case, BDR would have directed the Trustee of STCL Securities Trust Limited to sell the shares of SCTL.

xxvi. The interest for the period of October 2016 to April 2017 was forgone by BDR at the request of SCTL and BDR tried to improvise their security by getting the pledge recorded and making the Directors of SCPL/SCTL as Guarantors.

xxvii. In case the UPSI was communicated as alleged, the pledge on shares would have been invoked, however, the same was not done and BDR is still holding on to the 1,04,34,748 shares of SCTL in its Demat account.

xxviii. With respect to the loan extended during October, 2015 to March 30, 2016 by BDR to Shilpi Cable Private Limited (**SCPL**), 6 cheques of INR 5 Crore each were issued by SCPL, however, all of the said cheques were dishonoured due to the reasons "payment stopped by the drawer" or "drawer signatures differ".

xxix. No adverse inference can be drawn due to the slight delay in recording the pledge of shares in the Depository system. It is apparent from the records that there was a hostile relationship between the parties during the relevant period which had proximity with the alleged UPSI period.

xxx. The issues relating to non-payment of interest started at the end of the year 2016 and it was then BDR followed up with Mr. Mukesh Gupta and Mr. Manish Goel over the phone. It was because of pressure exerted by BDR on the aforesaid persons which had led to the issuance of post-dated cheques, which were also dishonoured on presenting to the bank for clearance.

xxxi. It is an admitted fact that under the initial loan agreement dated December 23, 2015 executed between BDR and SCPL, pledge was created on 40 Lakh shares and 1.5 Crore warrants of SCTL in favour of BDR. The said agreement was amended vide Amended Loan cum Guarantee deed dated May 01, 2017 and pursuant thereto, a pledge was created with respect to 1.2 Crore shares and 70 Lakh warrants of SCTL. A lien was marked on the said shares and warrants in the Demat account of SCPL and not even a single share/warrant was sold by BDR.

xxxii. It is also an admitted fact that applications of CIRP were filed by BDR against both SCTL and SCPL, however, as both the said companies have already gone into CIRP (on proceedings initiated by other creditors), the only option left for BDR was to file its claim before the Resolution Professionals, which it did.

xxxiii. During the alleged UPSI period, BDR was holding 40 Lakh equity shares and 1.5 Crore warrants of SCTL and even as of today, it is holding 1.2 Crore equity shares and 70 Lakh warrants of SCTL.

xxxiv. In total (against loans granted to SCTL and SCPL), the following are the details of shares/warrants pledged in favour of BDR:

Table no. 1

No. of shares of SCTL pledged with BDR for loans extended to SCTL (as on date of filing of reply)	1,04,34,748
No. of shares of SCTL pledged with BDR for loans extended to SCPL (as on date of filing of reply)	1,20,00,000
No. of shares of SCTL pledged with BDR for loans extended to SCTL (during UPSI period)	84,34,748
No. of shares of SCTL pledged with BDR for loans extended to SCPL (during UPSI period)	40,00,000
No. of warrants of SCTL pledged with BDR for loans extended to SCPL (during UPSI period)	1,50,00,000
No. of warrants of SCTL pledged with BDR for loans extended to SCPL (as on date of filing of reply)	70,00,000

xxxv. Out of the aforesaid, not even a single share was sold either before UPSI period, during the UPSI period or after the UPSI period.

xxxvi. Insofar as the resignation of Mr. Shreyansh Gupta is concerned, it is stated that he resigned on May 19, 2017 on the request of the *Noticee nos. 1* and *3* and the resignation from SCPL was given effect because the loan of BDR was sufficiently secured vide amended Loan cum Guarantee deed dated May 01, 2017 and pledge deed dated May 01, 2017.

xxxvii. The appointment of Mr. Anand Gupta as a Trustee in the year 2012 does not indicate frequent communication between the *Noticee no. 1* with the Promoter Directors of SCTL during the year 2017.

xxxviii. The allegations made with respect to the communication of UPSI are vague and the factors like an extension of loans, meetings for recovery of loan, receipt of cheques, and frequent fund transfers could not form the basis of the assumption to make the *Noticee no. 1* to be a connected person.

xxxix. The *Noticee nos. 1* and *2* had acquired the shares of SCTL in the following manner:

Dinesh Gupta (*Noticee no. 1*)

Table no. 2

Date	**No. of shares purchased**
02/05/2012	16,00,000
27/10/2014	10
03/11/2014	60051
30/09/2014	14,69,881
Total	**31,29,942**

Table no. 3

Dinesh Gupta HUF (Noticee no. 2)

Date	**No. of shares purchased**
02/05/2012	16,00,000
30/09/2014	14,69,881
17/12/2014	5,814
31/03/2015	6,32,000
09/11/2016	61,000
18/11/2016	2,000
21/11/2016	56,000
24/11/2016	56,000

25/11/2016	1,000
08/12/2016	64,200
03/01/2017	5,000
04/01/2017	3,135
09/01/2017	6,400
10/01/2017	1,500
11/01/2017	2,700
10/02/2017	14,000
13/02/2017	25,000
Total	**39,74,276**

xl. Both *Noticee nos. 1* and *2* sold the shares in various years with the following details:

Table no. 4

Dinesh Gupta (Noticee no. 1)

Financial Year	No. of shares of SCTL sold
2014-15	3,90,180
2015-16	23,09,684
2016-17	3,19,318
2017-18	1,10,760
Total	3129742

Table no. 5

<u>Dinesh Gupta HUF (Noticee no. 2)</u>

<u>Financial Year</u>	**<u>No. of shares of SCTL sold</u>**
2014-15	3,18,223
2015-16	27,36,994
2016-17	2,88,258
2017-18	6,30,801
Total	3974276

xli. The shares sold during the investigation period were on the lines of the trading executed in the previous years. Out of the total 68,57,533 shares acquired by the *Noticee nos. 1* and *2* from May, 2012 to December, 2016, approximately 84% of shares were already sold from July, 2014 to December, 2016 and during the investigation period of 8 months, the remaining 14-16% of the shares were sold.

xlii. The shares of SCTL were sold during the investigation period in the price range of INR 36 to INR 226. Even as per the allegations made in the SCN, the transaction in SCTL's shares during the UPSI period comprised only 6.54% of the total traded value of *Noticee no. 1*.

xliii. As the *Noticee nos. 1* and *2* were not having any UPSI, the trades cannot be termed as insider trading and no loss can be said to have been avoided unlawfully.

xliv. BDR still has 84,34,748 shares of SCTL in its Demat account and in case of possession of UPSI by *Noticee no. 2*, the shares would have been sold during the UPSI period leading to the recovery of the loan of INR 51 Crore along with interest.

xlv. Insofar as the calculation of the unlawful gains is concerned, it is submitted that SEBI has wrongly taken the average closing price of the shares of SCTL on May 02, 2017. The SCN itself has recorded that the price of its shares were falling sharply since April 26, 2017.

xlvi. As no violation of provisions has been established, no penalty deserves to be imposed.

6. The *Noticee nos. 3* and *4* vide a common reply dated April 30, 2022 have made submissions, majority of which are identical to those made by the *Noticee nos. 1* and *2*. The submissions which are unique to them and their facts as made on behalf of the *Noticee nos. 3* and *4,* are summarised hereunder:

i. *Noticee no. 3* was the Director of BDR only till November 04, 2017 and is not associated with the said company after the said date.

ii. A loan of INR 20 Crore was extended by BDR to SCTL on December 12, 2015 at an interest of 9% per annum and 1,04,34,768 shares of SCTL held by SCTL Securities Trust were kept under lien for the said loan. The loan amount and interest payment from October 01, 2016 were defaulted by SCTL and the cheques issued in lieu of the same were also dishonoured.

iii. The said loan was extended for another period of 3 months with interest at 18% per annum and an Amended Loan cum Guarantee Deed dated May 01, 2017 was executed and the Directors of SCTL were made personal Guarantor in the said deed. Further, a pledge of 84,34,748 equity shares of SCTL held by SCTL Securities Trust (along with bonus, dividends etc.) was created in favour of BDR.

iv. The loan repayment and the interest payment were defaulted by SCTL and the cheques issued in lieu of the same were again dishonoured.

v. Due to the said defaults, BDR invoked the pledge of 84,34,748 shares and informed SCTL that BDR is retaining the said shares. In response to the said intimation, Mr.

Manish Goel requested BDR that necessary arrangements for repayments are being made and therefore BDR should not sell those shares. However, no payments were made.

vi. Subsequently, Mr. Anand Gupta, Trustee of SCTL Securities Trust vide letters dated September 28, 2017 informed that SCTL has vide letters dated September 11, 2017 and September 14, 2017, disputed the creation of pledge of said shares in favour of BDR and SCTL Securities Trust and has called upon them to desist selling those shares. Accordingly, BDR could not sell those shares.

vii. Vide notice dated October 10, 2017, BDR had called upon SCTL to make the payment of the outstanding amount and further stated that till the realisation of said dues, BDR is entitled for retaining the shares as security. It was further informed that due to the objections raised by SCTL, BDR cannot sell and was not selling those shares.

viii. An insolvency petition was filed against SCTL by BDR on October 15, 2017, however, in November, 2017, *Noticee no. 3* had resigned from the directorship of BDR.

ix. Another loan of INR 22 Crore was extended by BDR to SCPL at 9% per annum and as per the loan agreement dated December 23, 2015, SCPL had pledged 40 Lakh shares and 1.5 Crore warrants in SCTL in favour of BDR.

x. As on March 31, 2016, the interest of INR 1,13,79,452 accrued on the said loan and TDS amount of INR 11,37,945 for the same was deposited on May 22, 2016 by SCPL under Section 194A of the Income Tax Act, 1961.

xi. Part of the balance amount being INR 2,41,507 was paid by SCPL to BDR on April 12, 2016 through RTGS.

xii. SCPL approached BDR in March, 2016 seeking a loan of another 4 Crore, which was given by BDR on the same conditions as applicable to the earlier loan amount.

xiii. An interest of INR 1,25,89,397 on the above loan was paid by SCPL to BDR on October 06, 2016 and TDS of INR 13,98,822 was deposited with the Income Tax Authorities on October 20, 2016 (total interest INR 1,39,88,219).

xiv. However, SCPL was unable to repay the principal outstanding of INR 31 Crore and thus sought an extension of the load period till April, 2017 and issued 4 cheques of INR 5 Crore each towards partial discharge of the outstanding. The said cheques were dishonoured on April 28, 2017.

xv. SCPL again approached BDR for an extension of the said loan for a 2 months' period at an interest of 18% and the personal guarantee of Mr. Manish Goel and Mr. Mukesh Kumar Gupta and a pledge of 75,10,000 shares were also offered. Accordingly, an Amended Loan cum Guarantee Deed dated May 01, 2017 was executed wherein the outstanding amount of INR 31 Crore was duly acknowledged. A pledge deed of the even date was also executed whereby pledge of 1,20,00,000 shares and 71,00,000 warrants of SCTL owned by SCPL was pledged in favour of BDR. Further, another pledge deed of even date was executed between BDR, SCPL and individual guarantors whereby a pledge of 75,10,000 shares of SCTL owned by them was created in favour of BDR. SCPL was liable to pay interest @18% p.a. for the loan amount of INR 31 Crore.

xvi. However, SCPL failed to repay the interest and principal amount of INR 31 Crore. The cheques issued towards the part payment of the loan were dishonoured and BDR has initiated proceedings under Section 138 of the Negotiable Instrument Act, 1881. As on October 15, 2017, the total outstanding of SCPL towards BDR was INR 36.24 Crore (approx.) and a petition under IBC was filed against SCPL by BDR.

xvii. The trading of the *Noticee no.3* was only 3.14% of the total shares of SCTL traded on the Stock Exchange during the UPSI period and the *Noticee no. 4* did not carry out any trades during the UPSI period.

xviii. The *Noticee no.3* had purchased 16 Lakh share of SCTL in May, 2012 and 13,97,513 bonus shares were allotted to the *Noticee no.3* in September, 2014. *Noticee no.3* has been selling the shares of SCTL from July, 2014 to June, 2017 in the following manner:

Table no. 6

Year (Months)	Number of shares sold
2014	4,57,130
2015	15,27,000
2016	67,872
2017	10,33,333

xix. The above details show that *Noticee no.3* had sold more than 15 Lakh shares in the year 2015. Further, in the year 2017, the *Noticee no.3* started selling the remaining holding from January 13, 2017 and sold 91,000 shares prior to the issuance of the said notice to SCTL. Further, during the alleged pre-UPSI period (December 10, 2016 to March 09, 2017), the *Noticee no.3* had sold 3,55,703 shares and the remaining 57,211 shares were sold on June 30, 2017 when the price was only INR 35.85. The same shows that he was not having the knowledge of UPSI, else he would have sold all his shareholding.

xx. Similarly, the *Noticee no. 4* had also sold the shares over a period of time in the following manner:

Table no. 7

Year (Months)	Number of shares sold
2014	4,93,123
2015	-
2016	25,09,881

January, 2017	10,800
June, 2017	1,05,452

xxi. *Noticee no. 4* (HUF of the *Noticee no. 3*) has not sold any share of the *Company* during the alleged UPSI period and balance 1 Lakh shares were sold on June 30, 2017 when the share price was INR 35.85 only. The same shows that there was no connection of the sale of shares with the alleged UPSI.

xxii. There was no loss that has been unlawfully avoided. In fact, BDR had suffered losses on account of unpaid loans and also due to a decrease in the value of the shares of SCTL pledged with BDR.

xxiii. As no violation of any provisions of law has been committed, no penalty needs to be imposed.

7. It is noted from the records that *Noticee no. 5*, vide her letter dated April 30, 2022, has filed her reply to the SCN and in the said reply, broadly the following submissions have been made on behalf of the *Noticee no. 5*:

i. *Noticee no. 5* is a housewife aged around 75 years, and she does not know the Promoter-Directors of the *Company* and is not connected to the *Company* in any manner.

ii. A perusal of the definition of UPSI as laid down under the PIT Regulations, 2015 indicates that the legal notice allegedly issued to the *Company* would not fall under the said definition of UPSI.

iii. The order of NCLT appointing IRP was set aside by the Hon'ble NCLAT vide its order dated August 01, 2017. The said information was disseminated on the stock exchanges, however, there was no impact on the prices of the shares of the *Company*. The same shows that insolvency proceedings or notices are no price sensitive information.

iv. It is also noted from the aforesaid order dated August 01, 2017 that two petitions were filed against the *Company* by Macquarie Bank Limited. However, the SCN mentions only about one insolvency notice dated March 08, 2017, rendering the SCN to be vague and containing incomplete facts. Further, the order passed by NCLT appointing IRP was set aside by the order dated August 01, 2017 of NCLAT and there was no impact on the price of the shares of the *Company* upon disclosure of information about the said order of NCLAT. The same shows that insolvency notice and proceedings emanating thereto are not price sensitive information.

v. Without prejudice to the above, it is also submitted that *Noticee no. 5* is neither a connected person in terms of Regulation 2 (1) (d) (i) nor an insider in terms of Regulation 2 (1) (g) (i) of PIT Regulation, as have been alleged in the SCN.

vi. *Noticee no. 5* was never associated with the *Company* in any capacity that allowed her, directly or indirectly, access to the unpublished price sensitive information nor is she reasonably expected to have such access. *Noticee no. 5* does not fall in the definition of "insider".

vii. *Noticee no. 5* was not aware of the issuance or the receipt of the insolvency notice dated March 08, 2017 to the *Company*.

viii. The trades executed by the *Noticee no. 5* during the alleged UPSI period of March 10, 2017 to April 28, 2017 did not impact the price of the scrip of the *Company* as her trading was minuscule (8,14,811 shares forming 4.15% of the total trading in the scrip) to the overall trading executed in the said scrip (1,96,38,668 shares).

ix. Without prejudice to the above, it is submitted that the *Noticee no. 5* had started purchasing shares of the *Company* in September 2015 and during the FY 2015-16, she had purchased 856423 shares at an average price of INR 66. Such shares were being diluted/sold in a routine manner, and there was no connection of the sale of shares with the alleged UPSI.

x. The SCN has acknowledged that the *Noticee no. 5* has traded in other scrips also during the alleged UPSI period. During the period of January 10, 2017 to March 09, 2017, securities worth INR 3 Crore (approx.) were sold by the *Noticee no. 5* and during the period of March 10, 2017 to April 30, 2017, she sold total securities worth INR 22 Crore (approx.). The sale of shares of the *Company* accounted to only 43.90% of the total value of securities sold by the *Noticee no. 5* during the said period.

xi. Further, the *Noticee no. 5* sold her remaining 41612 shares of the *Company* on June 30, 2017, when the price of the scrip was only INR 35.85. Had the *Noticee no. 5* possessed the UPSI, as alleged, she would have sold her entire shareholding earlier.

xii. *Noticee no. 5* was not in possession of or had access to the alleged UPSI nor has she taken any advantage of any information which was not generally available. As no violation has been committed, no loss has been unlawfully avoided by the *Noticee no. 5*.

8. The *Noticee no. 6* vide its letter dated April 30, 2022 filed a reply to the SCN. A perusal of the said reply indicates that most of the submissions made by it therein have already been recorded in the present order while highlighting the submissions of the other *Noticees*. Therefore, for the sake of brevity, only those submissions made by the *Noticee no. 6* that are unique and special to it, are being summarised hereunder:

i. The *Noticee no. 6* was not associated with the *Company* in any capacity that allowed it to access to the UPSI or is reasonably expected to allow such access. *Noticee no. 6* does no fall in the definition of "insider" as specified under the PIT Regulations.

ii. The *Noticee no. 6* was not aware of the receipt of the notice dated March 08, 2017 by SCTL.

iii. The *Noticee no. 6* sold only 1,13,000 shares which formed only 0.575% of the total shares of SCTL traded on the stock exchange.

iv. The *Noticee no. 6* started purchasing shares of SCTL during February 2016 and it purchased 511397 shares during 2015-16 at an average price of INR 54 and 7199351 shares during 2016-17 at an average price of INR 84.

v. The shares so acquired were being sold in a routine manner. As on December 09, 2016, the *Noticee no. 6* had 12, 30,748 shares of SCTL.

vi. As on April 30, 2017, the *Noticee no. 6* had huge quantities of 11,17,748 shares of SCTL. Subsequently, around 6 Lakh shares were sold in off-market transactions and it was left with 5,17,748 shares (as on June 30, 2017) of SCTL which were sold at an average price of INR 44.33. Had there been possession of UPSI, the *Noticee* would have sold all its shareholding.

9. I note that the personal hearing of the *Noticees* in the matter was first fixed for September 15, 2022, however, based on the request made on behalf of the said *Noticees*, the hearing got adjourned to September 26, 2022. However, for the said date also, a request for adjournment was received citing health issues of the Advocate of the *Noticees,* and accordingly, the hearing got adjourned to October 12, 2022. On the said revised date of hearing, the *Noticees* were represented by Mr. P.N. Modi, Senior Advocate, who made submissions to defend the case of the *Noticees.* Further, a written submission dated October 19, 2022 was also filed on behalf of the *Noticees*, through which the following key arguments were made before me:

i. The SCN has alleged the demand notice issued by Macquarie Bank demanding an operational debt as UPSI in terms of Regulation 2 (1) (n) (vi) of the PIT Regulations. The said Regulation was removed vide SEBI (Prohibition of Insider Trading) (Amendment) Regulations, 2018 w.e.f April 01, 2019.

ii. W.e.f September 02, 2019, SEBI Listing Obligations and Disclosure Requirements) Regulations, 2015 (**LODR Regulations**) came into force and it replaced the Listing

Agreements and consequently, fresh listing agreements were to be signed by all the listed companies. The revised form of listing agreements does not have any list or definition of "material events" like the previous detailed agreements and it stipulated that the company has to comply with the provisions of LODR Regulations.

iii. The Regulation 30 of the LODR Regulations stipulates disclosure of "material events" as per its Schedule III.

iv. IBC came into force w.e.f May 28, 2016, however, even in the year 2017, the LODR Regulations did not make any kind of reference to IBC, instead, the relevant clause (Clause 11 of the Schedule III of the LODR Regulations) categorise reference to BIFR and winding up petitions by any creditor as material information. It is pertinent to mention here that after IBC came into force, the references made to BIFR stood abated and the petitions are being filed before the NCLT.

v. For winding up petitions under the Companies Act, 2013 or a petition under IBC, a demand notice has to be served upon the company at its registered address. However, the provisions of LODR at relevant times mentioned only the references to BIFR etc.

vi. The definition of material events clearly excludes any demand notice from its scope and therefore, demand notice cannot be considered to be an UPSI.

vii. In the clauses 9 (a) and (b) of the Discussion paper dated March 28, 2018 (Discussion paper on compliance by listed entities undergoing the Corporate Insolvency Resolution Process under IBC Code, 2016), there were no specific disclosure requirements about the filing of an application/admission of an application for initiating the CIRP and the said Discussion paper also noted that the Regulation 30 of the LODR Regulations need to be suitably amended.

viii. Clause 9 (b) (iv) of the said Discussion paper suggested to include disclosure of the "Receipt of a demand notice" from an operational creditor under Section 8 (1) of IBC.

However, the said suggestion was not implemented showing that it was the intent of the legislating authority to categorically exclude Demand notices from the ambit of a 'material event'.

ix. By virtue of the amendment of LODR Regulations w.e.f May 31, 2018, Regulation 30 Schedule III Part A was amended to stipulate that the material events in relation to CIRP under the IBC start from the filing of the application before the NCLT and subsequent stages.

x. In the present case, the disclosure about the filing of the petition was done on April 30, 2017, which as per the SCN is the last day of the UPSI period.

xi. Further, issuance of a demand notice does not always result in the filing of an application before NCLT and in the present case also, the demand was disputed by SCTL vide reply dated March 20, 2017.

xii. The petition against SCTL was admitted vide order dated May 24, 2017 passed by the NCLT, however, vide order dated August 01, 2017, NCLAT set aside the said order and eventually, the said order of NCLAT was set aside by the order dated December 15, 2017 passed by the Hon'ble Supreme Court.

xiii. The preponderance of probabilities mitigates against an assumption that the alleged UPSI was informed to the *Noticees*. As on September, 2016, Shilpi had failed to repay the outstanding of INR 51 Crore and the *Noticees* were repeatedly attempting to recover said dues. It would have been in the interest of Promoters-Directors of SCTL to hide the alleged UPSI from the *Noticees*.

xiv. The extension agreement of the loan was executed on May 01, 2017, without realising that the disclosure of the alleged UPSI was made on April 30, 2017. The said agreement was drafted and prepared earlier, as is evident from the date of the stamp paper, i.e., April 24,

2017. Further, the shares of SCTL were taken as security in the said extension agreement indicating that the *Noticees* were not aware of the demand notice or the disclosure.

xv. Even after the extension of the loan tenure, the loan defaulted and in August, 2017, around 84.34 Lakh shares were taken from the Demat account of SCTL Securities Trust to the Demat account of the *Noticees,* which they are still holding.

xvi. 5 different complaints have been filed under Section 138 of the Negotiable Instruments Act, 1881 and the same are pending adjudication before the Court. (4 complaints filed on September 27, 2017 and one was filed on November 18, 2017).

xvii. The trading pattern of the *Noticees* reveals that the trading was done in the normal course. In September, 2016, the loans were defaulted and the sale of shares was accelerated. However, the maximum number of shares were sold by the *Noticee no. 1* (23.09 Lakh) and *Noticee no. 2* (27.36 Lakh) in the year 2015-16. Similarly, *Noticee nos. 3* and *4* also sold the maximum number of shares in the year 2015 and 2016, respectively. In comparison to the said sales, very less number of shares have been sold during the UPSI. *Noticee no. 6* has executed the maximum number of sales in the post UPSI period. Only *Noticee no. 5* has executed the maximum number of share sale during the UPSI period, however, as her trading was executed by her sons, viz., *Noticee nos. 1* and *3,* and they themselves have sold a comparatively small number of shares, therefore, the sales by the *Noticee no. 5* during the UPSI period is mere co-incidence.

xviii. The SCN has also alleged violation of Section 16 of the SCRA, however, the said provision does not apply to the present case and instead Section 15 read with Section 18 read with Section 2 (i) may be applicable. Without prejudice, it is stated that Section 18 of the SCRA specifically excludes spot delivery contracts from Sections 13, 14, 15 and 17 of the SCRA.

xix. Earlier, forward trading in shares was not permitted, however, the Sale of Goods Act permitted the sale of shares with payment or delivery being deferred. The concerns that arose were regarding non-payment or non-delivery of shares or bad delivery issues etc., and such concerns were resolved by notification of the Depositories Act, 1996 which specifies the beneficial owner as the owner of the shares. The shares being fungible, an unpaid seller has only remedy to recover the money and cannot seek to recover shares.

xx. The Depositories Act, 1996 amended Section 2 of SCRA and Section 2 (1) (i) (b) was inserted. The said provision specified that delivery in Demat accounts through a Depository Participant is a spot delivery and the issue of payment has become irrelevant.

xxi. In terms of the definition of "spot delivery" laid down under the SCRA, the payment of consideration is required to be made on the same day or the next day in the case of physical securities. However, no such timelines for making the payments on the same day or the next day are applicable when the shares are transferred from one Demat account to another, which has happened in the present case. The said distinction has been deliberately created for shares being transferred in Demat form.

xxii. In the present case, the shares were transferred through the Depository system, therefore, there was no regulatory requirement to make the payment the same day or the next day.

xxiii. Further, there is no charge that the impugned transaction is a result of excessive or undesirable speculation or that it has any market wide adverse impact.

10. I have carefully considered the allegations levelled against the *Noticees* in the SCN, the written reply received from the *Noticees*, submissions made by the *Noticees* during the personal hearing as well as the post hearing written submissions. 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, extract whereof is reproduced below for ready reference:

Securities Contracts (Regulation) Act, 1956

2 (i) "spot delivery contract" means a contract which provides for,-

(a) actual delivery of securities and the payment of a price therefor either on the same day as the date of the contract or on the next day, the actual period taken for the despatch of the securities or the remittance of money therefor through the post being excluded from the computation of the period aforesaid if the parties to the contract do not reside in the same town or locality;

(b) transfer of the securities by the depository from the account of a beneficial owner to the account of another beneficial owner when such securities are dealt with by a depository;

Contracts in notified areas illegal in certain circumstances.

13. If the Central Government is satisfied, having regard to the nature or the volume of transactions in securities in any State or States or area that it is necessary so to do, it may, by notification in the Official Gazette, declared this section to apply to such State or States or area, and thereupon every contract in such State or States or area which is entered into after the date of the notification otherwise than between members of a recognised stock exchange or recognised stock exchanges in such State or States or area or through or with such member shall be illegal :

Provided that any contract entered into between members of two or more recognised stock exchanges in such State or States or area, shall—

(i) be subject to such terms and conditions as may be stipulated by the respective stock exchanges with prior approval of Securities and Exchange Board of India;

(ii) require prior permission from the respective stock exchanges if so stipulated by the stock exchanges with prior approval of Securities and Exchange Board of India.

Power to prohibit contracts in certain cases.

16. (1) If the Central Government is of opinion that it is necessary to prevent undesirable speculation in specified securities in any State or area, it may, by notification in the Official Gazette, declare that no person in the State or area specified in the notification shall, save with the permission of the Central Government, enter into any contract for the sale or purchase of any security specified in the notification except to the extent and in the manner, if any, specified therein.

(2) All contracts in contravention of the provisions of sub-section (1) entered into after the date of notification issued thereunder shall be illegal.

Exclusion of spot delivery contracts from sections 13, 14, 15 and 17.

18. (1) Nothing contained in sections 13, 14, 15 and 17 shall apply to spot delivery contracts.

(2) Notwithstanding anything contained in sub-section (1), if the Central Government is of opinion that in the interest of the trade or in the public interest it is expedient to regulate and control the business of dealing in spot delivery contracts also in any State or area (whether section 13 has been declared to apply to that State or area or not), it may, by notification in the Official Gazette, declare that the provisions of section 17 shall also apply to such State or area in respect of spot delivery contracts generally or in respect of spot delivery contracts for the sale or purchase of such securities as may be specified in the notification, and may also specify the manner in which, and the extent to which, the provisions of that section shall so apply.

Notification No. SO 184(E), dated 1-3-2000

"In exercise of the powers conferred by sub-section (1) of section 16 of the Securities Contracts (Regulation) Act, 1956 (42 of 1956), read with Government of India Notification No. S.O. 573(E), dated 30th July, 1992 and Notification No. 183 (E), dated 1st March, 2000 issued under section 29A of the said Act, the Securities and Exchange Board of India (hereinafter referred to as 'the Board') being of the opinion that it is necessary to prevent undesirable speculation in securities in the whole of India, hereby declare that no person in the territory to which the said Act extends, shall, save with the permission of the board, enter into any contract for sale or purchase of securities other than such spot delivery contract or contract for cash or hand delivery or special delivery or contract in derivatives as is permissible under the said Act or the Securities and Exchange Board of India Act, 1992 (15 of 1992) and the rules and regulations made under such Acts and rules, regulations and bye-laws of a recognized stock exchange :

***Provided** that any contracts for sale or purchase of Government securities, gold related securities, money market securities and ready forward contracts in debt securities entered into on the recognized stock exchange shall be entered into in accordance with,—*

(a) the rules or regulations or the bye-laws made under the Securities Contracts (Regulation) Act, 1956 (42 of 1956), or the Securities and Exchange Board of India Act, 1992 (15 of 1992) or the directions issued by the Securities and Exchange Board of India under the said Acts;

(b) the rules made or guidelines or directions issued under the Reserve Bank of India Act, 1934 (2 of 1934) or the Banking Regulations Act, 1949 (10 of 1949) or the Foreign Exchange Regulation Act, 1973 (46 of 1973) by the Reserve Bank of India;

(c) the provisions contained in the notifications issued by the Reserve Bank of India under the Securities Contracts (Regulation) Act, 1956 (42 of 1956)."

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:*

…

(vi) material events in accordance with the listing agreement.

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. After carefully pondering upon the replies and other records of the present matter, I observe that the following two broad issues need to be adjudicated upon by me in the present proceedings:

i Alleged violation of provisions of SCRA by transfer of shares in off-market; and

ii Alleged violation of provisions of SEBI Act, 1992 and PIT Regulations by the trading in securities during the alleged UPSI period.

12. I shall now deal with the aforesaid issues in seriatim.

13. Insofar as the issue related to the off-market transfer of 16 Lakh shares of SCTL from Shilpi Communication Private Limited to each of the *Noticee nos. 1* to *4* is concerned, I observe that there is no dispute to the factual narrative as laid down in the SCN. It is undisputed that on May 02, 2012, Shilpi Communication transferred a total of 64 Lakh shares of SCTL in a manner that each of the *Noticee nos. 1* to *4* received 16 Lakh shares of SCTL. Pertaining to the said

transaction, a disclosure dated May 04, 2012 was made by Shilpi Communication wherein, it was *inter alia* stated that the said shares were transferred for a total consideration amount of INR 12.80 Crore thereby determining the average sell price to be INR 20 per share. However, it is noticed that the said payment of INR 12.80 Crore (INR 3.40 Crore from each of the *Noticee nos. 1* to *4)* was made partly in May, 2014 and the remaining payment was made in July, 2014. It is observed that by virtue of the delayed payment of the consideration, the SCN has alleged that the *Noticee nos. 1* to *4* have violated Section 16 of the SCRA read with SEBI notification dated March 02, 2000, Section 13 and Section 16 of the SCRA.

14. As stated earlier, no dispute whatsoever has been raised by the *Noticees* to the above stated facts. In defense of the allegations made in the SCN, the only plea that has been taken by the *Noticees* is that the shares were transferred through the mechanism of the Depository system and the statutory rigors for making payment on the same day or the next day of the said transaction is limited to transfer of shares executed in physical mode.

15. In this connection, a reading of Section 13 of the SCRA indicates that all contracts in securities need to be either executed through the members of a stock exchange or with such members. Further, Section 18 (1) of the SCRA carves out an exception to the said stipulation by stating that nothing contained in Section 13 shall apply to a 'spot delivery' contract. The same now takes me to the definition of spot delivery as laid down under Section 2 (i) of the SCRA. A perusal of the said definition and the amendment carried out therein indicates that before notification of the Depositories Act, 1996, all the securities were held and traded in physical form and therefore, the said definition envisaged about delivery of securities in physical form only. However, after the notification of the Depositories Act, 1996, investors dealing in securities have the option[2] to hold them in Dematerialized form also and accordingly, the definition of

[2] Section 8 of the Depositories Act, 1996

"spot delivery" was amended by the insertion of sub-section 2 (i) (b), clearly with a view to bring within its fold transfer/transaction of shares executed electronically between two parties through Depository mechanism also.

16. In this respect, before proceeding further, I find it appropriate to record that Section 2(i) of SCRA defines the spot delivery contract and clause (a) of the said Section says that for a transaction in securities to fall within the ambit of spot delivery, it requires to complete the delivery of the securities as well as payment of consideration either on the same day or on the next day. Thus, both delivery of securities and, payment of consideration, are required to be completed within 24 hours of the date of the contract, subject to the limitations mentioned in the clause itself. Clause (b) of the said Section deals with the transfer of securities through Depositories.

17. Having considered the argument advanced by the *Noticees* pertaining to the non-applicability of the aforesaid statutory timelines of payments in the case of transfers through Depository mode carefully, I find that though the said argument may appear impressive on its face, however, it has no merit. A plain reading of Section 2 (i) (b) of SCRA indicates that the said Section is completely silent on the aspect of timelines, irrespective of mode of delivery of securities or payment of consideration. It is not right to state that relevant provision provides a statutory time limit for payment of purchase consideration in respect of delivery of securities only in physical mode and provides complete freedom to decide on the time of exchange of purchase consideration in the case of transfer of securities through Demat accounts. It cannot be a case that in the same Section, the legislature provided for timelines of payment of consideration for the transfer of shares in physical form whereas, for the shares that are being transferred in electronic form, no timelines have been prescribed. The said observation is also fortified by virtue of the fact that the option to convert the physical shares into dematerialized

form, rest with the respective holder, therefore, the timelines for the physical transfer of shares can easily be by-passed by exercising the option to convert the securities in dematerialized form. Thus, if the interpretation made by the *Noticees* is considered, it will not only make an artificial differentiation between the two modes of transfer of securities (physical and electronic), but also will end up in creating contradictions and confusion in the functioning of the securities market, as people indulging in spot contracts for purchase/sale of shares, shall determine the time of payment of consideration as per their wish under the shelter of effecting transfer of shares in dematerlized mode.

18. Even if assuming some merit in the above submission of the *Noticees* for a moment, I find that it is an established principle of interpretation that in case of two separate laws having conflicting meaning are similarly applicable to same issue, then an effort should be made to adopt a harmonious interpretation with an aim to give effect to the spirit and legislative intent of the concerned statute. It is observed that the preamble of SCRA prescribes that its aim is to prevent undesirable transactions in securities. Therefore, it cannot be the case that the Act selectively intends to prevent any undesirable transactions only in physical shares and not in the shares being transacted through the Depository mechanism. There is no dispute to the fact that the plain language of Section 2 (i) (b) does not talk about the timeline of payments for shares being sold through the Depository system, however, adopting a radical interpretation to suggest that the prescribed timelines for payments of consideration are not "applicable" in such transactions involving electronic transfer of shares would clearly defeat the spirit and intent of the Act and would also render Section 2 (i) (a) as completely redundant.

19. It has also been brought to my notice that a similar and identical issue had come up for consideration before the Hon'ble Securities Appellate Tribunal (hereinafter referred to as the "**Hon'ble SAT/ Tribunal**") in the matter of *Mrs. Bhanuben Jaisukhlal Shah Vs. SEBI (Appeal no.*

271 of 2009; date of decision: March 05, 2010) and the Hon'ble Tribunal after having considered the issue in detail, has *inter alia* held as:

"*When the securities are held in the physical form, it is possible for the seller to physically deliver the same to the purchaser at the time of effecting the sale but this was not possible with effect from September 20, 1995 in respect of the securities that are held with the depositories in dematerialised form. The Parliament then inserted clause (b) in Section 2(i) of the Act. This clause did not bring about any change in the definition of spot delivery contract. Clause (a) of the amended definition remains the same as the definition prior to the amendment. Clause (b) was inserted only to explain what "actual delivery" would mean in respect of the securities held in dematerialised form. According to clause (b), when securities are transferred from one beneficial account to another, it would be treated as "actual delivery" of securities within the meaning of clause (a). It is, thus, clear that clause (b) is not an independent clause but only an explanation to the words "actual delivery" as used in clause (a).* ***We cannot, therefore, accept the argument of the appellant that clause (b) is an independent clause and that the spot delivery contract is complete with the mere transfer of securities from the account of one beneficial owner to that of another without reference to the payment of consideration.*** *This could never be. If that were so, the contract itself would become void being without consideration. Clause (b) cannot be picked up and interpreted in a manner which defeats the very purpose for which it was enacted.* ***While interpreting the provisions of Section 2(i) of the Act, we have to keep in mind the consequences which are likely to flow from the intended interpretation. We cannot but hold that clause (b) in Section 2(i) was not meant to stand on its own and it has to be read in conjunction with clause (a)."*** *(emphasis supplied)*

20. In view of my reasoning recorded above and in the light of the afore-quoted findings of the Hon'ble Tribunal, I am of the view that the arguments of the *Noticees* are not worthy of acceptance. Further, the reference made by the *Noticees* to the Sale of Goods Act,1930 to contend that the said Act permits the sale of shares with deferred delivery, is completely out of context, as being a special Statute, the sale of shares would always be governed by SCRA and not by Sale of Goods Act, 1930. As a result, I observe that the SCN is successful in bringing home the charge that the *Noticee nos. 1* to *4* have violated Section 16 of the SCRA read with the Notification no. G.S.R. 219 (E) dated March 02, 2000, Section 13 and Section 18 of the SCRA, as the payment of consideration of 64 Lakh shares of SCTL was not paid within the timelines prescribed under Section 2 (i) of the SCRA.

21. The next issue in hand pertains to the allegations of commission of insider trading by the *Noticee nos. 1, 2, 3,5* and *6*. In order to adjudicate the said charges in the backdrop of the relevant laws, I need to decide the following issues:

i. Whether the information pertaining to the demand notice dated March 08, 2017 issued on behalf of Macquaire Bank was a price sensitive information?

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

iii. Whether the Noticee no. 1, 2, 3, 5 and 6 were insiders of SCTL?

iv. If yes, whether the trades executed in the scrip of SCTL were done while in possession of/having access to the UPSI?

22. I shall now record my findings on the aforesaid issues in the backdrop of the submissions made by the *Noticees* and the records of the matter available before me.

23. At the outset, it is noted that the *Noticees* have not factually disputed the assertions made in the SCN pertaining to the receipt of the demand notice dated March 08, 2017 by SCTL. It has been, however, contended that the information about the receipt of the aforesaid demand notice does not fall under the events that have been enlisted under the definition of UPSI nor the said information falls in the list of material events enlisted in the listing agreement.

24. Before proceeding further in the matter, it is recorded that the term UPSI is defined under regulation 2 (1) (n) of the PIT Regulations and it is noted that as per the definition, UPSI means a piece of information which relates to a company, either directly or indirectly, and which is not generally available, and which, upon becoming generally available, is likely to materially affect the price of securities of such company.

25. The *Noticees* have vehemently contended that a demand notice does not satisfy the requirements to be termed as a UPSI. Before I proceed to deal with this submission, it is appropriate to have a critical appreciation of the definition of the term UPSI. From the perusal of the said definition, it can be seen that the definition of UPSI has an operative part as well as

an illustrative list of items that have been provided under the said definition to give an indication as to what are the broad circumstances that normally can give rise to an UPSI. For any information to qualify as a UPSI, it needs to meet the test of the above mentioned definition including those illustrative list of items. As per the operative part of the definition, for any information to qualify as UPSI, it needs to satisfy primarily three ingredients, which are following:

i. The information is related directly or indirectly to the company;
ii. Such information is not generally available;
iii. Such information upon becoming generally available, is "likely" to materially affect the price of the securities.

26. Further, the term "generally available information" is defined in Regulation 2(1)(e), as information that is accessible to the public on a non-discriminatory basis and the Note to the above regulation explain that information published on the website of a stock exchange, would ordinarily be considered generally available. Further, in the definition of UPSI, the relevant regulation as cited above contains an illustrative list of matters that ordinarily would give rise to UPSI. However, the definition is not restricted only to the items/events mentioned under the said illustration. The foremost test to identify UPSI is to verify as to whether the information satisfies the three ingredients of the definition of UPSI or whether it falls under any one of the illustrative list of items that are likely to give rise to UPSI, as per the PIT Regulations. Therefore, upon holistic reading of the provisions, it is observed that the PIT Regulations have provided the following guidance for identifying what information can be treated as UPSI viz: (a) an information that satisfies the operative part of the definition of UPSI, (b) certain matters as illustrated under the definition of UPSI pertaining to the business/ operations/ financials of the company that ordinarily will give rise to UPSI and (c) one of the ways in which any information

can be considered to be "generally available" is when it is published on the website of a stock exchange.

27. Further, I find it relevant at this stage to refer to the decision dated September 19, 2022 of the Hon'ble Supreme Court of India rendered in the matter of *SEBI vs. Abhijit Rajan*. In this matter, in the process of examining as to whether the information in that case was a price sensitive and unpublished information, the Hon'ble Supreme Court, *inter alia*, examined Regulation 2(ha) of the erstwhile SEBI (Prohibition of Insider Trading) Regulations, 1992 (hereinafter also referred to as the "**PIT Regulations 1992**") and held as:

"25. But the catch lies in understanding the true scope of Explanation (vii) under Regulation 2(ha). As we have seen earlier, the main part of Regulation 2(ha) defines "price sensitive information" to mean any information, which relates directly or indirectly to a company and which if published is likely to materially affect the price of securities of a company. The Explanation under Regulation 2(ha) creates a deeming fiction and it makes 7 items of information listed thereunder as price sensitive information.

………

27.Therefore, while dealing with a case falling under Explanation (vii) of Regulation 2(ha), one may have to see whether there was any likelihood of the said information materially affecting the price of the securities of the company."

28. Thus, the Hon'ble Supreme Court has held that any information pertaining to a company that falls within the items listed as an illustration would certainly contain the following inherent characteristics (i) ability to have a direct impact on the financial strength of the company and (b) ability to materially affect the price of the securities when such information is disclosed. From the above, it can be concluded that any information falling within the items/events covered under the aforesaid illustration will automatically qualify as a price sensitive information, as there is no discretion left not to treat them as a UPSI and for other events or information not covered in the said illustration of events in the Regulation, the likelihood of the said information/event materially affecting the price of the securities has to be examined to conclude that the same event/information is indeed a price sensitive information.

29. As regards the criteria to testify an event/information if it is an UPSI, i.e., the information upon becoming generally available being likely to materially affect the price of the securities, it is observed that what is relevant here is "likely" to materially affect and not its actual and quantitative impact on the price of the relevant securities. In the instant matter, it has been observed that prices of the scrip of the *Company* have witnessed a downward fall after the information pertaining to filing of petition under IBC was disclosed by the *Company* on April 30, 2017 indicating that the information about the receipt of demand notice upon disclosure, had all likelihood to impact the price of the shares of the *Company*. Further, in support of the materiality and potential/likely impact of information on the price of a scrip upon disclosure, reliance may also be placed on the order dated March 24, 2021 passed by the Hon'ble Tribunal in Appeal no. 272 of 2020 in the matter of *Mr. B Renganathan Vs. SEBI* wherein the Hon'ble SAT has held that:

"………A disclosure-based regulatory regime is founded on timely and adequate disclosure of all events material to a company or to its securities in any manner. Further hair-splitting will result in confusion; so the best way to deal with the event is to disclose without doing further analysis. Disputes regarding actual price sensitiveness is irrelevant as brought out in this matter by both the sides; with SEBI holding that prices increased by a few rupees in the opening trades on April 6, 2017 while the appellant holding that prices had already been on the rise several days prior to that and prices increased due to disclosure of an insurance license. What is relevant is whether the event in question is likely to have a material effect irrespective of whether it actually impacts or not. Therefore, in our considered view any event like a 100% acquisition of a company, irrespective of its value or size, is material and liable to bring in UPSI and consequently liable for regulatory compliances under LODR and PIT regulations ………"

30. As has been stated above, Regulation 2 (1) (n) also enlists certain specific events which have been categorically included in the definition of UPSI itself. It is observed that at the relevant times, the said list of events also included information about material events in accordance with the listing agreement. In the present case, the *Noticees* have contended that the receipt of such a demand notice was not a material event under the listing agreement. Further, a reference has also been made by the *Noticees* to the proposed amendment in LODR Regulations to incorporate "demand notice" as a material event and it has been contended that despite such a proposal, the amendment that was carried out in the LODR Regulations has not so far included

demand notice as a material event and as on today, only the filing of a petition under IBC has been incorporated as a material event.

31. I have carefully considered the above contention pertaining to the price sensitive character of the demand notice received by the *Company* by which, the *Noticees* have sought to shake the very foundation of the insinuations made in the SCN. I observe that the said contention which looks attractive on first blush, is not fostering the case of the *Noticees* due to multiple reasons as highlighted below:

I. The reference made to the proposed amendment in LODR Regulations is completely out of context as the said Regulation [Regulation 68 (2) read with Schedule III] only prescribes a list of material events which a listed entity has to mandatorily disclose to the stock exchange. However, when Regulation 68 is read as a whole, it is noted that Regulation 68 (1) makes a general prescription for all listed entities to promptly disclose all events which are material; all information which are price sensitive and all information which has bearing on the performance/operation of such listed entity.

II. Regulation 68 (2), in plain words states that: *"(2) Without prejudice to the generality of sub-regulation (1), the listed entity shall make the disclosures as specified in Part C of Schedule III.*"

III. Therefore, the list of events enlisted under Schedule III read with the Regulation 68 (2) does not eclipse the general mandate given to listed companies for disclosing all the price sensitive information by such listed entities which categorically states that the listed entities are under an obligation to promptly disclose all the price sensitive information.

IV. I may also hasten to add here that the argument pertaining to the non-inclusion of the demand notice under Schedule III also does not hold any water. I say so due to the fact that under IBC, a demand notice can be issued even on default of a meagre amount of "one lakh rupees"[3] by a corporate person, however, all such demand notices may not affect the price of the securities of such entity and thus such a demand notice may not be worthy of being called a price sensitive information. However, when the demand notice is received for an enormous amount threatening the very business undertaking of the *Company* which the corporate debtor is not able to settle or successfully dispute, such a notice certainly gives a right to the creditor to knock the doors of NCTL to set in motion the resolution process against the debtor/listed company. In the present case, the demand notice was for a large sum of INR 19.55 Crore which was issued on behalf of the Macquaire Bank and consequent to the disclosure of filing of a petition against SCTL (on April 30, 2017), the price of the scrip witnessed an immediate fall. The relevant records show that on April 28, 2017 (before the disclosure of filing of the petition was made), the share price of SCTL had closed at INR 119.50 and on May 02, 2017 (the first trading day after the disclosure, since May 01, 2017 was a trading holiday), the scrip opened at INR 107.55 and closed at the same price. In the next three trading days, the scrip spiralled down to INR 87.40 on May 05, 2017, thus registering a downfall of INR 32.10 or witnessed around 27% downfall in a week's time.

V. From the facts of the present case as enumerated above, I am bound to observe that it may not be the demand notice which would *per se* constitute a price sensitive information but the litmus test to colour a demand notice as a 'price sensitive information' would be the quantum of the amount involved in such notice and the corresponding capacity of the corporate debtor to settle such amount. In the present case, as demonstrated above, the demand notice issued on behalf of Macquarie Bank was not settled by SCTL and the same culminated into the filing of an application seeking initiation of the resolution

[3] *Section 4 (1) of IBC: "This Part shall apply to matters relating to the insolvency and liquidation of corporate debtors where the minimum amount of the default is one lakh rupees…"*

process of SCTL and ultimately, the *Company* died a corporate death as it went into liquidation pursuant to the proceedings initiated against it before the NCLT.

VI. At this stage, I seek further guidance from the judgment of the Hon'ble Supreme Court passed in the matter of *SEBI Vs Abhijit Rajan (Civil Appeal No 563 of 2020-DOD-19.09.2022)* wherein the Hon'ble Court has underscored the correlation of price sensitivity of an information with the materiality of impact on the price. In exact words, the Hon'ble Court has observed:

> *"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, <u>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</u>. An information may materially affect the price of the security of a company either positively or negatively. The impact may be beneficial or adverse. <u>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</u>. The effect can be bullish or bearish. But the effect should be material and not completely insignificant." (underline supplied)*

VII. In the present case, the alleged UPSI was never disclosed by the *Company* and when the information about the filing of the petition before NCLT against SCTL was disclosed to the market, its share price witnessed a steep downfall of around 27% in few trading trades, as mentioned above.

VIII. In addition to the above, in response to the submission that the demand notice is neither a part of UPSI under Regulation 2(1) (n) of the PIT Regulations nor a material event under the listing agreement, it is observed that on a careful perusal of the relevant provisions pertaining to PIT and the LODR Regulations, it is observed that the intent of the regulatory framework put in place through the PIT Regulations is two-fold; (i) to prevent any trading in securities with the advantage of having asymmetrical access to unpublished information, which when published would impact the scrip price; and (ii) to identify such unpublished information within the company and put in place internal controls to prevent its unauthorized use. Whereas, the intent of the regulatory framework of the LODR Regulations is to ensure that there is "timely and adequate" disclosure of relevant information by listed entities to investors, both at the time of initial filing as well on a continuous basis. Continuous, adequate, accurate and timely disclosure of information on an ongoing basis would achieve parity while enabling investors to make informed investment decisions.

IX. Therefore, at the very outset it can be seen that the PIT Regulations and the LODR Regulations have two different regulatory intents to serve and achieve. While the PIT Regulations aim to prevent anyone from taking unfair advantage due to information asymmetry like trading on the basis of UPSI, the intent of the LODR Regulations is to ensure that listed entities disclose all relevant information transparently in a timely manner to prevent information asymmetry. Further, Regulation 30 of the LODR Regulation pertains to disclosures of events or information, which in the opinion of the Board of a listed entity, are material, whereas the PIT Regulations, which cater to a much graver violation of insider trading, vis-à-vis disclosure violations, will prevail over the LODR Regulations when it comes to identifying what UPSI is. Thus, an event/information even if not considered by a listed company material for disclosure under Regulation 30 of the LODR Regulations, can be considered a price sensitive information under the PIT Regulations if it has the potentiality to impact the share price of the said company upon its disclosure to the public. Therefore, the submission that non-inclusion of a demand notice under regulation 30 of the LODR is sufficient to conclude that a demand notice can't be an event which could have any bearing on the price of a scrip and therefore does not qualify to be termed price sensitive information has no merit and does not deserve any further consideration.

32. In view of my reasoning recorded above and having been guided by the judgments of the Hon'ble Supreme Court as well as the Hon'ble Tribunal as aforesaid, I am not persuaded to accept the contentions made by the *Noticees* to colour the alleged UPSI as a non-material or non-price sensitive information. Under the circumstances, I am of the view that the information pertaining to the receipt of the demand notice by SCTL on behalf of Macquaire Bank was indeed a material information and was thus consequently a price sensitive information, as rightly alleged in the SCN.

33. Further, the submission that provisions under the LODR Regulations have no mentioning of IBC proceedings and still continued with reference to BIFR only is not material to be considered when the provisions of IBC read with notification dated May 28, 2016 make it evident that all BIFR references stood abated and such references were directed to be made/raised before the NCLT. Thus, the above submission is only technical and has no bearing on merit to be considered tenable.

34. The next issue that arises before me is the period for which the price sensitive information pertaining to the said demand notice remained unpublished. It is a matter of record that no disclosure whatsoever was made by SCTL regarding the receipt of the said demand notice. However, a disclosure dated April 30, 2017 (Sunday) was disseminated on the website of BSE that SCTL had made a disclosure dated April 29, 2017 under Regulation 30 of LODR Regulations informing that: "*a petition has been filed against the company under Section 8 & 9 of the Insolvency and Bankruptcy Code, 2016 (IBC 2016) by an overseas Bank claiming to be operational creditor against the company, before the Hon'ble National Company Law Tribunal (NCLT), New Delhi, which is disputed as per our company. The company is taking legal recourse in this matter. The matter is listed for hearing at NCLT on May 04, 2017.*"

35. It is observed from the SCN that the aforesaid information regarding receipt of the demand notice has been alleged to have remained unpublished from the day the said demand notice was received by SCTL, i.e., March 10, 2017 till the time the aforesaid disclosure was made by SCTL on BSE, i.e., April 30, 2017. In view of the undisputed factual position, I hold that the information pertaining to the receipt of the demand notice which remained unpublished till the time the disclosure regarding the filing of the petition under IBC was made by SCTL. Accordingly, I am of the view that the period commencing from March 10, 2017 till April 30, 2017 becomes the period during which the said price sensitive information pertaining to the demand notice remained unpublished, therefore, for adjudicating the present matter; the afore mentioned period is to be considered as the UPSI period.

36. The next issue that arises for my consideration is the most crucial aspect of the present matter, i.e., whether the *Noticee nos. 1* and *3* were in receipt of the aforesaid price sensitive information pertaining to SCTL so as to be held as insiders in terms of the PIT Regulations.

37. Before proceeding further, I note that the SCN has averred numerous factual evidences which show that *Noticee nos. 1* and *3* were having frequent communication with the Directors of SCTL (Mr. Mukesh Gupta and Mr. Manish Goel). At the cost of repetition, the said undisputed facts which form the foundation of the case of insider trading against the *Noticees* are enlisted herein below:

I. Extension of large amounts of loans by BDR to SCTL and other connected companies;

II. Admission of meetings between the *Noticee nos. 1* and *3* and Mr. Mukesh Gupta and Mr. Manish Goel for following up of the recovery of loans by BDR around the period of issuance of the aforesaid demand notice and filing of the petition before IBC;

III. Exchange of Cheques issued towards the partial outstanding amounts; and

IV. Frequent fund transfers without any kind of documentation to secure such amounts;

38. As can be noted from the summary of submissions made by the *Noticees,* it has been vehemently argued that the loan transactions and other ancillary factors cannot form a ground to allege the probable communication of the UPSI by the Promoter-Directors of SCTL to the *Noticee nos. 1* and *3*. The fulcrum of the said submission is that the alleged information itself was negative for SCTL and it cannot be reasonably expected from a borrower (SCTL) to convey such negative information to its lender (Directors of BDR; *Noticee nos. 1* and *3*) and no prudent person would have extended the tenure of the loan (as BDR has done) if such an information about the bad financials (or demand notice) about the borrower was received or known by him. Another defence that has been sought to be created by the *Noticees* is that, the disclosure about the filing of a petition against SCTL before NCLT was made through the stock exchanges on April 30, 2017, however, the amended loan agreements extending the existing tenure of loan repayment by BDR were signed on May 01, 2017 which shows that, had the *Noticees* were aware of such impending litigation against SCTL, they would not have extended the tenure of the loan.

39. I have carefully considered the aforesaid submissions and in my considered view, the exercise that needs to be carried out in the present case is to evaluate all the attendant factors to ascertain the probabilities emerging thereto, either in support of the *Noticees* or in support of the SCN.

40. At the outset, it is noted that due to multiple reasons, the relationship of the *Noticee nos. 1* and *3* with the Promoter-Directors of SCTL seems to be strongly cohesive. As already stated in detail, 64 Lakh shares of SCTL were transferred by its promoter entity (Shilpi Communication Private Limited) to the Demat account of *Noticee nos. 1* to *4* in the year 2012. For the said transaction, the consideration amount of INR 12.80 Crore was paid belatedly in the year 2014 that too, without any interest and incidentally, no documentation for securing the payment of

such huge amount of consideration was executed. The said transaction clearly smacks of a strong underlying relationship between the Promoter-Directors of SCTL with *Noticee nos. 1* to *4* as they (the Promoter-Directors of SCTL) did not pay heed to even secure the sales consideration of the shares sold to *Noticee nos. 1* to *4*.

41. Insofar as the loan transactions emanating from BDR is concerned, it is an admitted fact that BDR had extended loans to SCTL as well as to Shilpi Cable Private Limited ("SCPL"; one of the Promoter entity of SCTL). The details of the said loans so extended by BDR are captured in the following table for a better presentation:

Table no. 8

Sr. No.	Name of the Borrower	Amount (In INR)/Date of transfer	Date of agreement	Security
I.	Shilpi Cable Technologies Limited (SCTL)	20 Crore on 23/12/2015	05/01/2016	1,04,34,748 equity shares of SCTL
II.	Shilpi Cable Private Limited (SCTL)	(i) 25 Crore on 12/10/2015; (ii) 2 Crore on 13/10/2015; and (iii) 4 Crore on March 30, 2016 **Total: 31 Crore**	23/12/2015 for an amount of INR 27 Crore	40 Lakh shares of SCTL and 1.5 Crore warrants in SCTL held by Shilpi Cable Private Limited

42. As borne out of the records, both the aforesaid loans were extended at a rate of 9% per annum and in majority of instances, amounts were transferred before the execution of agreements. Further, the interest accruing on the loan after September, 2016 was not paid by

SCTL and eventually, neither the interest was paid nor the outstanding principal amount was repaid. Similarly, SCPL had paid part interest for the period of April- October, 2016 and subsequently, it also defaulted on the payment of the interest component accrued thereafter and repayment of the principal amount outstanding towards BDR. From the above, it is evident that the *Noticees no. 1* and *3* were known to the Promoters-Directors of SCTL so closely that loans were granted on a frequent basis and that too without securing the repayment either through documentation or by way of ensuring pledge of securities provided in the form of shares of SCTL. I may also hasten to add here that apart from the afore-said loans, BDR had also advanced money to SCTL and Shilpi Communication Pvt. Limited, as and when required by the said companies. In terms of the information furnished by the *Noticee no. 1*, the following is noted from the internal ledgers:

Table no. 9

Amounts in Crore

Sr. No.	Name of Shilpi Group entity	Amount given	Amount returned	Closing Balance (Cr./Dr.)
FY 2015-16				
1.	Shilpi Communication	1	10.1	0 $
2.	SCTL	28.06	28.06	0
FY 2016-17				
1.	SCTL	83.57*	80.50*	3.07 (Dr.)
FY 2017-18				
1.	SCTL	0	4.76	0**

$ Shilpi Communication had an opening debit balance of INR 9.1 Crore as on Apr 01, 2015 in the books of BDR

** Frequent transactions, both credit and debit, were observed between BDR and SCTL during Oct 2016-Mar 2017*

***The net closing balance have been adjusted to Zero on the basis of outstanding loan against shares extended to SCTL*

43. Now coming to the contention of the *Noticees,* it is noted that the tenures of the aforesaid loans were extended for three months (SCTL) and two months (SCPL) by way of execution of respective Amended Loan cum Guarantee Deeds which were executed on May 01, 2017, i.e., a day after the disclosure about filing of the petition before NCLT was made by SCTL. By virtue of the Amended Loan cum Guarantee deed executed for the loan given to SCTL, 84,34,748 shares of SCTL as held by the SCTL Securities Trust were pledged under a separate pledge deed of even date. Similarly, another Amended Loan cum Guarantee deed was executed for the loan given to Shilpi Cable Private Limited and a pledge deed was executed for the pledge of 1.2 Crore shares and 70 Lakh warrants of SCTL in favour of BDR and additionally, by another pledge deed, 5000 shares held by Mr. Mukesh and 75.05 Lakh shares held by Mr. Manish Goel were pledged.

44. I have carefully considered the submissions of the *Noticees* that there was no rationale for the Promoter-Directors of SCTL to communicate a negative UPSI to the *Noticee nos. 1* and *3* and no such communication of the UPSI has taken place as the tenure of the loans extended by BDR were extended even after the disclosure about filing of the petition under IBC was made to the stock exchanges. I have carefully examined the minute details surrounding the loan agreements, pledge deeds, etc., and I find that there are factors which tilt the preponderance of probabilities against the *Noticees* and in favour of the SCN, and such factors are being enumerated hereunder:

i. It is undisputed that the interest portion on both the loans remained unpaid after September, 2016 and for the loans extended to SCTL and for the loans extended to SCPL, even the total interest that accrued during April-October, 2016 was not paid to BDR by the respective borrower companies. Further, the principal amount which became repayable towards BDR was also not paid and instead in April, 2017, a few cheques were issued in favour of BDR and all of such cheques were dishonoured. The details of such cheques have been captured in the following tabular form:

Table no. 10

Sr. No.	Cheques issued by	Details of Cheques	Total amount involved	Status of cheques
I.	SCTL	Four cheques: Two dated April 24, 2017; and Two dated April 26, 2017	20 Crore	All cheques were dishonoured vide Memo dated April 28, 2017 for reasons like "Payment stopped by the drawer" and "Payment stopped by the drawer"
II.	SCPL	Six cheques: Two dated April 20, 2017; Two dated April 24, 2017; and Two dated April 26, 2017	30 Crore	All cheques were dishonoured vide Memo dated April 28, 2017 for reasons like "Payment stopped by the drawer" and "Drawer Signature differ"

ii. It is noted from the above table that only two cheques were issued by SCPL on April 20, 2017 and the date of all other cheques is either on April 24, 2017 or beyond such date. However, all the said cheques were returned dishonoured by the respective bank (s) to BDR through the Memos dated April 28, 2017. Therefore, going by the said dates, it may be presumed that any such further negotiation or extension of loan tenure by the lender (BDR) could have happened only after April 28, 2017 and admittedly, the Amended Loan cum Guarantee Agreements were executed on May 01, 2017 only.

iii. Interestingly however, as per the *Noticees*, the stamp paper for the said agreements extending the loan tenure was purchased by BDR itself well in advance on April 24, 2017 itself, i.e., four days prior to the date when all the cheques were returned dishonoured by the bank. Therefore, the said facts clearly indicate that BDR as well as the *Noticee nos. 1* and *3* were well aware of the financial crisis faced by the *Company* and also about the fate that the cheques are going to meet, when being presented to the bank.

iv. Further, it may also be highlighted here that SCTL had taken loan of INR 31 Crore and SCPL had taken loan of INR 20 Crore from BDR and against the same, cheques of INR 30 Crore (6 cheques of INR 5 Crore each) were issued by SCTL and SCPL had issued cheques for INR 20 Crore (4 cheques of INR 5 Crore each). Therefore, the deficit that remained from the outstanding amount was only INR 1 Crore from SCTL towards BDR as admittedly, the unpaid interest amount (INR 1.05 Crore for SCTL and INR 1.39 Crore for SCPL) for both the said loans was foregone by BDR due to the reasons best known to it since the Amended Loan cum Guarantee Agreements were apparently deliberately limited to the original loan amounts of INR 31 Crore and INR 20 Crore respectively. However, instead of pursuing legal remedy for dishonouring of the cheques, BDR chose to extend the tenure of the loans by foregoing the unpaid interest amounts.

v. Another interesting factor that emerges from the Amended Loan cum Guarantee Agreements is that the loans were extended for a very limited period of three months (SCTL) and two months (SCPL) only. Further, when the cheques issued by the debtors (SCTL and SCPL) were already dishonoured and the loan tenure was extended for a limited time frame, it is expected from any reasonably prudent lender to secure its interest by carrying out all the necessary acts. In this case, however, despite of having a pledge deed, I find that the actual pledge was created in the Demat account of SCPL belatedly. It is noted that the pledge for 80 Lakh shares was constituted on May 30, 2017 and for 40 Lakh shares, it was constituted in the demat account only on June 14, 2017. It may be recalled here that the said Amendment agreement was executed on May 01, 2017 extending the tenure of the loan for only two months, however, the pledge was constituted when almost 75% of the tenure of the loan period had already passed.

vi. Further, with respect to the pledge of shares/warrants, it is noted that in the initial loan agreement dated December 23, 2015 towards the loan given to SCPL, a pledge of 40 Lakh shares and 1.5 Crore warrants was recorded as a condition of security, and further by the Amendment agreement dated May 01, 2017, a pledge was created for 1.20 Crore shares and 70 Lakh warrants. However, as per the statement of Mr. Dinesh Gupta made during the investigation, the shares were not transferred to BDR.

vii. Insofar as the loan given to SCTL by BDR is concerned, 1,04,34,748 shares held by SCTL Securities Trust were recorded as pledged in the loan agreement. In terms of the submissions made by the *Noticee no. 1*, the relevant clause of the loan agreement dated January 05, 2016 recorded as: "*in case the borrower is not in a position to repay the loans as per the terms of repayment as per this agreement, the lender may without sending any notice to the borrower, ask for invocation of the aforesaid security. In such situation, the Trustee of the aforesaid Trust will dispose off the required number of aforesaid shares and the proceeds of the same shall be utilized for the purpose of repayment of the loan.*"

viii. In this connection, it is noted that the *Noticee no. 3* has contended that in the said loan agreement dated January 05, 2016, no power was granted to sell the shares. From a plain reading of the aforesaid clause of the said agreement, it emerges that the Trustee of the SCTL Securities Trust was clearly empowered to act under the directions of BDR to dispose of the shares in case of default by the borrower (SCTL), however, it goes beyond comprehension as to why the said clause was not invoked at all by BDR and now in the present proceedings, it has been claimed that there was no power conferred on BDR to get those shares sold for adjusting towards its recovery of the outstanding amount. It is also found erroneous that despite there being defaults in repayment on the part of SCTL, no corrective measures including the modification in the agreement seeking power to invoke the pledge so as to sell the shares received on pledge was sought by the *Noticees*.

ix. It is also an undisputed fact that the Trustee of the said Trust was Mr. Anand Gupta, who was appointed admittedly on the insistence of the *Noticee nos. 1,* only to ensure the protection of their interest. In terms of the email dated November 08, 2021 issued by Mr. Anand Gupta during the investigation, he has *inter alia* stated as: "*Further Shri Dinesh Gupta, my younger brother made me trustee of trust of Shilpi Cable and I was acting on his advice only and do not have much knowledge regarding the issue. As far as I remember I have not dealt with the company or with its shares personally. At present there is no cordial relation between me and Shri Dinesh Gupta. You may conduct the inquiries with him as ultimately his company BDR Builders and Developers P Limited had pledged these shares held in trust and I was nominee of Shri Dinesh Gupta*".

x. If I consider the covenant of the loan agreement dated January 05, 2016, pertaining to pledge of shares held by SCTL Securities Trust and the assertions of the Trustee of such Trust that he was a mere nominee of Mr. Dinesh Gupta (*Noticee no.1*), it may be reasonably expected that in case of default, BDR would go ahead for invocation of the pledge through the Trust which had the bounden obligation to dispose of the said shares. However, no such action was taken in the direction of invoking the pledge and ultimately, the loan was extended for another three months by an Amendment Agreement dated May 01, 2017.

xi. Going by a simple calculation, the said period of three months also expired in August, 2017, however, the pledge on 84,34,748 shares of SCTL was not utilised to settle the dues. As can be noted from the reply of the *Noticee no.3,* BDR invoked the pledge on the said shares and informed SCTL that BDR is "retaining" the said shares as security for payment of the outstanding of INR 20 Crore and interest accrued thereto. It has further been stated that Mr. Manish Goel approached BDR and requested it not to sell any shares by assuring that it is arranging funds for re-payment of the dues. Further, it has been submitted that Mr. Anand Gupta (Trustee) informed telephonically and vide letters dated September 28, 2017 that SCTL has vide letters dated September 11, 2017 and September 14, 2017, disputed the creation of pledge in favour of BDR and SCTL Securities Trust and had called upon the Directors of BDR to desist from selling any pledged shares and the entity (BDR) whose money of more than 50 Crore was at stake, readily accepted the above dispute/resistance of the Promoters of SCTL and found it right that they had no authority to sell those pledged shares and accordingly the same were not sold by BDR.

xii. The perusal of the letters issued by SCTL to dispute the creation of the pledge indicates that SCTL in the said letter addressed to the Trustee of the SCTL Securities Trust, has *inter alia* asserted as: "*That on the date of invoking of pledge, the cumulative value of shares was more than Rs. 20,00,00,000/- and no intimation was sent by M/s BDR Builders and Developers Limited to SCTL*"

xiii. It is observed that by citing the aforesaid objection as a reason not to sell the shares on which the pledge was invoked, does not seem to be an acceptable argument. The said submission lacks any kind of counter assertion made on behalf of BDR in reply to the said letters of SCTL/SCTL Securities Trust and BDR never asserted its right to sell the said shares to recover its dues. The said silence on the part of BDR also seems questionable as the price of the shares during August, 2017 was in the range of INR 24.50 to INR 32.70. It is quite strange to note that BDR did not sell the said shares during that time when the borrower had defaulted to repay the loan and interest even after the extended tenure, even though the price of the scrip was falling every day and admittedly, the said shares are still lying with BDR as the *Company* ultimately went into liquidation. Further, even if the purported objection raised by SCTL is taken on its face value, a reasonably prudent lender would have attempted to sell atleast a chunk of shares so as to recover the loan extended by it and the interest accrued thereon. However, in the present case, the lender did not sell the shares merely because the total value of the shares was in excess of the loan amount. The explanation furnished on behalf of BDR is frivolous and creates further suspicion about the cryptic silence and inaction to recover its dues from the pledged shares which it could have done easily be selling the shares of SCTL in the market even at a time when its share price was falling down steadily.

xiv. It is also of pertinence to mention here that Mr. Shreyansh Gupta, who was purportedly made Nominee Director on the Board of SCPL for the purpose of securing the loan extended by BDR to SCPL had resigned from its Board on May 19, 2017. However, the submission that he was a Nominee Director to secure the loan of BDR gets falsified due to his statement to the effect that he never attended any Board meeting nor was involved in the day to day affairs of SCPL and he was not even aware of the functions which he would be discharging as a Director. Had the purpose of appointing Mr. Shreyansh on the Board of SCPL been limited to securing the loan, he would not have resigned on May 19, 2017 when the loan was still outstanding. In the present proceedings, it has been claimed by the *Noticees* that the loan was secured by the pledge deed dated May 01, 2017, therefore, Mr. Shreyansh had resigned from the Board. The said statement of the *Noticees* is contradictory to the records, as by the time Mr. Shreyansh had resigned, the pledge on the shares of SCTL was not created in the Demat account of SCPL and the same was created only on May 30, 2017 and June 14, 2017, i.e. the dates subsequent to the resignation of Mr. Shreyansh Gupta.

xv. The submission pertaining to the execution of Amended Loan cum Guarantee Agreements doesn't inspire confidence to take the defence of the *Noticees* forward that they were not aware of the development pertaining to the issuance of demand notice and filing of winding up petition against SCTL. The *Noticees* though have made tall claims under the execution of the above agreements on May 01, 2017, however, nothing has been put forward to suggest as to how the payment of dues was secured by them from a company, which had already defaulted in past and the *Noticees* were struggling to secure even the payment of interest on the amount originally lent to the *Company*. On the one hand, it is on record that the *Company* had defaulted in paying interest which was charged @ 9%, however, through the aforesaid extended/ amended agreements, the interest was revised upwards to 18%. There is nothing on record to indicate as to how an entity that defaulted even in paying interest charged @ 9 % would be in a position to pay interest @ 18% within a short period of 2-3 months from the last default. The tall claims advanced about securing cheques and guarantee given by the Promoters-Directors of SCTL are also found to fall flat, since admittedly, no payment ever was made either by SCTL or SCPL.

xvi. It is noted that to dispute the allegation of receipt of the UPSI from the Promoters of SCTL, the *Noticees* have also claimed to have developed acrimony in their relationship with the *Company* and its Promoters/ Directors. The above submission is also not supported by the facts narrated before me either in the SCN or in the replies filed on behalf of the *Noticees*. It is evident from the records that the *Company* had defaulted in payment way back in September, 2016 itself, however, no major steps were taken by the concerned *Noticees* to ensure to protect such huge amounts lent to the *Company* from being irrecoverable, which ultimately happened due to deliberate laxity and inaction on the part of the *Noticees* who seem to have not been bothered too much about the *Company's* default or financial mess in the *Company*. On the contrary, the record thus shows that even after default, no stern actions were taken by the *Noticees* including the invocation of pledge of shares secured against the advancement of the loan. It is also not in dispute that *Noticees no. 1* and *3* were in frequent communication with the Promoter-Directors of the *Company* and were visiting the office of the *Company* on a regular basis. It is also not in dispute that the stamp paper was purchased on April 24, and the Amended Loan agreements were executed on May 01, 2017 which shows that they were regularly in communication with the *Company* and its Promoters-Directors and no acrimony seemingly had cropped up between them.

45. In order to sum up my aforesaid findings, I observe that the defence taken by the *Noticees* that the Promoters-Directors of SCTL will not communicate the UPSI to the *Noticee nos. 1* and *3* as because the *Company* and its Promoter company, both were the borrowers of BDR, is totally contradictory to the records which rather clearly suggest that the said *Noticees* have not acted as a *bonafide* lender throughout the period. There are multiple factors to strengthen my above aforesaid view , like the loan was extended before documentation was carried out; a large amount of interest due for a certain period was easily foregone; the stamp paper for extending the loan tenure was purchased before even the cheques were dishonoured; the purported Nominee Director on the Board of the *Company* resigned before the loans were secured; the pledge was invoked but the shares were not liquidated to recover the outstanding on flimsy grounds which are legally untenable and reliable etc. These are some of the factors which show that undue

leverage was continuously being given by BDR to SCTL and SCPL. By virtue of such undue leverage in so many forms, I am not persuaded to exonerate the *Noticees* merely because of the fact that they were also the lenders of SCTL/SCPL. In the given facts of the case, I have no hesitation to hold that when the Promoter-Directors of SCTL were getting enormous benefits in terms of loans of as huge amount as INR 51 Crore (INR 31 Crore for SCPL and INR 20 Crore for SCTL) and the *Noticee nos. 1* and *3* almost abstained from recovering the outstanding due (of BDR) even after the *Company* defaulted to pay interest to them which was eventually waived off; when even after the cheques were dishonoured, no appropriate proceedings were initiated against the borrowing companies; when the communication between the *Noticee nos. 1* and *3* was frequent with the Directors of SCTL, it makes a compelling case for making the said *Noticees* to fall under the definition of connected persons in terms of Regulation 2 (1) (d) (i) and insiders in terms of Regulation 2 (1) (g) (ii) of the PIT Regulations. Further, it is also noted from the records that the *Noticee no. 5* is the mother of the *Noticee nos. 1* and *3*. I note from the SCN that during the investigation conducted by SEBI, the *Noticee no. 5* had vide her letter dated September 05, 2021 *inter alia* stated that her trading account was opened on the advice of her sons (*Noticee no. 1* and *Noticee no.3)* and trading in the said account including the one done in the scrip of the *Company* was carried out by her sons. Strangely however, in her subsequent reply to the SCN, the *Noticee no. 5* has not whispered anything about her trading account being managed by her sons and infact has defended the allegations on their merits. Be that as it may, in view of the fact that the *Noticee no. 5* is the immediate relative of the *Noticee no. 1* and *Noticee no.3,* she also qualifies to be a connected person in terms of Regulation 2 (1) (d) (ii) (a) and consequently an insider of the *Company* under Regulation 2 (1) (g) (i) of the PIT Regulations.

46. Further, the *Noticee no. 2 (*Dinesh Gupta HUF) is a HUF of Mr. Dinesh Gupata (Noticee no. 1) who has already been held above as an insider. Therefore, when the Karta of the HUF who used to take the decisions pertaining to the trading activities in the accounts of said HUF

has been held to be an insider of the *Company,* therefore, all the trades executed by such a HUF controlled by a HUF would also fall in the realm of insider trading.

47. Insofar as the *Noticee no. 6* is concerned, it has been noted above that the Directors of *Noticee no. 6* were also Directors in certain other companies wherein *Noticee nos. 1, 2* or their family members were also Directors. The relation between the directors of the *Noticee no. 6* with the *Noticee nos. 1* and *3* and their family members is also admitted by the respective parties. The fact that the mobile number and email id of the *Noticee no. 3* was mentioned in the KYC and UCC of the *Noticee no. 6* has also been not disputed. Further, the fact that *Noticee no. 4* is the major shareholder of the *Noticee no. 6* has also been not disputed. Apart from the above undisputed facts, there were funds transaction also that shows connection of the *Noticee no. 6* with the *Noticee nos. 1* and *3*. It is also an admitted position that its trading decisions were being controlled by the *Noticee no. 3* only, therefore, all the trading decisions of the *Noticee no. 6* were also being taken by an 'insider of SCTL', thereby making it also an insider within the realm of PIT Regulations

48. Having observed that the *Noticee nos. 1, 2, 3, 5* and *6* were all insiders of the *Company* during the relevant period, the next mandate for me in the present proceedings is to analyse the trading of the said *Noticees* as alleged in the SCN. I note from the SCN that the following are the details of the trades executed by the said *Noticees* during the relevant period:

Table no. 11

Dinesh Gupta- Noticee no. 1

	Date	Gr Buy Vol	Gr Sell Vol	Net Trd Vol	Gr Buy Value	Gr Sell Value	Avg. buy/ sell rate
Pre-UPSI (Dec 10, 2016- Mar 09, 2017)	10-Feb-17	20000	117400	**-97400**	**4179909**	**22812505**	**191.29**
UPSI (Mar 10, 2017- Apr 30, 2017)	16-Mar-17	0	169156	-169156	0	36581508	216.25
	16-Mar-	0	20477	-20477	0	4433290.9	216.50

	17						
	05-Apr-17	0	26000	-26000	0	5803319.9	223.20
	10-Apr-17	0	15000	-15000	0	3300222.9	220.01
	11-Apr-17	0	26000	-26000	0	5783508.7	222.44
				-256633	**0**	**55901850**	**217.82**
Post- UPSI (May 1, 2017-Jul 31, 2017	30-Jun-17	0	43760	**-43760**	**0**	**1568796**	**35.85**

<u>Dinesh Gupta HUF- Noticee no. 2</u>

	Date	Gr Buy Vol	Gr Sell Vol	Net Trd Vol	Gr Buy Value	Gr Sell Value	Avg. buy/ sell rate
Pre-UPSI (Dec 10, 2016- Mar 09, 2017)	14-Dec-16	0	25000	-25000	0	5075148.85	203.01
	15-Dec-16	0	25000	-25000	0	5030000	201.20
	16-Dec-16	0	24000	-24000	0	4835073.4	201.46
	20-Dec-16	0	26263	-26263	0	5252152.6	199.98
	21-Dec-16	0	25000	-25000	0	4992500	199.70
	23-Dec-16	0	12500	-12500	0	2479998	198.40
	30-Dec-16	0	11500	-11500	0	2278443.8	198.13
	2-Jan-17	0	6678	-6678	0	1329752.3	199.12
	3-Jan-17	5000	0	5000	996029.7	0	199.21
	4-Jan-17	3135	0	3135	624215.25	0	199.11
	6-Jan-17	0	15000	-15000	0	3280307.75	218.69
	9-Jan-17	6400	0	6400	1404412.6	0	219.44
	10-Jan-17	1500	0	1500	332752.55	0	221.84
	11-Jan-17	2700	0	2700	631908.65	0	234.04
	10-Feb-17	20000	6000	14000	3779155.3	1107213.2	190.85
	13-Feb-17	25000	0	25000	5506250	0	220.25
				-113206	**13274724**	**35660590**	**197.74**
UPSI (Mar 10, 2017- Apr 30, 2017)	14-Mar-17	0	25000	-25000	0	5516573.2	220.66
	15-Mar-17	0	18500	-18500	0	4046254.4	218.72
	16-Mar-17	0	21617	-21617	0	4683841.45	216.67
	12-Apr-17	0	216175	-216175	0	47787309.9	221.06
	13-Apr-17	0	100000	-100000	0	22300000	223.00

	13-Apr-17	0	75000	-75000	0	16725042.6	223.00
	17-Apr-17	0	200000	-200000	0	45188769.7	225.94
				-656292	**0**	**146247791.3**	**222.84**
Post- UPSI (May 1, 2017-Jul 31, 2017	30-Jun-17	0	39626	-39626	0	1420592.1	35.85

Rajesh Gupta- Noticee no. 3

	Date	Gr Buy Vol	Gr Sell Vol	Net Trd Vol	Gr Buy Value	Gr Sell Value	Avg. buy/ sell rate
Pre-UPSI (Dec 10, 2016- Mar 09, 2017)	13-Jan-17	0	91000	-91000	0	20196641.2	221.94
	7-Mar-17	0	82346	-82346	0	18019069.65	218.82
	8-Mar-17	0	107357	-107357	0	23429562.8	218.24
	9-Mar-17	0	75000	-75000	0	16303289.75	217.38
				-355703	**0**	**77948563.4**	**219.14**
UPSI (Mar 10, 2017- Apr 30, 2017)	10-Mar-17	0	50000	-50000	0	10892832.2	217.86
	14-Mar-17	0	215000	-215000	0	47419862.5	220.56
	15-Mar-17	0	27000	-27000	0	5943031.55	220.11
	16-Mar-17	0	5445	-5445	0	1177577.2	216.27
	23-Mar-17	0	59500	-59500	0	12811400.55	215.32
	24-Mar-17	0	65097	-65097	0	13833868.25	212.51
	18-Apr-17	0	115000	-115000	0	25869051	224.95
	24-Apr-17	0	80021	-80021	0	17518658.85	218.93
				-617063	**0**	**135466282**	**219.53**
Post- UPSI (May 1, 2017-Jul 31, 2017	30-Jun-17	0	60567	-60567	0	2171326.95	35.85

Nirmala Gupta- Noticee no. 5

	Date	Gr Buy Vol	Gr Sell Vol	Net Trd Vol	Gr Buy Value	Gr Sell Value	Avg. buy/ sell rate
Pre-UPSI (Jan 10, 2017- Mar 09, 2017)	-	-	-	-	-	-	-
UPSI (Mar 10, 2017- Apr 30, 2017)	16-Mar-17	0	15990	-15990	0	3452241	215.90
	20-Mar-17	0	147224	-147224	0	31691995.9	215.26

	21-Mar-17	0	29000	-29000	0	6260638.35	215.88
	22-Mar-17	0	10895	-10895	0	2327789	213.66
	23-Mar-17	0	100194	-100194	0	21563352.6	215.22
	24-Mar-17	0	19172	-19172	0	4062091.75	211.88
	27-Mar-17	0	75000	-75000	0	16148712.35	215.32
	28-Mar-17	0	50000	-50000	0	10943727	218.87
	11-Apr-17	0	100000	-100000	0	22020465.75	220.20
	12-Apr-17	0	131282	-131282	0	29000232.6	220.90
	13-Apr-17	0	65409	-65409	0	14532924.85	222.19
	17-Apr-17	0	25000	-25000	0	5694375	227.78
	24-Apr-17	0	40296	-40296	0	8633915.05	214.26
	26-Apr-17	0	5349	-5349	0	1067414.9	199.55
				-814811		**177399876.1**	**217.72**
Post- UPSI (May 1, 2017-Jun 30, 2017	30-Jun-17	0	41612	-41612	0	1491790.2	35.85

<u>Ajay Fincap Consultants Pvt. Ltd. – Noticee no. 6</u>

	Date	Gr Buy Vol	Gr Sell Vol	Net Trd Vol	Gr Buy Value	Gr Sell Value	Avg. buy/ sell rate
Pre-UPSI (Dec 10, 2016- Mar 09, 2017)	-	-	-	-	-	-	-
UPSI (Mar 10, 2017- Apr 30, 2017)	12-Apr-17	0	10000	-10000	0	2202831.15	220.28
	13-Apr-17	0	65000	-65000	0	14590103.55	224.46
	21-Apr-17	0	38000	-38000	0	8449064.60	222.34
				-113000		**25241999.3**	**223.38**
Post- UPSI (May 1, 2017-Jul 31, 2017	06-Jul-17	0	280000	-280000	0	12138000	43.35
	07-Jul-17	0	237748	-237748	0	10816760.1	45.50
				-517748		**22954760.1**	**44.33**

49. I note that the *Noticees* have submitted that they have been selling the shares of SCTL since the year 2014-15 and in each year, a large number of share were sold by the *Noticees* and

even the alleged selling of shares was carried out in a routine manner. In so far as the said contention is concerned, I observe that it would be the trading behaviour in the proximate time of the UPSI that assumes significance to adjudicate the allegation of insider trading. In the present case, the UPSI period commenced on March 10, 2017 with the receipt of the demand notice by SCTL. As can be noted from the SCN, the *Noticee no. 2 (*HUF of the *Noticee no. 1)* has executed the following transactions from January 03, 2017 to February 13, 2017 in the scrip of SCTL:

Table no. 12

Date	Gr Buy Vol	Gr Sell Vol	Net Trd Vol
3-Jan-17	5000	0	5000
4-Jan-17	3135	0	3135
6-Jan-17	0	15000	-15000
9-Jan-17	6400	0	6400
10-Jan-17	1500	0	1500
11-Jan-17	2700	0	2700
10-Feb-17	20000	6000	14000
13-Feb-17	25000	0	25000

50. From the details highlighted above it can be seen that till February 13, 2017, the *Noticee no. 2* had purchased 25,000 shares of SCTL for a total value of INR 5506250 (INR 55 Lakh approx.). However, after a month, from February 14, 2017, the *Noticee no. 2* only sold the shares of SCTL in large quantities in the range of 18500 to 216175 shares per day and in total has sold 656292 shares from March 14, 2017 to April 17, 2017. Similarly, the other *Noticees* have also sold a large number of shares during the UPSI period as per the details highlighted in the following table:

Table no. 12

Sr. No.	Noticee no.	Period of selling	Total number of shares sold
1.	Noticee no. 1	March 16, 2017 to April 11, 2017	256633
2.	Noticee no. 3	March 10, 2017 to April 24, 2017	617063
3.	Noticee no. 5	March 16, 2017 to April 26, 2017	814811
4.	Noticee no. 6	April 12, 2017 to April 21, 2017	113000

51. As can be seen from the above table, the *Noticees* have sold large number of shares of SCTL and infact during the UPSI period, all the *Noticees* have only sold the shares of SCTL. At this stage, my attention gets drawn to the statement of Mr. Dinesh Gupta (*Noticee no. 1)* as recorded during the investigation conducted by SEBI. Following is the extract of the statement dated March 09, 2021 wherein Mr. Dinesh has explained the reason for selling of those shares during the period from January to March, 2017:

> *"Q. You have sold around 3 Lac shares during the quarter Jan-Mar 2017 in individual capacity and around 30000 shares from Dinesh Gupta HUF. What was the rationale.*
>
> *A. I am regularly buying and selling shares of SCTL since 2014.*
>
> *When SCTL/SCPL started defaulting in payment of interest/principal of loans given to them, I thought that if the company goes into problem, the share price would also go down. Hence I decided to sell the shares of SCTL in the market to recover as much as possible." (underline supplied)*

52. It may be noted here that the loan/interest default by SCTL started from October, 2016 onwards, therefore, if the said default in repayment of the loan was the trigger point for selling the shares, the sale of shares should have proximity with such default. However, in the pre-UPSI period from December 10, 2016 to March 09, 2017, I find the *Noticee* no. 1 traded only on

one day, i.e., February 10, 2017, while he purchased 20,000 shares and sold 1,17,400 shares of SCTL. After February 10, 2017, however the *Noticee no. 1* started selling shares of SCTL on March 16, 2017 only, which infact has proximity to the commencement of UPSI period, i.e., March 10, 2017. Under the circumstances, the ground of loan default being taken by the *Noticee no. 1* as a justification for his action of selling of shares seems to be clearly an after-thought explanation given by the *Noticee no. 1*. Rather, the unusual trading behaviour of the *Noticee no. 1* as well as that of the other *Noticees* where, they are seen to be trying to get rid of the shares of SCTL by selling them in huge quantities, clearly indicates that the said action was being carried out while in possession of/having access to the UPSI (about the impending default to Macquaire Bank and demand notice from the said Bank) and such trades were thus in the nature of insider trading. The explanation that shares secured against the loan are still held by them, and that if they possessed the UPSI, they would have also sold the shares secured against the loan, does not merit consideration. It has already been submitted by the *Notices* that on the assurance of Mr. Manish Goel (Director of the *Company*), they had decided not to sell the shares and further have stated that SCTL has disputed the creation of pledge in favour of BDR and SCTL Securities Trust. Moreover, admittedly the *Noticees* have not taken any steps to sell the shares to liquidate against the outstanding loans. Therefore, the above submission would now not come to their rescue to suggest that just because BDR had not sold shares, the shares sold by the *Noticees* deserve immunity from the serious allegations of insider trading, when the circumstances attendant to the timing and volume of trades heavily weigh against the *Noticees* to indicate that the trades executed during the UPSI period in the scrip of SCTL were executed while in possession of the UPSI. I also do not find merit in the above contentions of the *Noticees* for the reason that the position of these *Noticees* are not similar and akin to the lender i.e. BDR. BDR could stand in the queue as a secured creditor in the liquidation proceeding, which is not the case with the *Noticees* and this factor may also have led them to take the position of offloading their holdings in the scrip of the *Company*.

53. Therefore, I am of the firm view that the trades executed by the *Noticee nos. 1, 2, 3, 5* and *6* in the scrip of SCTL during the UPSI period were violative of Section 12 A (d) and (e) of the SEBI Act, 1992 read with Regulation 4 (1) of the PIT Regulations.

54. I may hasten to add here that during the investigation, the *Noticee no. 5* had stated that all trades in her account were done by her sons*, Noticee no. 1* and *3*. Therefore, the same shows that she qualifies as an immediate relative in terms of Regulation 2 (1) (f) of the PIT Regulations, as she used to consult the insiders and had given control over her trading accounts to the insiders (*Noticee no. 1* and *Noticee no.3)* of the *Company*. In this connection, I may further observe that such a plea of imputing the actions executed in her own account to her sons, cannot be a ground for dropping charges against her, as by giving control of her trading/demat account, the *Noticee no. 5* unequivocally exposed herself to all the consequences arising out of any misdeed by her sons.

55. Having held that the trades executed by the *Noticee nos. 1, 2, 3, 5* and *6* were in the nature of insider trading, the next issue that comes for my consideration is to calculate the quantum of the unlawful losses that has been avoided by the said *Noticees* by indulging in the said act of insider trading. The formula used for the calculation of the unlawful loss avoided by the said *Noticee nos. 1, 2, 3, 5* and *6* as per the SCN is:

> ***Unlawful loss avoided= {No. of shares sold while in possession of UPSI X average sell price} – {No. of shares sold while in possession of UPSI X average closing price on the day UPSI becoming public or the closing price on the following trading day, depending upon the timing of notification of UPSI to stock exchange}***

56. In the present case, the UPSI was disclosed on BSE on April 30, 2017 (Sunday) and on NSE on May 02, 207 before the market hours, therefore, the SCN has taken the average closing

price of the shares of SCTL on BSE and NSE on May 02, 2017, i.e., INR 107.25. Taking the said closing price, the SCN has computed the following amounts of unlawful notional loss that have been avoided by the aforesaid *Noticees:*

Table no. 14

Sr. No.	Name of entity	Shares sold in UPSI period	Avg. sell price per share	Avg. Closing price on May 02, 2017 (NSE and BSE)	Notional Loss avoided (in INR)
1	Noticee no. 1	256633	217.82	107.275	2,82,98,920.9
2	Noticee no. 2	656292	222.84		7,56,63,904.7
3	Noticee no. 3	617063	219.53		6,90,98,714.7
4	Noticee no. 5	814811	217.72		8,97,67,727.9
5	Noticee no. 6	113000	223.38		13,119,865.0
	Total	**2457799**			**275,949,133.2**

57. I note that the *Noticees* have contended that the SCN has wrongly taken the average closing price on May 02, 2017. In this connection, I seek guidance from the judgment of the Hon'ble SAT, passed in the matter of *Dushyant N. Dalal Vs. SEBI 2010 SCC Online SAT 328*. In the said order, the Hon'ble SAT has held *inter alia* 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.*"

58. Though in the aforesaid order, the Hon'ble SAT was confronted with the issue of calculation of unlawful notional gains, however, applying the said ratio in the present case, I find that the SCN is justified in considering the average closing price of the shares of SCTL so as to arrive at the quantum of the notional loss that the said *Noticees* avoided by indulging in insider trading.

59. It is noted that in the present proceedings, the *Noticees* have also been called upon to show cause as to why appropriate monetary penalty for the violation of SCRA, SEBI Act, 1992

and PIT Regulations be not imposed on them. It is noted that the *Noticees* have contended that no violation has been committed, therefore, no penalty needs to be imposed on them.

60. In this connection, it is noted that the power to impose a monetary penalty under SCRA and SEBI Act, 1992 is without prejudice to the powers of SEBI to issue directions under Section 12A (1) of SCRA and 11B (1) of the SEBI Act, 1992.

61. In the present order, it has already been delineated in detail, as to how the sale of 64 Lakh shares of SCTL to the *Noticee nos. 1, 2, 3* and *4* was in violation of Section 16 of the SCRA read with SEBI Notification G.S.R 219 (E) dated March 02, 2000, Section 13 and Section 18 of SCRA read with Section 2(i) of SCRA. Further, the charges of commission of insider trading as levelled against the *Noticee nos. 1, 2, 3, 5* and *6* have also been established and despite making myriad submissions, the said *Noticees* have not been able to vindicate themselves or prove their innocence as discussed in the preceding paragraphs. Therefore, in my considered view, as the said charges have been established against the *Noticees,* the *Noticees* deserve to be inflicted with appropriate monetary penalty under the relevant statutory provisions.

62. It is noted that the Section 15J of the SEBI Act, 1992 (and Section 23J of SCRA) 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

63. Insofar as the violation pertaining to insider trading is concerned, it has already been recorded in the present order that such insider trading was carried out by the concerned *Noticees* on multiple days and further large amounts of losses have been avoided unlawfully by the said *Noticees* by indulging in insider trading. Besides, with regard to the violation of provisions of SCRA, the records have not quantified any profit that accrued to the concerned *Noticees.*

64. In view of the reasons recorded in detail in this Order and in order to protect the interest of investors and the integrity of the securities market, I, in the exercise of the powers conferred upon me under Section 11, 11(4) and 11B of the SEBI Act, 1992 read with Section 19 of the SEBI Act, 1992, read with Section 12A of SCRA hereby issue the following directions and impose the following penalties:

i. The *Noticee nos. 1, 2, 3, 4, 5* and *6* are restrained from accessing the securities market and are further prohibited from buying, selling or otherwise dealing in securities, directly or indirectly, or being associated with the securities market in any manner, whatsoever, for a period of 1 year from the date of this Order;

ii. The *Noticees nos. 1, 2, 3, 5* and *6* shall, disgorge the amount of unlawful gains as mentioned in Table no. 14, along with simple interest @ 9% per annum from May 11, 2017 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 the 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".

iii. The *Noticees* 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.in on 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
Dinesh Gupta	Section 16 of the SCRA read with SEBI Notification G.S.R 219 (E) dated March 02, 2000, Section 13 and Section 18 of SCRA read with Section 2(i) of SCRA.	Section 23H of SCRA	INR 5 Lakh
	Section 12A (d) and (e) of the SEBI Act, 1992 read with Regulation 4 (1) of the PIT Regulations	Section 15G of SEBI Act, 1992	INR 10 Lakh
Dinesh Gupta HUF	Section 16 of the SCRA read with SEBI Notification G.S.R 219 (E) dated March 02, 2000, Section 13 and Section 18 of SCRA read with Section 2(i) of SCRA.	Section 23H of SCRA	INR 5 Lakh

	Section 12A (d) and (e) of the SEBI Act, 1992 read with Regulation 4 (1) of the PIT Regulations	Section 15G of SEBI Act, 1992	INR 10 Lakh
Rajesh Gupta	Section 16 of the SCRA read with SEBI Notification G.S.R 219 (E) dated March 02, 2000, Section 13 and Section 18 of SCRA read with Section 2(i) of SCRA.	Section 23H of SCRA	INR 5 Lakh
	Section 12A (d) and (e) of the SEBI Act, 1992 read with Regulation 4 (1) of the PIT Regulations	Section 15G of SEBI Act, 1992	INR 10 Lakh
Rajesh Gupta HUF	Section 16 of the SCRA read with SEBI Notification G.S.R 219 (E) dated March 02, 2000, Section 13 and Section 18 of SCRA read with Section 2(i) of SCRA.	Section 23H of SCRA	INR 5 Lakh
Nirmala Gupta	Section 12A (d) and (e) of the SEBI Act, 1992 read with Regulation 4 (1) of the PIT Regulations	Section 15G of SEBI Act, 1992	INR 10 Lakh
Ajay Fincap Consultants	Section 12A (d) and (e) of the SEBI Act, 1992 read with Regulation 4 (1) of the PIT Regulations	Section 15G of SEBI Act, 1992	INR 10 Lakh

iv. The particulars of SEBI Account for making e-payment are as under:

Name of the Bank	**Branch Name**	**RTGS Code**	**Beneficiary Name**	**Beneficiary Account No.**

Bank of India	Bandra Kurla Branch	BKID 0000122	Securities and Exchange Board of India	012210210000008

In case of e-payments, the Noticees are advised to forward the details and confirmation of the payments so made to the Enforcement department of SEBI for their records as per the format provided in Annexure A of Press Release No. 131/2016 dated August 09, 2016 which is reproduced as under:

1. Case Name:	
2. Name of the payee:	
3. Date of payment:	
4. Amount paid:	
5. Transaction No:	
6. Bank Details in which payment is made:	
7. Payment is made for (disgorgement amount and along with order details)	

65. 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 *Noticees.*

66. The obligation of the aforesaid debarred *Noticees*, 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.

67. The Order shall come into force with immediate effect.

68. 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: JUNE 19TH , 2023 **S. K. MOHANTY**

PLACE: MUMBAI **WHOLE TIME MEMBER**

SECURITIES AND EXCHANGE BOARD OF INDIA